



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**  
**Office of Federal Operations**  
**P.O. Box 77960**  
**Washington, DC 20013**

[REDACTED]  
Yun C.,<sup>1</sup>  
Complainant,

v.

Dan Coats,  
Director,  
Office of the Director of National Intelligence,  
Agency.

Request No. 2019001638

Appeal No. 0120182012

Agency No. ODNI-2018-005

**DECISION ON REQUEST FOR RECONSIDERATION**

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Yun C. v. Office of the Dir. Of Nat'l Intelligence, EEOC Appeal No. 0120182012 (Nov. 6, 2018). EEOC Regulations provide that the Commission may, in its discretion, grant a request to reconsider any previous Commission decision issued pursuant to 29 C.F.R. § 1614.405(a), where the requesting party demonstrates that: (1) the appellate decision involved a clearly erroneous interpretation of material fact or law; or (2) the appellate decision will have a substantial impact on the policies, practices, or operations of the agency. See 29 C.F.R. § 1614.405(c).

In her underlying complaint, Complainant claimed that she was subjected to discrimination and a hostile work environment on the bases of race (African-American), color (black), sex (female) and disability when:

1. She was asked to train two coworkers who received overtime, but she was not allowed to receive overtime;

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

2. On August 23, 2017, the Agency Deputy Chief of Manpower said to her that she hoped she did not feel that she was a “slave driver;”
3. In September 2017, the Agency Deputy Chief said to her that Complainant was her slave and she knew Complainant thought she was the worst “master” she ever had;
4. The Agency Deputy would touch her even though she asked her not to do so;
5. From September 2016 to October 2017, the Agency Chief of Manpower reported falsehoods about her to Staffing Firm 1, resulting in Staffing Firm 1 rating her horribly;
6. From September 2016 to October 2017, people unidentified in the record excluded her from work/spreadsheet updates and assignments and her work was deleted from the system after she stayed to complete tasks;
7. Around March and April 2017, Agency management informed Staffing Firm 1 that she was arriving late even though this was for doctor visits after an automobile accident; and
8. Agency management gave negative feedback about her to Staffing Firm 1, resulting in the termination of her service to the Agency on October 5, 2017.

In its final decision, the Agency dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(1) on the grounds of failure to state a claim. The Agency determined that Complainant was an employee of Staffing Firm 1 rather than the Agency.

On appeal, the Commission reversed the Agency’s final decision. The Commission found that the Agency possessed sufficient control over Complainant’s position to qualify as her joint employer. The Commission stated that the Agency controlled the means and manner of Complainant’s performance.

In its request for reconsideration, the Agency contends that the Commission’s previous decision involved a clearly erroneous interpretation of material fact or law and will have a substantial negative impact on its EEO policies, practices and operations. The Agency maintains that it did not have an employer-employee relationship with Complainant. The Agency states that Complainant reported to her Staffing Firm 1 supervisor who was located at the Agency. The Agency argues that Staffing Firm 1 evaluated Complainant’s work performance and did not seek input from the Agency. The Agency notes that Complainant’s position required a high level of skill and she worked independently approximately 70 percent of the time. The Agency points out that Staffing Firm 1 paid Complainant’s salary in accordance with its payroll schedule, provided her with vacation and sick leave, approved any leave she took, and offered and provided her with retirement benefits. Further, the Agency states that Complainant worked eleven years for Staffing Firm 1. The Agency contends that our prior decision would substantially and negatively impact its practice of utilizing contractors, significantly undermining the Agency’s operations.

In response, Complainant asserts that Agency officials distributed the work she was assigned and were the officials who oversaw her leave approval. Complainant maintains that the Agency provided information to Staffing Firm 1 concerning her job performance that affected the annual bonuses or increases she received. Complainant maintains that her contact with Staffing Firm 1 was limited. According to Complainant, anything requiring approval, tasking of work, day to day operations of work, guidance of work, direction of work, assignment of work and structure of work came directly from the Agency.

The Commission emphasizes that a request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (Aug. 5, 2015); see, e.g., Lopez v. Dep't of Agric., EEOC Request No. 0520070736 (Aug. 20, 2007). Rather, a reconsideration request is an opportunity to demonstrate that the appellate decision involved a clearly erroneous interpretation of material fact or law, or will have a substantial impact on the policies, practices, or operations of the Agency. The Agency has not done so here. The Agency has failed to establish that it was not a joint employer of Complainant. The record establishes that the Agency possessed sufficient control over Complainant's position to qualify as her joint employer. We discern no persuasive argument or evidence in the Agency's request for reconsideration that satisfies the criteria for granting its request to reconsider.

After reviewing the previous decision and the entire record, the Commission finds that the request fails to meet the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to DENY the request. The decision in EEOC Appeal No. 0120182012 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.

#### ORDER (E0618)

The Agency is ordered to process the remanded claims in accordance with 29 C.F.R. § 1614.108.<sup>2</sup> The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

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<sup>2</sup> On issue 1, the Agency should ask Complainant to clarify from whom she expected to receive approval for overtime – Staffing Firm 1, the Agency, or both. If Complainant expected to receive approval solely from Staffing Firm 1, the Agency need not investigate further issue 1 because the Agency would not be involved in the matter. On issue 6, the Agency should ask Complainant in part to identify who was involved and for whom they worked.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

#### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

May 15, 2019

Date