



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

[REDACTED]
Kyoko H.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2019003252

Appeal No. 2019001697

Agency No. 200P-0653-2018103830

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Kyoko H. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019001697 (Mar. 29, 2019). 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).

Complainant, a Physician at the Agency's VA Roseburg Medical Center in Eugene, Oregon, contacted an EEO counselor with an allegation that she had been discriminated against on the bases of race (Asian), national origin (Filipino), sex (female), and in reprisal for prior protected EEO activity when she was not selected for the position of Chief of Surgery. The parties entered into a settlement agreement on July 24, 2018, which provided in pertinent part that:

(2)(b) The Agency will formally designate Dr. [N] as Complainant's immediate supervisor and remove Dr. [M] (the former Chief of Surgery) permanently as her supervisor and [he will] not play a role

¹ 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.

in any future evaluations regarding Complainant within seven calendar days from the effective date of this agreement. Dr. [N] will remain Complainant's immediate supervisor until the new Chief of Surgery reports for duty. When the new Chief of Surgery reports for duty he/she will be Complainant's immediate supervisor.

However, Complainant alleged that the settlement agreement had been breached on several occasions between August and November 2018, as evidenced by the former Chief of Surgery's exercise of supervisory authority over her by making decisions regarding her surgery schedule and disapproving a leave request that she had submitted.

The Agency found no breach of the July 24, 2018 settlement agreement and Complainant appealed. In the appellate decision, the Commission found that the Agency had breached the settlement agreement after finding evidence in the record of the former Chief of Surgery exerting supervisory control over Complainant as she alleged in connection with the incidents involving her scheduling and leave.

On remand, we directed the Agency to specifically enforce the terms of the agreement. We ordered the Agency to issue a written directive to the former Chief of Surgery and the new Chief of Surgery reaffirming its obligations under the provisions of the July 24, 2018 settlement agreement. Commission records indicate that, in a memorandum dated April 15, 2019, the facility's Director issued a directive regarding adherence to the settlement agreement with Complainant. The memorandum was directed to the former and the new Chiefs of Surgery. The third clause of the memorandum states: "You are hereby directed to comply with the requirements of the settlement agreement between the [Agency] and [Complainant]."

In her request for reconsideration, Complainant appears to be arguing that the Agency continued to breach the settlement agreement between December 2018 and March 2019. 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. Complainant's request addresses neither of the criteria for reconsideration. Rather, she contends that the Agency continued to violate the terms of the settlement agreement by allowing the former Chief of Surgery to exercise supervisory authority over her until March 2019. We note that the Director's memorandum of April 15, 2019 addresses Complainant's concerns, and she has not presented any allegations of violations of the settlement agreement after the date of the memorandum.

We find that Complainant's arguments on appeal do not 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. Accordingly, we find that Complainant failed to demonstrate that the Commission should reconsider its appellate decision.

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. 2019001697 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.


COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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.

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:



Carlton M. Hadden, Director
Office of Federal Operations

August 16, 2019

Date