



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

[REDACTED]  
Clifford L.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Request No. 2023004031

Appeal No. 2023002090

Agency No. 2003-666-2022-148054

**DISMISSAL OF REQUEST FOR RECONSIDERATION**

The Agency requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Clifford L. v. Department of Veterans Affairs, EEOC Appeal No. 2023002090 (June 6, 2023). For the reasons stated below, the Commission DISMISSES the request.

**ISSUE PRESENTED**

Whether the matter of the timeliness of Complainant's EEO counselor contact at issue in the Agency's request for reconsideration has been rendered moot by an earlier Commission decision on the same complaint finding no discrimination on the merits.

---

<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.

### BACKGROUND

Complainant worked as a Training Instructor at the Agency's Sheridan Veterans Affairs Medical Center in Sheridan, Wyoming. In a formal EEO complaint filed on November 30, 2022, Complainant alleged that the Agency discriminated against him on the basis of disability as follows:

1. On January 26, 2022, the Education Services Chief denied Complainant's reasonable accommodation request;
2. On February 9, 2022, the EEO Program Manager stated to Complainant, "I have had enough of you, keep my name out of your mouth or I will file a complaint against you;"
3. On July 18, 2022, the Chief of Nutrition and Food Services stated to Complainant, "I don't have to provide you with anything," when Complainant asked for supporting documents for the reason that his employment was being terminated; and
4. On July 18, 2022, the Associate Director of Patient Care Services instructed police to escort Complainant out of the building immediately while he was trying to gather his personal belongings.

On January 20, 2023, the Agency issued a decision dismissing the complaint for untimely EEO Counselor contact. Complainant appealed and on appeal, the Commission reversed the Agency's dismissal of the complaint and remanded the matter for further processing in Clifford L. v. Department of Veterans Affairs, Appeal No. 2023002090 (June 6, 2023).

Following remand, on June 28, 2023, the Agency accepted the complaint for investigation. The Agency completed an investigation, issued a report of investigation, and issued a final decision addressing the merits of the complaint, concluding that Complainant was not subjected to discrimination as alleged. On appeal, the Commission affirmed the Agency's finding of no discrimination in Clifford L. v. Department of Veterans Affairs, EEOC Appeal No. 2024001561 (Sept. 23, 2024).

However, on July 7, 2023, days after the Agency had accepted the complaint for processing in accordance with our decision in Appeal No. 2023002090, the Agency filed a request for reconsideration of that same decision.

### ANALYSIS

The appellate decision in Appeal No. 2023002090 found that the Agency erred in dismissing the complaint for untimely EEO Counselor contact. The Agency subsequently accepted the claims in the complaint, investigated the matter, and issued a decision on the merits of the complaint, which the Commission ultimately affirmed on appeal in Appeal No. 2024001561. Once the Commission issued its decision affirming the finding of no discrimination, the Agency no longer had a stake in determining whether Complainant's initial contact with the EEO counselor was untimely, and any Commission decision on the Agency's request for reconsideration would have no legal effect. See generally Campbell-Ewald Co. v. Gomez, 577 U.S. 153, 160-61 (2016) quoting Genesis Healthcare Corp. v. Symczyk, 569 U.S. 66, 72 (2013) (If an intervening circumstance deprives the plaintiff of a personal stake in the outcome of the lawsuit, at any point during litigation, the action can no longer proceed and must be dismissed as moot). The intervening circumstance of the Agency's merits determination and Commission affirmance of that decision therefore rendered the Agency's request for reconsideration moot. Id. Accordingly, the Agency's request for reconsideration is hereby DISMISSED.

### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0124)


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 their 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

December 30, 2024  
Date