



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

[REDACTED]  
Mahalia P,<sup>1</sup>  
Complainant,

v.

Marcia L. Fudge,  
Secretary,  
Department of Housing and Urban Development,  
Agency.

Request No. 2023004492

Appeal No. 2022002182

Hearing No. 570-2020-00685X

Agency No. HUD-00151-2019

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Mahalia P. v. Department of Housing and Urban Development, EEOC Appeal No. 2022002182 (July 6, 2023).

**ISSUE PRESENTED**

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022002384 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

**BACKGROUND**

During the relevant time, Complainant worked as a Senior Business Analyst, GS-14, at the Agency's Office of Securities Operations, Government National Mortgage Association in Washington, D.C.

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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.

On August 27, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the basis of race and age when she was obstructed from applying for an Office of Securities Operations position and the position was filled by another with no vacancy announcement being issued. At the Conclusion of the investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ) but the AJ issued a decision without a hearing on April 19, 2021, finding no discrimination. The AJ specifically notified Complainant that she had the right to file an appeal with the Commission after the conclusion of the Agency's 40-day period for issuing a final order if the Agency failed to issue a final order but did not specify when such an appeal should be filed. The Agency promptly issued its final order fully implementing the AJ's decision ten days later, on April 29, 2021. Significantly, however, the Agency issued the final order via email and sent Complainant's copy to an incorrect email address. Complainant did not appeal from the final order until March 11, 2022, and we dismissed the appeal as untimely filed. See Mahalia P. v. Department of Housing and Urban Development, EEOC Appeal No. 2022002182.

The instant request for reconsideration from Complainant followed.

#### CONTENTIONS ON REQUEST

Complainant contends that her appeal should not have been dismissed as untimely because she had been told by the AJ that she needed to file within 30-days of the Agency issuing its final order, but she never received such a final order. Furthermore, she argues, the AJ stated that if the Agency did not issue a final order within 40 days, Complainant could file an appeal "at any time" following the expiration of the 40-day window and still be considered timely. Complainant further argues that we erred in our prior decision in applying the doctrine of laches because the Agency was not prejudiced by the delay in Complainant's appeal.

The Agency argues that we should affirm our prior decision dismissing the appeal as untimely, noting that the Agency's April 29, 2021 final order was also transmitted to Complainant's representative and that Complainant failed to explain why she did not receive copies from her representative. The Agency further argues that Complainant's belief that she could file her appeal at any time after the forty-day window expired was "illogical" and that no reasonable person would believe the Commission would allow an infinite amount of time to file an appeal. The Agency contends that the Commission appropriately applied the doctrine of laches.

#### STANDARD OF REVIEW

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).

### ANALYSIS

Here, it is undisputed that Complainant did not personally receive a copy of the Agency's April 29, 2021 final order due to the Agency error in her address. Therefore, in filing her appeal on March 11, 2022, she asserts she relied on information that she could file an appeal anytime after the 40-day window from the AJ's decision had passed.

The Commission has held there is no regulatory provision that sets a specific time limitation for filing an appeal in circumstances where an AJ's decision becomes final by operation of 29 C.F.R. § 1614.109(i) because no final agency order has been issued. Avery S. v. Dep't of the Treasury, EEOC Request No. 2020000221 (Jan. 22, 2020). Rather, as noted in our previous appellate decision in this matter, the time for Complainant to file an appeal is governed by the doctrine of laches, "an equitable remedy under which an individual's failure to diligently pursue their actions can bar their claims." Avery S., EEOC Request No. 2020000221 (quoting O'Dell v. Dep't of Health and Human Serv. EEOC Appeal No. 05901130 (Dec. 27, 1990)). Here, Complainant waited close to a year before she filed her appeal. The Commission has consistently held that a complainant must act with due diligence in the pursuit of his claim. See Bula P. v. Dep't of the Navy, EEOC Appeal No. 2021003971 (Oct. 4, 2022), request for reconsideration denied, EEOC Request No. 2023000545 (Mar. 16, 2023) (complainant's appeal was untimely under the doctrine of laches where she waited approximately one year to file an appeal after the AJ's decision where the agency did not issue a final order); Cathie K. v. Soc. Sec. Admin., EEOC Appeal No. 202000209 (Apr. 27, 2021) (doctrine of laches was applicable when complainant did not act with due diligence in filing her appeal until almost one year after receiving the AJ's decision). In this case, we currently found that the doctrine of laches is applicable, and Complainant did not act with due diligence in filing her appeal after receiving the AJ's decision.

Complainant on request seeks to relitigate the matters decided in our prior decision. However, Complainant still fails to submit adequate justification to invoke waiver or equitable tolling for filing the appeal. The Commission emphasizes that a request for reconsideration is not a second appeal to the Commission. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110) (Aug. 5, 2015), at 9-18; 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 has made no such demonstration here.

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. 2022002182 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 (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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

July 22, 2024

Date