



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

[REDACTED]  
James S.,<sup>1</sup>  
Complainant,

v.

Gary Gensler,  
Chair,  
Securities and Exchange Commission,  
Agency.

Request No. 2023004514

Appeal No. 2023002034

Agency No. SEC-00010-2022

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in James S. v. Securities and Exchange Commission, EEOC Appeal No. 2023002034 (July 6, 2023). 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, Senior Counsel at the Agency's Division of Enforcement, Office of Chief Counsel in Washington, D.C., filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of disability and in reprisal for prior protected EEO activity when:

1. Between late August 2019 and January 2020, management officials failed to provide Complainant with a reasonable accommodation;
2. Between August 2020 and September 2020, management officials failed to provide Complainant with a reasonable accommodation;

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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.

3. During the fall 2021, management officials delayed responding to Complainant's request for information related to accessing his annual performance review;
4. On or about April 18, 2022, Complainant read an email dated March 16, 2021, which included false and misleading statements management officials wrote related to his performance in fiscal year 2020;
5. Between January 2022 and March 2022, Office of Human Resources officials delayed responding to Complainant's requests for information related to accessing his annual performance reviews; and
6. On or about August 19, 2022, a management official in the Office of Human Resources did not respond to Complainant by close of business, as he had requested, or the next business day.

The Agency dismissed the complaint for untimely EEO Counselor contact, failure to state a claim, and for alleging the same claim raised in a previous complaint. In the appellate decision, the Commission affirmed the Agency's dismissal decision.

We have reviewed the various arguments raised by Complainant in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision. Complainant presents arguments which were previously raised and considered or could have been raised during the original appeal. The Commission emphasizes that a request for reconsideration is not a second appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), Chap. 9 § VI.A (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 has not done so here. Thus, we conclude that Complainant has not presented any persuasive evidence to support reconsideration of the Commission's 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. 2023002034 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

January 29, 2024  
Date