



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

[REDACTED]
Augustine P.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Request No. 2023004803

Appeal No. 2022003330

Agency No. 4B-230-0177-21

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Augustine P. v. U.S. Postal Service, EEOC Appeal No. 2022003330 (August 21, 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).

On December 21, 2021, Complainant filed an EEO complaint, which he subsequently amended, alleging that the Agency discriminated against him on the bases of race (Black, not of Hispanic origin), national origin (not specified), color (black), disability (physical), and in reprisal for prior protected EEO activity when:

1. On an unspecified date, management failed to pay the amount of his grievance settlement from his Emergency Placement in 2019;

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.

2. Since May 5, 2020, and ongoing, management failed to accommodate him based on his medical restrictions from his on-the-job injury;
3. On or around July 27, 2021, and ongoing, the Manager publicly humiliated him by stating that his injuries were fake and he was lazy;
4. On a date to be specified, management promised a coworker his route;
5. On or around October 18, 2021, he was placed on leave for something he did not do;
6. On dates to be specified, management failed to pay him back pay;
7. On or around October 30, 2021, management subjected him to an investigative interview regarding his COVID-19-related absences; and
8. On or about January 11, 2022, he was issued a Notice of Removal.

The Agency dismissed claim (1) pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim as either a collateral attack on the grievance settlement or as an attempt to enforce the grievance settlement, over which the Commission had no jurisdiction.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). For the purposes of its decision, the Agency assumed, based on his on-the-job injury, that Complainant had a record of a disability and that management was aware of the disability. The Agency found that Complainant did not establish that he was denied a reasonable accommodation as alleged in claim (2) because there was no evidence that he requested an accommodation or that he had any work-related medical restrictions after returning to work after his on-the-job injury.

In EEOC Appeal No. 2022003330 (Aug. 21, 2023), the Commission affirmed the Agency's final order. In finding in favor of the Agency, the Commission found that the Agency properly dismissed claim 1 as a collateral attack on the grievance process and found that the Agency did not fail to accommodate Complainant or discriminate against him as alleged.

We have reviewed the various documents provided by Complainant in support of the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision, as 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. 2022003330 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:



Carlton M. Hadden, Director
Office of Federal Operations

January 25, 2024
Date