



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

[REDACTED]
Chauncey M.,¹
Complainant,

v.

William J. Burns,
Director,
Central Intelligence Agency,
Agency.

Request No. 2024000909

Appeal No. 2022002343

Agency No. 21-17

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022002343 (October 4, 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). For the following reasons, the Commission DENIES Complainant's request.

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.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022002343 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

BACKGROUND

During the relevant period, Complainant worked as a Chief Staff Officer, Grade GS-15, in an Agency headquarters office at a facility at or near Washington, DC. The record indicates that in early March 2020, due to the nationwide COVID-19 pandemic, the Agency initially sent Complainant, and other "high risk" employees home on Weather Safety Leave (WSL). On March 29, 2021, Complainant filed a formal EEO complaint alleging that the Agency discriminated against him on the bases of race (African American), color (black), disability (associational, based on infant child with health conditions), and in reprisal for prior EEO-protected activity when:

- a. From September to October 2020, the Executive Director and Deputy Director removed Complainant's responsibility as reviewer for most of the junior officers and assigned Complainant as rater for all the African American and Black officers;
- b. On 8 October 2020, the Executive Director and Deputy Director advertised Complainant's position to be backfilled;
- c. From September to November 2020, the Executive Director and Deputy Director denied Complainant the role of performance rater and involvement in the petition for promotion process of his direct subordinate; and
- d. On 14 December 2020, the Executive Director and Deputy Director replaced Complainant by putting another officer in his position.

Following an investigation by the Agency into the claims, the Agency, in accordance with Complainant's request, issued a final decision that found no discrimination. The prior appellate decision affirmed the Agency's final decision.

Regarding claim (a), the Commission noted the Agency's contention that the plan was to have Complainant complete the performance evaluations for the employees who designated themselves as high risk and were on WSL because Complainant had spent more time with those employees and was more familiar with their performance.

Moreover, the Agency maintained that Complainant and the Deputy Chief both rated non-Black officers and that the staff was not assigned to a rater based on race and/or color. Regarding claims (b) and (d), the Executive Director and Deputy Director testified that their decision to advertise Complainant's position for backfill was due to Complainant's insistence on not returning to working regular hours in the office until he had a vaccine. Complainant was warned that if he did not return to the office the Agency would backfill his position. Despite this warning, Complainant remained out of the office on leave or teleworking. Regarding Claim c, the Agency justified its decision to remove Complainant from his Deputy Chief's performance review process because the Executive Director decided to replace Complainant as the Deputy Chief's rater because her performance review was due the following day and Complainant had been absent from the office for the preceding three months. Consequently, it was determined that the Executive Director was in a better position to evaluate the Deputy Chief's performance.

The previous decision found that Complainant was unable to establish that the Agency's legitimate, nondiscriminatory, reasons were a pretext for discrimination. Finally, the previous decision, without finding that Complainant actually raised a claim of discrimination under the Rehabilitation Act presumed that he did so for purposes of analysis only, found that to the extent Complainant requested a reasonable accommodation, during the period he refused to return to work in the office, the Agency's actions complied with the Rehabilitation Act.

The instant request for reconsideration from Complainant followed.

CONTENTIONS ON RECONSIDERATION

Complainant argues that the previous decision involved clearly erroneous interpretations of material fact or law and should be reversed. In this regard, he maintains that his workplan was recognized as reasonable and effective and was not a hardship to the Agency. Among other things, Complainant emphasized that he did not request, nor did the Agency grant him extended leave, nor was he teleworking. At the times relevant to the complaint, he was reporting to work at an Agency site, not strictly teleworking. The Agency, he notes, was tasking him with work and he also was completing mandatory annual training and other training requirements. Complainant's second contention is that the Agency's reason for removing his responsibility of evaluating his Deputy lacks credence.

Complainant maintains that the actual reason was to protect the Deputy, who is white, from being held accountable by Complainant for her racist words and actions toward African American employees. Complainant's third contention is that the previous decision erred in finding that he did not plan a date to return to his main duty location and intended to continue working from an alternate location and/or teleworking. According to Complainant this was untrue. He argues that he advised the Agency that he planned to be vaccinated once the Center for Disease Control deployed the COVID vaccine in October 2020. Finally, Complainant disputes the previous decision's determination that the Agency "assisted" him in obtaining another GS-15 position. According to Complainant, prior to the Agency replacing him with a white employee, he was in an SIS/GS-15 position, not simply a GS-15 position. Moreover, after he was vaccinated, he found, applied for, was interviewed, and was selected for a GS-15 position (not SIS/GS-15).

The Agency contends that Complainant's request fails to meet the criteria detailed in 29 C.F.R. § 1614.405(c).

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

We have reviewed the submissions by Complainant in support of the instant request for reconsideration. However, we determine that there is no reason to disturb the Commission's prior decision. 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), 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.

For the most part, Complainant reiterates the same assertions raised on appeal that the Agency discriminated against him by backfilling his position and removing from him the responsibility of evaluating one of his subordinates. The remainder of Complainant's arguments focus on aspects set forth in the final paragraph of the prior decision concerning whether Complainant established that he was denied a reasonable accommodation. Complainant maintains that his COVID related work plan with the Agency was a reasonable accommodation needed because of his son's health condition. As the Agency noted, Complainant did not raise a reasonable accommodation claim in his complaint; consequently, the Agency maintains, any erroneous determinations by the prior decision regarding this issue are not material. In Arthur F. v. U.S. Postal Serve, 0120182699 (Oct. 23, 2019), the Commission held that employees who are in a relationship or have an association with individuals who have disabilities are not themselves entitled to reasonable accommodation for those disabilities. See, also, Complainant v. Dep't of Defense, EEOC Appeal No. 0120112815 (Aug. 14, 2014); Davis v. Dep't of Interior, EEOC Appeal No. 0120123517 (Feb. 12, 2013) (Complainant sought an accommodation to care for her husband). Accordingly, we find that the prior decision's ultimate determination that, to the extent Complainant requested a reasonable accommodation, there was no violation of the Rehabilitation Act was proper.

CONCLUSION

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. 2022002343 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

December 11, 2024

Date