



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

[REDACTED]
Clarine L.,¹
Complainant,

v.

Pete Hegseth,
Secretary,
Department of Defense
(Defense Health Agency),
Agency.

Request No. 2024002042

Appeal Nos. 2022003811, 2023004452

Hearing No. 531-2020-00411X

Agency No. DHANCR-20-0025

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Clarine L. v. Department of Defense, EEOC Appeal Nos. 2022003811, 2023004452 (Jan. 3, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of the decision on EEOC Appeal Nos. 2022003811 and 2023004452 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

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.

BACKGROUND

During the relevant time, Complainant worked as a Health Systems Specialist, GS-0671-09, in the General Internal Medicine Service at the Walter Reed National Military Medical Center in Bethesda, Maryland.

Complainant filed a formal complaint, which she subsequently amended, alleging that the Agency discriminated against her on the bases of race (African American), age (over 40), disability (physical and mental), and in reprisal for prior protected activity when:

1. On December 19, 2018, she was harassed and bullied by the Internal Medicine Service Chief (Service Chief-1).
2. In 2018, her job duties and computer system access were taken away by the Business Manager (Supervisor-1), the Health Service Administrator (Administrator-1), and Service Chief-1.
3. On or about December 4, 2018, she received a written counseling for conduct and performance from Supervisor-1.
4. On December 18, 2018, she received a written counseling for conduct and performance from Supervisor-1.
5. On January 7, 2019, she received a written counseling for conduct and performance from Supervisor-1.
6. In 2019, she became aware that Supervisor-1 failed to give her a performance appraisal that was due before March 24, 2019.
7. In March 2019, Service Chief-1 gave her a negative report to the Audiology Service Chief.
8. On April 3, 2019, she became aware that Supervisor-1 accessed her medical information.
9. On April 2, 2019, Supervisor-1 made a medical statement on Complainant's Federal Employee's Notice of Traumatic Injury and Claim Continuation of Pay/Compensation form, delaying her workers' compensation paperwork.

10. On or about May 7, 2019, she was informed by Supervisor-1 that a case number had not been assigned to her accident investigation and that sufficient medical documentation had not been received, which could delay the workers' compensation process. She was also informed that the 45-day timeframe for case development had passed and that she must now take either annual or sick leave moving forward.
11. On or about May 31, 2019, Supervisor-1 documented and acknowledged Complainant's performance plan while she was out on workers' compensation.
12. In July 2019, she asked the Labor/Management Employee Relations Division Chief (HR-1) to change the unjust appraisal in DPMAP.
13. In November 2019, she had not received her appraisal in a timely manner, and her appraisal was changed from unsatisfactory to satisfactory.
14. On or about December 19, 2019, she was verbally assaulted by Service Chief-1.
15. On or about December 20, 2019, her work was not acknowledged by Service Chief-1 in an email he sent.
16. On February 12, 2020, she emailed the Human Resources Liaison (HR-2), asking when her appraisal would be completed in the system.
17. On or about February 14, 2020, her request to work with Command MSA University was denied by Service Chief-1.
18. On or about February 14, 2020, she was denied participation in department leadership duties that had been back briefed on Patient-Centered Medical Home (PCMH) by Service Chief-1.
19. On February 26, 2020, Complainant received a rating of 1 on her appraisal, which did not allow her to qualify for an award.
20. On March 4, 2020, Supervisor-1 stated that Complainant did not do her work well.

21. On March 10, 2020, she received an email from the Business Manager (Supervisor-2) harassing her based on her approved reasonable accommodation.

Following an investigation, the Agency issued a final decision on June 2, 2022, pursuant to 29 C.F.R. § 1614.110(b). In the decision, the Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged in claims (1) through (8). The final decision did not address claims (9) through (21) or the basis of disability, which Complainant had raised as a basis for discrimination in her amendments.

Complainant appealed this decision to the Commission on July 5, 2022. The Commission docketed the appeal as Appeal No. 2022003811. On appeal, Complainant contended that the Agency's final decision was excessively late and argued that default judgment in her favor was an appropriate sanction. Complainant also noted that the Agency's decision failed to address the amended claims.

Complainant also filed a separate EEO complaint, which she subsequently amended, alleging that the Agency discriminated against her on the bases of her race (African American), color (brown), disabilities (physical and mental), age (over 40), and in reprisal for prior protected EEO activity when:

22. Since October 2019, Service Chief-1 has excluded Complainant from leadership meetings.
23. In October 2019, Service Chief-1 informed Complainant that her duties would be changing but failed to identify the new duties and did not respond to requests for clarification.
24. In October 2019, Supervisor-2 denied Complainant's reasonable accommodation request to telework.
25. On December 11, 2019, management removed a filing cabinet from Complainant's office.
26. On December 16, 2019, Complainant's supervisor told her that she needed to change her time in Automated Time Attendance and Production System (ATAAPS) to Absent Without Leave (AWOL) for December 11, 2019.

27. On December 20, 2019, Service Chief-1 failed to acknowledge the Performance and Improvement Chief's email complimenting Complainant's project contributions.
28. In December 2019, Complainant learned management failed to inform Human Resources that she was on extended Leave Without Pay (LWOP) for medical reasons, as required by policy.
29. From February 2020 to present, Complainant's reasonable accommodation request has not been appropriately processed in a timely manner, and management has failed to provide Complainant with an effective accommodation.
30. On March 10, 2020, Complainant's first-line supervisor told her that she was not supporting the mission.
31. In May 2020, Supervisor-2 accused Complainant of jeopardizing a Lean Six Sigma project.
32. In July 2020, management gave Complainant taskers, kept changing the task and/or deadlines, and, in turn, discredited Complainant's work.
33. In July 2020, management instructed Complainant not to reach out for assistance because she was a GS-9 and nobody needed to hold her hand.
34. In July 2020, a Supervisory Health System Specialist (Supervisor-3) questioned Complainant regarding an IT issue by stating "why did you put the union on my email".
35. In July 2020, Complainant did not receive the same support or training as her colleagues.
36. In July 2020, Complainant was moved to a room with loud banging noises outside.
37. On August 6, 2020, management placed Complainant on a Performance Improvement Plan (PIP).
38. On September 29, 2020, Complainant became aware that she was removed from the GIMS administrative distribution list.

39. On October 16, 2020, Complainant was not paid because her hours were not certified by Supervisor-3 and timely entered in the Defense Civilian Payroll System.
40. On November 4, 2020, management accused Complainant of not following instructions when sending out emails to providers and yelled at Complainant and interrupted her while she was speaking.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC AJ. Complainant timely requested a hearing but subsequently withdrew her request on February 8, 2021. On February 10, 2021, the AJ issued an order granting Complainant's request and ordering the Agency to issue a final decision pursuant to 29 C.F.R. § 1614.110(b).

Complainant filed Appeal No. 2023004452 on August 3, 2023. On appeal, Complainant noted that the Agency failed to issue a final decision and again requested default judgment as a sanction for the Agency's delay. The Agency subsequently issued decision on September 14, 2023, more than two and a half years after the AJ ordered the Agency to issue a final decision.

In the decision on Appeal Nos. 2022003811 and 2023004452 (Jan. 3, 2024), the Commission consolidated the appeals for adjudication and ultimately affirmed the Agency's final decisions finding no discrimination. While the Commission found that the Agency failed to timely issue final decisions, the Commission found that the Agency did not act in a manner to warrant the sanction of default judgment. However, the Commission informed the Agency that it would notify EEOC's Federal Sector Programs of the Agency's failure to comply with the regulations regarding the timely issuance of final agency decisions.

Regarding Complainant's reasonable accommodation claims, the Commission found that due to Complainant's failure to provide medical documentation, Complainant did not establish by preponderant evidence that she needed full-time telework as a reasonable accommodation for her disability in 2019. The Commission further found that with respect to subsequent requests for accommodation, the record showed that the Agency provided Complainant with effective alternate accommodations and ultimately granted Complainant's request to telework on April 16, 2020. While the Commission acknowledged that the Agency later rescinded the telework accommodation due to Complainant's poor performance and failure to communicate while

teleworking, the Commission found that the Agency proved that it would be an undue hardship to allow Complainant to continue teleworking.

As for Complainant's allegations of improper access of confidential medical information, the Commission determined that Complainant failed to establish that management improperly accessed her confidential medical information in violation of the Rehabilitation Act, as the requested medical information was required to initiate Complainant's workers' compensation claim, extend Complainant's absence, and to verify what kind of leave Complainant wanted to take. Moreover, management denied accessing Complainant's medical records or the possibility that they could access Complainant's records.

Finally, with respect to Complainant's allegations of disparate treatment and harassment, the Commission found that Complainant did not establish that the Agency's proffered reasons for its actions were a pretext for discrimination or that the alleged harassment was based on her race, color, age, disability, and/or prior protected activity. Therefore, Complainant failed to establish that she was subjected to discrimination or a hostile work environment as alleged.

The instant request for reconsideration followed.

CONTENTIONS ON REQUEST

Complainant asserts that the Commission's decision to not issue any sanction is contrary to precedent. Additionally, Complainant states that the decision erroneously credited the Agency's factual assertions. Specifically, Complainant contends that supervisory testimony stating that Complainant's position required Complainant to be in-person was not supported by the record, as Complainant was ultimately removed from front-desk duty, which was the portion of her job that required in-person contact. Complainant argues that the Agency's eventual grant of her telework request demonstrates that in-person contact was not an essential function of her position and granting telework was not an undue hardship for the Agency.

The Agency did not respond.

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 prior decision. Despite Complainant's assertion that the prior decision not to sanction the Agency lacks precedent, we note that the prior decision specifically cites to the Commission's decisions where the Commission declined to sanction agencies under similar circumstances. Similarly, Complainant's arguments regarding her denial of reasonable accommodation claims simply reiterate arguments previously made in the prior appeal.

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.

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 Nos. 2022003811 and 2023004452 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

February 5, 2025

Date