



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

[REDACTED]
Camie B.,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce
(Bureau of the Census),
Agency.

Request No. 2024002212

Appeal No. 2023003775

Hearing No. 510-2022-00278X

Agency No. 63-2021-00438D

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Camie B. v. Dep't of Commerce, EEOC Appeal No. 2023003775 (January 9, 2024).

ISSUES PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023003775 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

On September 3, 2020, the Agency selected Complainant for a Census Field Supervisor position at its Atlanta Regional Census Center ("ARCC") in Georgia. Individuals who were selected for the position were informed that their selection was for training alone, and at the conclusion of training, supervisors would recommend if the individual would be assigned work or terminated, based on their performance at training. An SF-50 effective September 3, 2020, noted that Complainant's appointment would not exceed October 29, 2020.

Complainant attended training on September 3 and 4, 2020. Following the training, Complainant's first line supervisor, a Census Field Manager ("CF Manager"), instructed Complainant to claim her training hours and complete the training modules. Complainant did not claim these hours nor complete her training. CF Manager told Complainant the Agency would not continue with her employment. On September 9, 2020, CF Manager emailed Complainant to remind her to return her Agency-issued equipment, and informed Complainant that her time submissions were not properly completed. When Complainant reported to the office to return her equipment on September 10, 2020, there was a confrontation between Complainant and CF Manager. The record contains an SF-50 effective September 12, 2020, stating Complainant resigned.

Subsequently, on February 9, 2021, an ARCC Clerk ("Clerk") called several individuals, including Complainant, to inform them of a Post Enumerator Supervisor position. Individuals informed of the position then needed to be invited to attend training by the Agency. As the Agency already exceeded the number of candidates able to be invited to training, Complainant was not invited. On May 7, 2021, CF Manager requested Complainant be listed as "ineligible" for the position of Post Enumerator Supervisor given Complainant's past performance during training. On the same day, an Administrative Support Specialist ("Support Specialist") responded that misconduct/ performance paperwork should have been reported and submitted but because this was not done, Complainant showed up again on the certificate and was selected to be contacted. Support Specialist stated that she could not make Complainant "ineligible."

On June 23, 2021, Complainant emailed CF Manager to inquire when she would begin training for the Post Enumerator Supervisor position. CF Manager responded that the Agency filled the position and Complainant was not selected.

Complainant then sent a follow-up email asking why she was offered the position when it was already filled. CF Manager responded that Complainant was not offered the position and explained it was a selection process to select trainees and Complainant was not selected to be invited to training.

On July 19, 2021, Complainant initiated equal employment opportunity (EEO) contact. On August 30, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), disability (knee impairment, post-traumatic stress disorder, and anxiety), age (year of birth: 1951), and in retaliation for prior protected activity when:

1. (a) on February 9, 2021, Complainant was selected for a Post Enumerator Survey Supervisor position, and, in June 2021, CF Manager denied Complainant the position;

(b) in September 2020, Complainant was subjected to harsher treatment and criticism by CF Manager, who told Complainant she was, "too old," and "maybe you shouldn't be here...you are supposed to be qualified for the job," when Complainant asked for instructions; and
2. on June 23, 2021, Complainant was denied Continued Supervisory training by CF Manager.

The Agency accepted Complainant's complaint for EEO investigation. Following the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an EEOC Administrative Judge (AJ) or an immediate final agency decision. Complainant requested a hearing. The Agency filed a motion for summary judgment. When Complainant did not object, the AJ granted the Agency's motion for a decision without a hearing and, on January 25, 2023, issued a decision without a hearing.

The AJ, in his decision, dismissed claims 1(a) and 1(b) for untimely EEO contact. As to claim 2, the AJ noted that regarding the basis of reprisal, the incident took place weeks before Complainant sought EEO counseling. Further, the AJ noted there was no evidence to establish that Complainant was involved in any way with the EEO process prior to her initial July 19, 2021 EEO contact concerning this complaint. Additionally, the AJ noted there was no evidence how comparatives outside of Complainant's protected groups were treated with respect to claim 2.

The AJ found that Complainant only presented her subjective belief she was discriminated against but nothing more, which was insufficient to establish a prima facie case of discrimination. Subsequently, the Agency issued a final order.

The Agency's final order fully implemented the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 2023003775.

The decision in EEOC Appeal No. 2023003775 affirmed the Agency's final order. The Commission noted, on appeal, Complainant did not challenge the dismissal of claims 1(a) and 1(b), so they would not be addressed. The Commission concluded that "the Agency correctly determined that the preponderance of the evidence did not establish that Complainant was discriminated against by the Agency." The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

On request for reconsideration, Complainant asked the Commission to reverse the underlying appellate decision. Specifically, Complainant stated that there was an erroneous interpretation of material fact. Complainant stated that she was the only African-American trainee, and that management took adverse actions against her based on her protected bases of race, disability, age, and reprisal for prior EEO activity.

The Agency opposed Complainant's reconsideration request, asking the Commission to deny Complainant's request. Specifically, the Agency stated that Complainant failed to satisfy the reconsideration criteria provided in 29 C.F.R. § 1614.405.

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. We agree with the prior decision's affirmance of the Agency's finding of no discrimination. Further, we have carefully reviewed Complainant's arguments and determine that the matters either were raised or could have been raised below.

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), Chapter 9 § VI.A (August 5, 2015); see, e.g., Lopez v. Dep't of Agriculture, EEOC Request No. 0520070736 (August 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.

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. 2023003775 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)

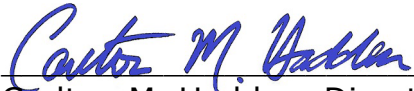
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 Support Specialist 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 8, 2025

Date