



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

████████████████████
Brant C.,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Request No. 2024003821

Appeal No. 2023001131

Hearing No. 450-2019-00184X

Agency No. ARRRAD18FEB00554

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Brant C. v. Dep't of the Army, EEOC Appeal No. 2023001131 (May 13, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023001131 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

At the time of events giving rise to this complaint, Complainant worked as an Army civilian employee at the Agency's Red River Army Depot facility in Texarkana, Texas, serving in a temporary position as a Heavy Mobile Equipment Mechanic Supervisor.

On May 15, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African American) when on January 9, 2018, the Chief, Mine-Resistant Ambush Protected (MRAP) Division failed to convert his competitive temporary promotion to a Heavy Mobile Equipment Mechanic Supervisor to a permanent status; and when on July 9, 2018, Complainant was notified via letter that his temporary promotion to a Heavy Mobile Equipment Mechanic Supervisor was cancelled effective July 22, 2018. In a subsequent amendment, Complainant also alleged that the Agency unlawfully retaliated against him when on October 30, 2018, Complainant was constructively discharged when he resigned following notification that he was issued a Notice of Proposed 3-day suspension on July 24, 2018.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing.

On October 7, 2022, the Administrative Judge (AJ), over Complainant's objections, granted the Agency's April 18, 2022, motion for a decision without a hearing. While the AJ found that Complainant failed to establish a prima facie case of discrimination, the AJ concluded that even if Complainant could make the requisite showing, the Agency had legitimate, nondiscriminatory reasons for its failure to convert Complainant's temporary promotion to permanent status and its decision to cancel Complainant's temporary promotion. As for Complainant's constructive discharge claim, the AJ found that Complainant failed to demonstrate that he had been subjected to intolerable working conditions. As such, the AJ granted the Agency's motion and entered judgment in favor of the Agency. The Agency did not issue a final order within 40 days of the AJ's decision.

Complainant appealed the Agency's final action to the Commission, arguing that he established a prima face case of discrimination, retaliation, and constructive discharge.

Complainant also argued that the AJ erred in stating that he had to be subjected to an “intolerable work condition” in order to assert a constructive discharge claim and maintained that the Agency’s actions were pretextual.

In EEOC Appeal No. 2023001131 (May 13, 2024), the Commission found that that the Agency proffered nondiscriminatory reasons for its actions. Specifically, Complainant’s temporary position was not converted because there was not an authorized space available at the center in which Complainant worked. Moreover, the Commission noted that approximately only 3-5 individuals were converted, among the 40-50 individuals that were serving in temporary positions, because those individuals had submitted conversion requests before the mandatory decrease in workload went into effect, and importantly, there were authorized spaces in the centers where they worked. The Commission found that Complainant’s disagreements with the Agency’s reasons were insufficient to demonstrate pretext. Regarding the constructive discharge, the Commission determined that there was no evidence to suggest that issuing Complainant a proposal for a three-day suspension was either discriminatory or intolerable. As such, the Commission determined that Complainant had not established that the Agency subjected him to discrimination in reprisal for prior protected activity when he retired.

The instant request followed.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant reiterates the same contentions that he previously raised.

The Agency asserts that Complainant failed to present any argument or evidence showing that the appellate decision involved a clearly erroneous interpretation of material fact or law, or that appellate decision would have a substantial impact on the policies, practices, or operations of the agency. The Agency requests that the Commission uphold its prior decision finding no discrimination.

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 various arguments raised by Complainant in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision, as Complainant largely presents contentions that were previously raised and considered. 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.

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. 2023001131 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

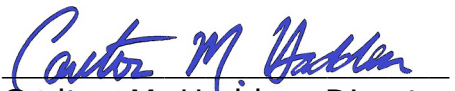
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0124)

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 9, 2024
Date