



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

[REDACTED]
Michelle G.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Request No. 2024004006

Appeal No. 2024001963

Agency No. FBI-2023-00296

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Michelle G. v. Department of Justice, EEOC Appeal No. 2024001963 (June 24, 2024). For the reasons discussed below, Complainant's request for reconsideration is denied.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2024001963 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 the events, Complainant was not a former employee, employee, or applicant with the Agency.

On July 7, 2023, the Agency's Inspection Division issued a letter to Complainant informing her that it was not opening an internal affairs investigation based upon a complaint she filed with the Inspection Division as a private citizen.

In her complaint with the Inspection Division, Complainant alleged that Agency agents failed to enforce her civil rights regarding an espionage referral against various personnel of the Agency and of the state court system of Prince Georges County, Maryland.

Complainant subsequently filed a formal EEO complaint on August 23, 2023, alleging that the Agency subjected her to discrimination on the bases of race (African American), sex (female), and in reprisal for prior protected EEO activity when on July 7, 2023, Complainant received a letter from the Agency's Inspection Division stating that it would not be opening an investigation into a complaint she filed.

The Agency dismissed the EEO complaint pursuant to 29 C.F.R. § 1614.107(a)(1) for failure to state a claim. In dismissing the complaint, the Agency explained that Complainant did not have standing to bring her complaint against the Agency as she was not a current or former employee or applicant with the Agency. In reaching this conclusion, the Agency acknowledged that Complainant had applied for employment with the Agency in 2021. However, the Agency determined that her complaint was not based on anything related to her application, as the documents that Complainant submitted in support of her complaint were directed towards the Department of Defense. Furthermore, Complainant's allegations pertained to allegations against a Maryland state court. While the Agency concluded that Complainant had no standing to bring the complaint, the Agency found that even if Complainant had the requisite standing, she failed to demonstrate that she suffered any harm with respect to a term, condition, or privilege of employment. Complainant appealed the dismissal of her complaint to the Commission.

In EEOC Appeal No. 2024001963, we affirmed the Agency's dismissal of the formal EEO complaint.

The appellate decision found that Complainant was not at the time of the events raised a current or former employee or applicant with the Agency and she therefore lacked standing to file an EEO complaint.²

The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

In her request, Complainant states the complaint should not have been dismissed because the reprisal she experienced was causally connected to the discrimination that occurred in Agency No. FBI FBI-2021-00048 (Adena J. v. Dep't of Justice, EEOC Appeal No. 2021003476 (Oct. 18, 2021) and Detra S. v. Dep't of Justice, EEOC Appeal No. 2023000372 (Jan. 26, 2023)) where the Agency ultimately found that the FBI was a joint employer of Complainant. She stated that the Agency's actions on July 7, 2023 was in retaliation for engaging in protected activity with OFO. She stated her complaint³ was pending since 2020 without reprisal until after she engaged in protected EEO activity. Complainant asserts the FBI then violated procedure in order to retaliate against her and targeted her employment at the Department of Defense. She states it is her good faith belief that the FBI infiltrated her current position at the Marine Corps Cyber Division and use it as a counterintelligence investigation in violation of DOD regulations.

The Agency did not file a brief or statement in connection with this request.

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).

² The appellate decision also noted that Complainant had listed parental status as a basis for discrimination, but the Commission does not have jurisdiction over claims of discrimination based on parental status. See Ward B. v. Dep't of Homeland Sec., EEOC Appeal No. 2019004740 (Feb. 20, 2020).

³ It is believed that Complainant here is referring to her complaint with the Inspection Division and not her EEO complaint.

ANALYSIS

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

Although Complainant was previously an applicant for employment with the Agency, the record reflects that at the time of the events in question, she was neither an applicant nor current or former employee of the Agency. The arguments she makes on appeal do not demonstrate otherwise.

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. 2024001963 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 13, 2025
Date