



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

[REDACTED]
Hyo E.,¹
Complainant,

v.

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

Request No. 2024004210

Appeal No. 2024001497

Agency No. ARCEMOBIL24OCT00160

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Hyo E. v. Department of the Army, EEOC Appeal No. 2024001497 (June 11, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2024001497 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

BACKGROUND

At the time of events giving rise to this complaint, Complainant was a former employee of the Agency.

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.

On November 16, 2023, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African American), sex (female), and in reprisal for prior EEO activity when:

1. On January 9, 2023, the Assistant District Counsel of the Savannah District treated her differently than other Department of Army (DA) employees in drafting the terms and executing a Negotiated Settlement Agreement (NSA) that does not conform to the DA standards in Army Regulation (AR) 690-600.
2. On or about August 8, 2023, two Assistant District Counsels of the Middle East District shared the NSA, dated January 13, 2023, with individuals in the Transatlantic Expeditionary District (TAE) who did not have a need to know.
3. On or about August 8, 2023, two Assistant District Counsels of the Middle East District inquired with the Assistant District Counsel of the Savannah District about her prior EEO activity, received the NSA dated January 13, 2023, and shared it and used it in an official proceeding with the EEOC Washington Field Office.
4. On September 28, 2023, she became aware that two Assistant District Counsels of the Middle East District cited the NSA, dated January 13, 2023, in a Motion to Dismiss EEOC Case No. 570-2023-01192X.

The Agency dismissed claims 1 through 4 pursuant to 29 C.F.R. §1614.107(a)(1) for failure to state a claim. The Agency also dismissed claims 1 through 3 pursuant to 29 C.F.R. §1614.107(a)(2) for untimely contact with an EEO counselor.

In our prior decision, we found that dismissal of the complaint for failure to state a claim was appropriate because Complainant was not aggrieved. Specifically, we noted that Complainant was not aggrieved because her claims were associated with matters not related to a term, condition, or privilege of her employment. We also found that dismissal of claims 1 – 3 for untimely contact with an EEO counselor was appropriate. The instant request for reconsideration followed.

CONTENTIONS UPON REQUEST

On reconsideration, Complainant resubmits arguments made during her previous appeal and Complainant makes the conclusory assertion that the Commission's prior decision was clearly erroneous. 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. 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.

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. 2024001497 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

November 14, 2024
Date