



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

[REDACTED]
Nieves P.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Health Agency),
Agency.

Request No. 2024004321

Appeal No. 2023000697

Hearing No. 410-2021-00353X

Agency No. ARBENNING20OCT03257

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Nieves P. v. Dep't. of Defense, EEOC Appeal No. 2023000697 (June 20, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023000697 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 a Social Services Assistant at the Agency's Department of Primary Care, Martin Army Community Hospital in Fort Benning, Georgia.

On December 12, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), sex (female), color (Black), disability (mental and physical), age (over 40), and in reprisal for prior protected EEO activity when she was subjected to numerous incidents of harassment including sending "harassing and intimidating" text messages and emails; on September 25, 2020, she was suspended for 14 days without pay; on September 3, 2020, she was denied "59 minutes" that others were granted; she was given unrealistic work time expectations, denied leave requests and poor performance appraisals; and her supervisors conspired against her in an attempt to remove her from federal service.

Following the investigation, Complainant timely requested a hearing. The AJ assigned to the case determined *sua sponte* that the complaint did not warrant a hearing and over Complainant's objections, issued a decision without a hearing in favor of the Agency on September 29, 2022. When the Agency failed to issue a final order within 40 days of receipt of the AJ's decision, the AJ's decision finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged became the Agency's final action pursuant to 29 C.F.R. § 1614.109(i). Complainant appealed the Agency's final action to the Commission, arguing that the AJ erred in issuing summary judgment when the Agency had not filed a motion for it and because there were motions of material fact in dispute. On the merits, Complainant insisted that she established that she was subjected to discrimination and harassment based on her protected classes.

In EEOC Appeal No. 2023000697 (June 20, 2024), the Commission determined that the AJ properly issued a decision without a hearing. The Commission further determined that while Complainant established a prima facie case on the bases of race, color, disability, and reprisal, the AJ correctly found that the Agency articulated legitimate, nondiscriminatory reasons for its actions. Specifically, Complainant was required to submit medical documentation to support her requests for sick leave after Complainant frequently called out, and her requests coincided with time-sensitive tasks. Moreover, it was evident that she frequently also incorrectly filled out her time sheets in a way that always appeared to benefit her.

Complainant was also denied her request for 59 minutes, associated with receiving the flu shot, because she failed to provide the necessary medical documentation. Finally, the record indicated that Complainant was issued a 14-day suspension for a Health Insurance Portability and Accountability Act (HIPAA) violation when she provided false patient information to the patient's family and for multiple instances of failure to follow supervisory instructions and being Absent Without Leave. Ultimately, the Commission determined that Complainant failed to establish that any of the Agency's reasons were pretext for discrimination. Lastly, the Commission determined that Complainant failed to demonstrate that the common workplace occurrences rose to a level of actionable harassment.

The instant request followed.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant largely reiterates the same contentions that she previously raised. The Agency did not provide a response.

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. 2023000697 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 16, 2024
Date