



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

[REDACTED]
Sherley P,¹
Complainant,

v.

Douglas A. Collins,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Request No. 2024004348

Appeal No. 2024002423

Hearing No. 490-2023-00023X

Agency No. 200I-614-2022-144724

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2024002423 (July 2, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2024002423 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

During the relevant time, Complainant worked as a Program Support Assistant, GS-7, at the Agency's Veterans Affairs Medical Center in Memphis, Tennessee.

On May 10, 2022, Complainant filed a formal complaint. On June 29, 2022, the Agency accepted the following claims from the formal complaint:

Complainant alleged discrimination on the bases of race (Mixed American Navajo Indian), sex (female), color (not specified), disability, age (57), and in reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 when:

1. From March 3, 2022, to present, management denied Complainant's request for reasonable accommodation and denied her participation in the interactive process;
2. From March 3, 2022, to present, Complainant was subjected to a Fact Finding investigation;
3. From March 3, 2022, to present, management and coworkers have been shunning Complainant, sabotaging her training and work, and harassing Complainant over her parking tag;
4. From March 3, 2022, to present, the Management and Program Assistant slammed doors, made mean comments under her breath, disrespected Complainant in front of trainees, called Complainant stupid, and said something was wrong with Complainant, that Complainant 'didn't remember things from being in a car accident with a concussion';
5. From April 1, 2022, to May 31, 2022, management re-trained Complainant;
6. On April 5, 2022, management charged Complainant as Absent Without Leave (AWOL); and
7. On June 14, 2022, the Director terminated Complainant during her probationary period.

Complainant's formal complaint also included the following additional allegations:

8. VAMC hiring practices against Deaf individuals by placing them in a lower pay grade and pay level even when they have undergraduate and Master's Degrees and background experience.

9. EEOC compromise/breached of the agreement made on May 7, 2021. [References a settlement agreement that was executed in relation to Agency case number 200I-0614-2017100698.]

10. Supervisor subjected Complainant to EEO Facilitation without Complainant knowing she was the subject to be focused upon.

11. From on or about September 1, 2021, to March 2, 2022, management took no action regarding Complainant's allegations that employees were shunning Complainant, sabotaging her training and work, and harassing her over her parking tag.

12. From on or about September 1, 2021, to October 31, 2021, employees rolled their eyes at Complainant and shut their office door or did not communicate with her.

13. From on or about September 1, 2021, to March 2, 2022, an Agency employee slammed doors, made mean comments under her breath and disrespected Complainant in front of trainees; called Complainant stupid, dumb, said something was wrong with Complainant and that she did not remember things from being in a car accident with a concussion. 3 2024002423

14. On or about October 1, 2021, an Agency employee went through Complainant's desk and overhead cabinet and logged onto her computer.

15. On October 12, 2021, "Requested Selective Placement Coordinator Assistant to move incorrect position as my background education and degree".

16. On or about November 1, 2021, an Agency employee yelled at Complainant and belittled her in front of a trainee.

17. On or about November 1, 2021, Complainant received lack of training.

18. On or about December 1, 2021, an Agency employee slammed doors and made rude comments about people having degrees and not being a veteran.

19. On or about December 1, 2021, an Agency employee discussed Complainant's personnel file and reasonable accommodation with others without a need to know.

20. On January 11, 2022, Complainant was subjected to a Fact Finding.

21. On January 26, 2022, an Agency employee had employees go through Complainant's bags and things on her desk.

22. On January 18, 2022, an Agency employee asked Complainant to train an intern.

Within the Notice of Partial Acceptance issued on June 29, 2022, the Agency dismissed claims 8 and 9 for failure to state a claim, pursuant to 29 C.F.R. § 1614.107(a)(1), because these claims alleged breach of a settlement agreement, which were properly raised with the Agency's Office of Policy and Compliance. The Agency provided Complainant with the Agency contact for the relevant office and advised her that she could pursue the matter with that office. The Agency dismissed claim 10 for failure to state a claim, pursuant to 29 C.F.R. §1614.107(a)(1), because statements made during mediations or settlement negotiations, including any dissatisfaction and/or disagreements with what occurred, may not serve as the basis for an EEO complaint. The Agency dismissed claims 11 through 22 pursuant to 29 C.F.R. §1614.107(a)(2) for failing to be like or related to the allegations that were the subject of EEO counseling.

On November 2, 2022, following the completion of the investigation, the Agency notified Complainant of the right to request either a hearing and decision by an EEOC Administrative Judge (AJ) or an immediate final decision by the Agency. On November 11, 2022, Complainant requested a hearing before an AJ.

On December 5, 2023, Complainant filed a civil action (2:23-CV-2756) in the United States District Court for the Western District of Tennessee.

On December 14, 2023, the AJ assigned to the case, in response to the Agency's December 6 motion, dismissed Complainant's hearing request when the AJ determined that the pending civil action in federal district court encompassed the claims at issue in the complaint.

On February 2, 2024, the Agency issued its final decision where it dismissed the complaint pursuant to 29 C.F.R. § 1614.107(a)(3) because Complainant filed a case with the complaint as the underlying basis in the United States District Court for the Western District of Tennessee. Complainant appealed.

In EEOC Appeal No. 2024002423, the Commission determined that the above-referenced civil action (No. 2:23-CV-2756) raises the same claims as Complainant's entire EEO complaint currently on appeal. The Commission specifically noted that it is appropriate to dismiss a pending appeal under these circumstances to prevent a complainant from simultaneously pursuing both administrative and judicial remedies on the same matters, wasting resources, and creating the potential for inconsistent or conflicting decisions, and in order to grant due deference to the authority of the federal district court. See, e.g., Von E. v. Dep't of the Treasury, EEOC Appeal No. 2020004947 (Feb. 17, 2022). Accordingly, the Commission affirmed the Agency's dismissal. The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

Complainant offers little in the instant request other than repeating prior claims and complaints. Complainant also strongly reasserts that she is a victim of reprisal 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 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. As already noted, Complainant raises little argument to support her request for reconsideration. We emphasize that 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. 2024002423 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)

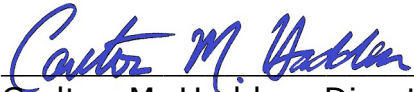
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.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

February 18, 2025

Date