



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

[REDACTED]
Genny L.,¹
Complainant,

v.

Janet L. Yellen,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Request No. 2024004377

Appeal No. 2023000402

Hearing No. 570-2021-00898X

Agency No. IRS-21-0122-F

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Genny L. v. Dep't. of the Treasury, EEOC Appeal No. 2023000402 (June 13, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023000402 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 Customer Service Representative in the Wage and Investment Division at the Agency's Appletree Call Center in Cheektowaga, New York.

On October 27, 2020, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (achromatopsia; lumbar/cervical issues; anxiety; depression) and in reprisal for protected EEO activity when from May 11, 2018, to the present, the Agency failed to provide her with effective reasonable accommodation.

Following the investigation, Complainant timely requested a hearing. The Equal Employment Opportunity Commission Administrative Judge (AJ) subsequently held a hearing and issued a decision in favor of the Agency. In her decision, the AJ initially noted that Complainant requested the following accommodations: "[e]rgonomic chair; adjustment to lighting; longer monitor arms or possible altering of current monitor arms, adjustment to keyboard table, possible side table for 'mouse' maneuvering, black cubicle shield. Also, requesting cubicle 326 which is close to the rest room and since the cubicle is located in the corner – light adjustment may not be necessary." The AJ then thoroughly detailed the Agency's long history of continued attempts to provide Complainant with a reasonable accommodation and ultimately concluded that Complainant had not established that the Agency failed to provide her with an effective reasonable accommodation.

In finding no discrimination, the AJ determined that the accommodations provided to Complainant were precisely the ones that were recommended by Complainant's medical providers. While Complainant argued that the Agency failed to effectively accommodate her, the AJ emphasized that Complainant could not have known whether the offered accommodations were effective or not, as she had not returned to her workstation. Furthermore, the AJ found that Complainant's request for reassignment was essentially a request to be moved to a different supervisor. The AJ emphasized that agencies are not required to grant such requests as a reasonable accommodation. As for Complainant's allegation that the Agency unreasonably delayed the accommodation process, the AJ found that Complainant did not establish that the Agency had unreasonably delayed providing her with accommodations.

The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination by denying her an effective reasonable accommodation as alleged.

In her appeal, Complainant argued that the AJ abused her discretion by limiting the number of witnesses and the amount of time each witness, including Complainant, could present her/his case. Complainant also argued that the AJ's decision made it difficult to present sufficient evidence to support her case. Regarding the merits, Complainant argued that the Agency erred in finding no discrimination and argued that the probative record showed that the Agency failed to reasonably accommodate her.

In EEOC Appeal No. 2023000402 (June 13, 2024), the Commission affirmed the Agency's final order. The Commission noted that AJs are given broad discretion to conduct administrative hearings. Based on the record, the Commission found that the AJ did not abuse her discretion as Complainant failed to identify what specific or material information was otherwise lacking from the record due to the AJ's decision to limit time and witnesses.

Regarding Complainant's denial of reasonable accommodation claim, the Commission found that the AJ properly determined that the Agency did not unreasonably delay providing Complainant with her requested reasonable accommodations. While Commission acknowledged that the Agency denied Complainant's request for reassignment, the Commission found that the Agency was not obligated to reassign her because the record showed that: 1) Complainant failed to provide documentation showing how her medical conditions would prevent her from performing the essential functions of her current position even with all her requested accommodations in place; 2) and the Commission has long held that a request for reassignment to a new supervisor does not constitute an actionable request for reasonable accommodation, as such a request is on its face unreasonable.

Furthermore, the Commission emphasized that reassignment was an accommodation of last resort and explained that while Complainant was entitled to an effective accommodation, she was not entitled to her accommodation of choice. As Complainant failed to show that the provided accommodations were ineffective, the Commission concurred with the AJ's finding of no discrimination regarding Complainant's denial of reasonable accommodation claim.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant largely reiterates the same contentions that she 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 implementing the AJ's 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. 2023000402 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

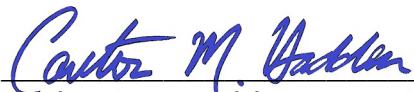
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0124)

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 19, 2024
Date