



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

[REDACTED]
Gale A,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(National Institutes of Health),
Agency.

Request No. 2024004394

Appeal No. 2023000499

Hearing No. 531-2020-00014X

Agency No. HHS-NIH-NICHD-042-19

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2023000499 (June 24, 2024).

ISSUE PRESENTED

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

On November 2, 2022, Complainant timely filed her appeal of the EEOC Administrative Judge's (AJ) decision without a hearing in favor of the Agency. In March 2024, Complainant learned that, during the discovery process ordered the by the AJ, the Agency had failed to disclose certain documents, specifically, agendas of "RAD"² meetings that were attended by the management officials Complainant deemed responsible for the alleged discrimination. On June 3, 2024, Complainant moved for sanctions based on the Agency's failure to produce these RAD meeting agendas. On June 14, 2024, the Agency opposed Complainant's sanctions motion. On June 24, 2024, the Commission issued an appellate decision without addressing Complainant's sanctions motion.

The instant request for reconsideration followed.

CONTENTIONS ON RECONSIDERATION

On reconsideration, Complainant's Counsel argued that the appellate decision was erroneous in failing to consider the motion to sanction the Agency for violating the AJ's discovery order. Complainant contended that the RAD meeting agendas directly related to her reprisal claim. According to Counsel, the Agency's withholding of the RAD meeting agendas had deprived Complainant of the pertinent knowledge that her EEO claims were regularly discussed by management. It was further argued that the RAD meeting agendas were evidence that would have supported Complainant's position that management harbored retaliatory hostility against her.

The Agency responded that Complainant's filing of the motion for sanctions at the appeal stage was inappropriate. The Agency also maintained that Complainant's motion for sanctions was untimely and the Commission did not err in declining to address it.

Complainant responded that it is appropriate for the Commission to consider the RAR meeting agendas and sanctions against the Agency because to do otherwise would result in a miscarriage of justice.

² There was no explanation for the acronym RAD. It appears to be a reference to the names of the managers that regularly attended those meetings.

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 examined Complainant's motion for sanctions, here, on reconsideration. Without so finding, we presumed that the evidence at issue, the RAD meeting agendas, was not previously available and that Complainant acted diligently upon learning of the RAD meeting agendas existing.

We carefully examined the RAD meeting agendas notwithstanding that they were heavily redacted. The RAD meeting agendas were dated between 2020 and 2022. Even through redaction, it is clear that the Agency's RAD meeting agendas contained one-line entries designated "ER/CIVIL/OGC/OIR." Next to that designation, within the same single line of text, followed what appeared to be the initials of employees who had ongoing EEO or similar matters. This is consistent with the witness, whose testimony, in a separate EEO case, revealed the existence of the RAD meeting agendas. The witness had stated that managers attending the RAD meetings only briefly reviewed the pending EEO matters but did not go into details. Consequently, we find that the RAD meeting agendas merely indicated that Complainant's EEO matter was possibly discussed, but these documents alone did not evidence that an unlawful retaliation motive factored into the Agency's decisions concerning Complainant.

We are not unsympathetic to Complainant's contentions and concur that the Agency should have provided the RAD meeting agendas during the discovery stage. However, if the Agency had properly produced these RAD meeting agendas, then we are not convinced that these agendas themselves contained evidence which demonstrated Agency management's retaliatory animus against Complainant or showed that the Agency's non-discriminatory reasons for the actions at issue were pretextual.

In sum, we find that, under the circumstances of this case, Complainant was not clearly prejudiced even though the Agency withheld the RAR meeting agendas. Since we are not persuaded that specific harm resulted from Agency's omission of the RAD meeting Agendas during discovery, we decline to issue sanctions against the Agency. Complainant has not shown that the appellate decision involved a clearly erroneous interpretation of material fact or law, or that the appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

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. 2023000499 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)

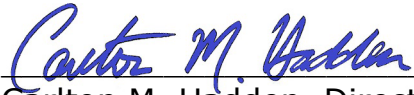
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 24, 2025
Date