



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

[REDACTED]
Frederick A.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Request No. 2024004565

Appeal No. 2023002619

Hearing No. 550-2022-00256X

Agency No. 19-00253-02783

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Frederick A. v. Dep't of the Navy, EEOC Appeal No. 2023002619 (July 8, 2024).

ISSUE PRESENTED

Whether the Agency's request for reconsideration of EEOC Appeal No. 2023002619 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 was an applicant for employment. He had previously worked at the Agency but retired early.

On August 20, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (Asian), national origin (Vietnamese), sex (male), color ("Yellow"), age (over 40), and in reprisal for prior protected EEO activity when on April 17, 2019, he was notified that the job offer for the Electronics Engineer, GS-12, position was withdrawn by the Electrical Engineering Applied Technology Branch Head.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. However, on November 1, 2021, the AJ dismissed the complaint for failure to state a claim, as the AJ determined that Complainant's job offer was withdrawn due to his failure to obtain the requisite interim security clearance, and such matters were outside of the Commission's jurisdiction. The Agency subsequently issued a final order implementing the AJ's decision. Complainant appealed this order to the Commission.

The Commission ultimately reversed the Agency's final order and remanded the complaint for continued processing. In the appellate decision, the Commission found that the crux of Complainant's claim was not the denial of a security clearance, but the rescinding of a tentative job offer. See Avery S. v. Dep't of the Navy, EEOC Appeal No. 2022001365 (Apr. 14, 2022).

On remand, the AJ determined *sua sponte* that the complaint did not warrant a hearing. In the Notice of Intent to Issue Summary Judgment, the AJ found that there were no issues of material fact or credibility to be determined at a hearing. The AJ further found that Complainant lacked corroborative evidence demonstrating that the Agency's actions were motivated by Complainant's protected statuses. Over Complainant's objections, the AJ issued a decision without a hearing in favor of the Agency on February 16, 2023. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Complainant also appealed this order to the Commission, arguing that the Agency violated an Agency directive when it did not allow him to correct the issue with his fingerprinting result. Complainant stated that he wanted to submit new evidence to prove the Agency was not telling the truth during the investigation. The submitted evidence included the Agency directive referenced by Complainant, several screen shots of the Freedom of Information Act (FOIA) website, and other duplicative information.

In EEOC Appeal No. 2023002619 (July 8, 2024), the Commission affirmed the Agency's final order. In its decision, the Commission found that the Agency articulated legitimate, nondiscriminatory reasons for rescinding Complainant's job offer. While the Commission considered Complainant's contentions regarding pretext, the Commission ultimately found such evidence to be insufficient to prove that the Agency acted with discriminatory animus.

The instant request followed.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant largely reiterates the same contentions that he previously raised. The Agency did not respond.

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 rejected in the initial appeal. The Commission emphasizes that a request for reconsideration is not a second appeal. See 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. 2023002619 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 2, 2024

Date