



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

[REDACTED]
Cornell S.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service,
Agency.

Request No. 2024004573

Appeal No. 2024002450

Agency No. 6B-710-0001-24

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2024002450 (July 2, 2024). For the reasons that follow, the Complainant's request for reconsideration is DENIED.

ISSUE PRESENTED

The issue is whether Complainant's request for reconsideration of EEOC Appeal No. 2024002450 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 Real Estate Specialist, EAS-23, at the Agency's Processing and Distribution Center in San Francisco, California. After becoming aware on August 28, 2023, that the Agency had posted vacancy announcements for three Real Estate Specialist positions on January 10, February 21, and June 13, 2023 without informing him, Complainant's attorney mailed a letter dated October 11, 2023, to the Agency's EEO Office to initiate the EEO process. While the date of mailing is unknown, the record reflects that the Agency received the letter on October 19, 2023.

On January 3, 2024, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination on the bases of age (over 40) and in reprisal for prior protected EEO activity under the ADEA when on August 28, 2023, he became aware that management failed to properly post multiple Real Estate Specialist positions on January 10, February 21, and June 13, 2023, which caused him to be unable to apply for the positions.

In his formal complaint and accompanying documents, Complainant alleged the Agency discriminated against him by only advertising the job positions via an online portal. Complainant argued that he would have applied for these positions had he been aware of them, but the Agency failed to adequately advertise these positions. According to Complainant, management should have notified employees of the vacancy announcements in a blast email or at the monthly meetings. Complainant surmised that management intentionally chose to advertise the vacancies online because they were aware that he did not regularly check the online portal for vacancy announcements. He attributed management's failure to properly advertise the positions to his age and reprisal.

The Agency ultimately dismissed the claim pursuant to 29 C.F.R. § 1614.107(a)(2), for untimely request for pre-complaint counseling, as the Agency found that Complainant failed to request EEO counseling within the requisite time period. In reaching this conclusion, the Agency relied on the five-day presumption for mailing. As the Agency received the October 11, 2023, letter on October 19, 2023, the Agency determined that Complainant's attorney mailed the letter on October 14, 2023. The Agency determined that since Complainant became aware of alleged discrimination on August 28, 2023, he was required to initiate EEO contact no later than October 12, 2023. However, he failed to do so. Consequently, the Agency found dismissal to be warranted.

Complainant appealed the dismissal but he did not file a brief or raise any arguments on appeal. In EEOC Appeal No. 2024002450 (July 2, 2024), we cited to Commission precedent and stated that while Complainant argued that he was unable to apply for the positions because he was unaware of the vacancy announcements, nothing in the record demonstrated that the Agency discouraged him from applying, utilized an informal/secretive selection process, or took other affirmative steps to harm his candidacy. Indeed, we observed, the record reflected that the vacancy announcements were posted internally online for all to see. To the extent that Complainant failed to see the vacancy announcements because he rarely checked the internal portal, we found it to be insufficient to rebut the general rule that a complainant who fails to apply for a position cannot then claim discriminatory non-selection.

CONTENTIONS ON REQUEST

On request, among other things, Complainant, through counsel submits that “the Board,” in dismissing his claims, erroneously applied the facts and therefore committed legal error. Complainant contests the dismissal of his claims for untimeliness, asserting that on October 11, 2023, he contacted the Agency via first-class mail concerning his allegations of discrimination/retaliation in this matter. Complainant did not contest the Commission’s finding regarding his non-hiring.

The Agency did not submit a brief on request.

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. Complainant raises little argument to support his request for reconsideration as he presented no basis to support a finding that the previous decision erroneously affirmed the Agency dismissal on the grounds stated therein.

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. 2024002450 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

November 19, 2024
Date