



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

[REDACTED]
Ellan K.,¹
Complainant,

v.

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

Request No. 2024004585

Appeal No. 2023002544

Hearing No. 560-2022-00001X

Agency No. IRS-21-0336-F

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Ellan K. v. Dep't of the Treasury, EEOC Appeal No. 2023002544 (July 8, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023002544 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 Fulltime Seasonal Data Transcriber at the Agency's Service Center in Kansas City, Missouri.

On May 30, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (physical) and in reprisal for prior protected EEO activity when:

1. After receiving a March 9, 2021, letter from the Office of Personnel Management (OPM) denying her application for disability retirement, she learned that Internal Revenue Service (IRS) management had submitted false information in response to OPM's questions regarding the retirement application that she submitted on February 25, 2020;
2. On or about June 18, 2021, she continued to receive Absence Without Leave (AWOL) notifications, despite having an OPM disability retirement approval dated May 13, 2021; and
3. She has been subjected to various acts of harassment, including but not limited to:
 - a. She was charged with multiple hours of Absence Without Leave (AWOL), despite the Agency's awareness that she had provided medical documentation stating she was unable to work;
 - b. She was charged with Leave Without Pay (LWOP) in 2020 even though she had not worked at all during the 2020 Tax Season;
 - c. She was charged with an "excessive amount" of furlough time; and
 - d. On May 15, 2021, she was ordered to contact an IRS manager regarding a tax compliance issue within a certain time frame, or she would be subject to disciplinary action.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. However, over Complainant's objections, the AJ granted the Agency's motion for a decision without a hearing and issued a decision without a hearing.

In finding no discrimination, the AJ found that the Agency articulated legitimate nondiscriminatory reasons for its actions. The AJ ultimately determined that Complainant failed to show that the Agency's actions were pretext for discrimination on the bases of her disability or in reprisal for protected activity. Additionally, the AJ found that Complainant was not entitled to reasonable accommodation because she failed to demonstrate that she was qualified for the position that she held. Regarding Complainant's harassment claims, the AJ found that the events, even viewed collectively, were not severe or pervasive to constitute a hostile work environment. Ultimately, the AJ found that Complainant failed to support her contentions with evidentiary support. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant appealed the Agency's final action to the Commission. She argued that the AJ improperly determined and misapplied the facts by essentially incorporating the entirety of the Agency's Motion for Summary Judgment. Complainant also asserted that the AJ failed to consider the evidence in the light most favorable to Complainant and made improper credibility determinations. Additionally, Complainant asserted that the record had not been adequately developed because of the Agency's refusals to comply with Complainant's discovery requests. Regarding her claims, Complainant argued that there was direct evidence of disability discrimination and reprisal. In response, the Agency requested that the Commission affirm its decision.

In EEOC Appeal No. 2023002544 (July 8, 2024), the Commission found that summary judgment was appropriate given the record. The Commission noted that since it determined that Complainant was not a qualified individual with a disability, it would not address or disrupt the AJ's reasonable accommodation analysis. The Commission further found that the Agency proffered legitimate, nondiscriminatory reasons for its actions. Regarding claim 1, while management acknowledged that there were several mistakes and oversights on the Agency's part, the information provided to OPM was what was recorded in the system, and not intentionally misleading or false. Regarding claim 2, management acknowledged sending the repeated AWOL notifications but noted that this was due to Complainant's failure to follow proper procedures to request leave; secure leave; and failure to provide appropriate notice of her absence. Management stopped sending the notices upon receipt of Complainant's approved disability retirement.

Complainant argued that these reasons were pretext, but the Commission found that Complainant's disagreements with the Agency's reasons were insufficient to demonstrate pretext, and that there was no evidence of unlawful motivation involved. Regarding Complainant's claim of a hostile work environment, the Commission determined that there was no evidence that the work-related incidents were abusive or offensive, or taken in order to harass Complainant. The instant request followed.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant asserts that the appellate decision involved clearly erroneous interpretation of material fact or law, and has a substantial impact on the policies, practices, or operations of the Agency. Complainant's focus is on the alleged defect in the failure of the appellate decision to acknowledge a regulation regarding seasonal employment. Additionally, Complainant argues that the Agency failed to provide a complete and proper complaint file and thus impacted the Commission's ability to arrive at a proper determination.

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 asserts that even if the Commission improperly interpreted the regulation regarding seasonal employment, Complainant failed to prove that such a presumed error was clearly erroneous, or ultimately material to the outcome of the matter. The Agency requests that the Commission deny the reconsideration 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 various arguments raised by Complainant in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision. Complainant's main contention, her status as a seasonal worker, was previously raised and considered. Additionally, the record is complete and there is no indication that it is lacking in any manner. 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. 2023002544 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

January 13, 2025
Date