



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

[REDACTED]
Latonya D.,¹
Complainant,

v.

Isabel Casillas Guzman,
Administrator,
Small Business Administration,
Agency.

Request No. 2024004640

Appeal No. 2023004729

Hearing No. 570-2021-00619X

Agency No. 12-20-005

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Cecile T. v. Small Business Administration, EEOC Appeal No. 2023004729 (July 29, 2024). For the following reasons, the Commission DENIES the request.

ISSUE PRESENTED

Whether the Agency's request for reconsideration of EEOC Appeal No. 2023004729 meets the criteria 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

Complainant worked as a Program Analyst, GS-343-14, at the Agency's Office of Government Contracting and Business Development in Washington, D.C. Complainant filed a formal EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), disability (anxiety disorder, hypertension, panic attacks), and in reprisal for prior protected EEO activity when:

1. On December 3, 2019, Complainant was denied a reasonable accommodation when her approved reasonable accommodation was rescinded; and
2. On February 16, 2020, Complainant was reassigned to another position.

Following an investigation, Complainant requested a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). The AJ held a hearing and issued a decision finding in Complainant's favor with respect to claim (1) only. The AJ determined that the Agency failed to reasonably accommodate Complainant when management ended her reasonable accommodation of four-days per week of telework. The AJ noted that Complainant had performed the job successfully, as demonstrated by her annual appraisal ratings, since 2016. The AJ found the Agency's argument that Complainant could not perform the essential functions of her position while teleworking was unpersuasive. Additionally, the record did not contain facts or evidence that Complainant could not perform the essential functions of her position for the time-period that she was under her supervisor's supervision.

To remedy the violation, the AJ ordered the Agency to pay Complainant \$31,250.00 in non-pecuniary compensatory damages. The AJ also ordered that if and when the Agency discontinued its pandemic-related telework, it was to engage with Complainant in the interactive process to determine whether her disabilities require, and her physician still recommended that she telework up to four-days per week. Additionally, the AJ ordered training for the identified management officials.

The Agency issued a final order declining to fully implement the AJ's decision and filed an appeal with the Commission.

In the appellate decision, the Commission reversed the Agency's final order rejecting the AJ's finding of failure to accommodate. The Commission found that the Agency failed to demonstrate that Complainant's reasonable accommodation during this period was ineffective, that Complainant was unable to perform her duties under her reasonable accommodation, or that Complainant's reasonable accommodation presented an undue hardship on the Agency. The Commission agreed with the AJ's finding that the basis for revoking Complainant's reasonable accommodation -- that Complainant could not perform the essential functions of her position and did not provide adequate medical documentation -- to be disingenuous and lacked good faith. As a result, the Commission found that the Agency denied Complainant reasonable accommodation in violation of the Rehabilitation Act. The Commission also affirmed the AJ's award of \$31,250.00 in compensatory damages, training for the responsible officials, and notice of the violation being posted.

The Agency filed the instant request for reconsideration.

CONTENTIONS ON REQUEST

In its request for reconsideration, the Agency contends that the Commission's previous decision constitutes an erroneous interpretation of long-established precedent on what constitutes an effective accommodation. In particular, the Agency emphasizes that the accommodation of four days of telework per week was not effective. In response, Complainant asks that the previous decision be upheld.

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 the Agency in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision.

The Agency presents arguments which were previously raised and considered or could have been raised during the original appeal. Although it frames its arguments in terms of the reconsideration criteria, in reality, the Agency is merely raising the same arguments it raised on appeal. In other words, the Agency is still contesting the merits of the AJ's findings and conclusions, expressing its disagreement with the interpretation of the factual record in our previous decision rather than pointing to actual factual and legal errors in that decision.

A request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, 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. The Agency 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. 2023004729 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as slightly modified below.

ORDER

To the extent it has not already done so, the Agency shall take the following actions:

1. Within sixty (60) calendar days of the date this decision is issued, the Agency shall pay Complainant \$31,250.00 in non-pecuniary compensatory damages.
2. Within thirty (30) calendar days of the date of this decision is issued, the Agency shall provide the training as originally ORDERED for the Agency officials. The Agency is to provide at least eight (8) hours of training on the Rehabilitation Act and reasonable accommodation process to all Agency managers, HR personnel, and advisors involved

in the decision to revoke Complainant's reasonable accommodation, including the legal sufficiency review, if any. At a minimum, the following individuals identified in the previous decision must be provided such training: NS1, DPEM, and DAA. The training must be taught by non-Agency personnel (i.e. non-SBA employees or contractors). The Agency shall consider obtaining external training directly from the EEOC or another provider, such as the National Employment Law Institute. This ordered training does not alter the Agency's other requirements under the No Fear Act or any other law or regulation but is in supplement thereto.

3. The Agency shall post a notice as set forth in the section below entitled "Posting Order."

POSTING ORDER (G0617)

The Agency is ordered to post at its Office of Government Contracting and Business Development copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g).

The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 18, 2024

Date