



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

████████████████████
Neil M.,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Request No. 2024004774

Appeal No. 2023000557

Hearing No. 570-2020-00136X

Agency No. ARHQOSA18SEP03429

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Neil M. v. Department of the Army, EEOC Appeal No. 2023000557 (August 6, 2024). For the following reasons, the Commission DENIES the request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023000557 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

Complainant, a GS-11 Lead Program Specialist in the Office of Administrative Assistant in Fort Belvoir, Virginia, filed an EEO complaint alleging that the Agency discriminated against him on the bases of race, age, and in reprisal for prior protected EEO activity when:

1. On August 21, 2018, management ignored Complainant's email requesting the status of his leave request for September 2018;
2. On August 23, 2018, during a mid-point review, management notified Complainant's that two of his training requests were being denied and provided him with a counseling;
3. On September 23, 2018, management issued Complainant a letter of counseling;
4. On March 23, 2019, management issued Complainant a letter of reprimand; and
5. On May 13, 2019, management issued Complainant a rating of unacceptable on two of his performance elements for the 2019 appraisal year.

Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). The AJ issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination as alleged. The Agency issued a final order fully implementing the AJ's decision.

On appeal, Complainant challenged the Agency's order only with respect to whether the letter of reprimand addressed in incident (4) and the performance appraisal addressed in incident (5) were retaliatory. In the appellate decision, the Commission affirmed the final order. The Commission first found that Complainant failed to establish a prima facie case of reprisal with respect to either occurrence. Notwithstanding, the Commission found that the management officials articulated legitimate and non-retaliatory reasons for the reprimand and the mid-year appraisal which Complainant failed to rebut. Complainant presented neither documentary nor testimonial evidence that tended to undermine or contradict the Agency's explanations for these actions. Accordingly, the Commission found that Complainant was not subjected to reprisal as alleged.

CONTENTIONS ON REQUEST

In his request for reconsideration, Complainant appears to be raising allegations concerning an email he received in April 2017, and threats by individuals in his management chain wanting to terminate his employment. He also raised matters concerning his employment status not being correctly documented, being charged with absence without leave, a denial of his request for a desk audit, and numerous instances of his emails being ignored by management. Accordingly, Complainant requests that the Commission grant his 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. As already noted, Complainant raises little argument to support his request for reconsideration. Rather, Complainant is merely attempting to relitigate the previous decision on the merits. We find, just as the appellate decision found, that Complainant has presented no persuasive evidence demonstrating that the conduct at issue was based on retaliatory animus or that the Agency's reasons for its actions were pretext for unlawful reprisal.

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.

His request addresses neither of the reconsideration criteria. Instead, he appears to be relitigating his appeal on the merits, referring to new matters in support of his contentions.

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. 2023000557 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 12, 2024

Date