



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

[REDACTED]
Mack B.,¹
Complainant,

v.

Michael S. Regan,
Administrator,
Environmental Protection Agency,
Agency.

Request No. 2024004793

Appeal No. 2023001437

Hearing No. 570-2020-00593X

Agency No. 2019-0039-HQ

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Mack B. v. Environmental Protection Agency, EEOC Appeal No. 2023001437 (July 25, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023001437 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 an Economist, GS-13, at the Agency's Office of Water, Headquarters, in Washington, D.C.

On May 23, 2019, Complainant filed an EEO complaint alleging that the Agency subjected him to discrimination and a hostile work environment on the bases of race (Asian), national origin (Pakistani), sex (male), religion (Islam), color (black), disability (physical), age (over 40), and in reprisal for prior protected EEO activity when:

1. in March 2017, Complainant was not selected for an Environment Protection Specialist position (GS-14), announced under vacancy number LV-OW-MP-2017-0005;
2. in December 2017, Complainant was not selected for an Environment Protection Specialist position (GS-14), announced under vacancy number LV-OW-MP-2017-0014;
3. on June 28, 2018, the Director suspended Complainant for fourteen (14) calendar days;
4. since August 2018, Complainant's first-line supervisor ("Supervisor") has not given Complainant permission to publish a scholarly article;
5. since October 2018, the Supervisor included the Associate Director, who is not a part of Complainant's supervisory chain, to attend performance discussions;
6. on December 4, 2018, Complainant was denied a reasonable accommodation;
7. on January 30, 2019, the Supervisor emailed Complainant that his work was not acceptable and to brief the Associate Director on his work;
8. on or about March 1, 2019, the Associate Director removed Complainant from the Dredge and Fill project and the State Certification project;
9. on March 4, 2019, the Associate Director tasked Complainant with developing a response essay for the "Step 1 Rule;"
10. in April 2019, the Supervisor issued Complainant an unsatisfactory midyear performance appraisal evaluation; and
11. on May 2, 2019, the Supervisor put Complainant on a Performance Improvement Plan (PIP).

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant requested a hearing. The Agency filed a motion for a decision without a hearing, urging the AJ to dismiss claims 1-4 as untimely and alternatively dismiss claim 3 on the grounds that Complainant elected the grievance process. As for the remaining claims, the Agency urged the AJ to rule in its favor on the merits.

Over Complainant's objections, the AJ issued a decision without a hearing in favor of the Agency. In the decision, the AJ granted the Agency's motion to dismiss claim 3. However, the AJ denied the Agency's motion regarding claims 1-2, and 4. While the AJ agreed with the Agency that claims 1-2, and 4 were untimely as discrete acts, the AJ found that these claims survived the Agency's motion because they were sufficiently related to Complainant's harassment claim. Ultimately, the AJ found that the probative record showed that the Agency did not discriminate against Complainant as alleged. The Agency subsequently issued a final order implementing the AJ's decision.

Complainant appealed the Agency's final order to the Commission, but did not submit any contentions in support of his appeal. The Agency did not respond to Complainant's appeal.

In EEOC Appeal No. 2023001437 (July 25, 2024), the Commission affirmed the Agency's final order. While Complainant had alleged that the Agency failed to reasonably accommodate him when it denied his request to come into work before his start time and stay past his end time each day to avoid rush hour traffic, the Commission found no persuasive evidence showing that the Agency failed to do so. To the contrary, the Commission found that the Agency effectively accommodated him when it allowed him to amend his schedule as needed and/or telework for part of the day to avoid traveling during rush hour traffic. As for Complainant's remaining claims, the Commission found no persuasive evidence that the Agency subjected him to either disparate treatment or harassment.

The instant request followed.

CONTENTIONS ON REQUEST

In requesting reconsideration, Complainant argues, for the first time, that the provided accommodations were ineffective. Complainant also argues that the Agency discriminated against him when it took the alleged adverse actions against him. Complainant not only accuses the Branch Chief and the Associate Director of collaborating against him to take the alleged adverse actions, but also his Union Representative, whom he believes collaborated with management to harm him. Furthermore, Complainant contends that he was harmed by the AJ's decision to issue a decision without a hearing because he was unable to obtain relevant evidence, such as evidence regarding his non-selections.

The Agency opposes the appeal.

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 presents contentions that could have been timely raised 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. 2023001437 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 30, 2024
Date