



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

[REDACTED]
Cossondra S.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Request No. 2024004802

Appeal No. 2023003702

Hearing No. 430-2022-00244X

Agency No. DON-21-65923-00890

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in 2023003702.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023003702 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

BACKGROUND

During the relevant time, Complainant worked for the Agency as an Architect, in Cherry Point North Carolina. On September 9, 2021,

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.

Complainant filed a formal complaint claiming discrimination based on race, sex, and reprisal.

On May 8, 2023, the Agency issued a final order. Its certificate of service indicated that the decision was sent to Complainant on May 8, 2023, via the Agency's electronic Secure Access File Exchange. The certificate of service also stated that it was presumed that the final decision was received within five days after it was sent.

In Appeal No. 2023003702, the Commission dismissed the instant appeal as untimely filed. Specifically, the Commission found that Complainant was presumed to have received the Agency's final order no later than May 13, 2023. The Commission further found that Complainant had filed the appeal on June 14, 2023, which was beyond the 30-day time limit set by the regulations. The Commission also found that the Agency had explicitly informed Complainant of the time limits on her right to appeal. Finally, the Commission determined that Complainant provided no justification to invoke waiver or equitable tolling. The Commission acknowledged that Complainant claimed to have received the final decision on May 15, 2023, but that she provided no evidence or appellate argument to rebut the reasonable presumption contained in the certificate of service.

CONTENTIONS ON REQUEST

Complainant argues that she did not actually receive the final order until May 15, 2023, and that technical computer difficulties prevented her from gaining access to the final order for several days preceding May 15, 2023.

In response, the Agency argues that Complainant did not retrieve the final order on May 15, 2023 (as opposed to not having *received* it on that day). The Agency asserts that the final order was emailed on May 8, 2023, and that Complainant's failure to retrieve a delivered document does not justify waiver or equitable tolling. The Agency notes that Complainant argues that she had technical difficulties on May 13, 2023, and May 15, 2023. The Agency argues, however, that there is no evidence reflecting that Complainant was not able to retrieve the decision on May 8 – May 12, 2023. Finally, the Agency argues that Complainant had made no effort to contact the Agency to resolve any technical issues during this time, though contact information was readily available.

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 submission by Complainant in support of the instant request for reconsideration. However, we determine there is no reason to disturb the Commission's prior decision which dismissed the appeal. Complainant has provided no justification for us to now determine that the appeal was indeed timely filed. 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 § VII.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. 2023003702 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 25, 2024
Date