



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

Lamarr Price,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2024004830

Appeal No. 2024001125

Hearing No. 510-2021-00034X

Agency No. 2003-580-2022-145997

DECISION ON REQUEST FOR RECONSIDERATION

On August 25, 2024, Complainant requested by email that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2024001125 (June 26, 2024). The Commission docketed Complainant's request for reconsideration on August 27, 2024.

ISSUES PRESENTED

The issues presented are: (1) whether there is sufficient evidence to find that Complainant's request for reconsideration was untimely filed; and (2) whether Complainant's request for reconsideration of EEOC Appeal No. 2024001125 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

¹ Typically, cases are randomly assigned a pseudonym to replace a complainant's name when the decision is published to non-parties and the Commission's website. Complainant requests that his real name be used rather than a pseudonym.

BACKGROUND

During the relevant time, Complainant was employed by the Agency as the Deputy Chief of Logistics at the Veterans Affairs Medical Center in Houston, Texas.

On August 9, 2022, Complainant filed a formal complaint, alleging discrimination and harassment based on sex, disability, and in reprisal for prior protected activity when:

1. On May 22, 2022, the Agency failed to adhere to the established timeline/procedures to grant or deny a reasonable accommodation request within 30 calendar days of the initial request;
2. On April 29, 2022, the Agency directed managers to "cover down vacant supervisory positions," in an effort to not provide Complainant's reasonable accommodation;
3. On April 29, 2022, Complainant's first-line supervisor (Supervisor1) and the Local Reasonable Accommodation Coordinator (LRAC) denied Complainant's request for reasonable accommodation, to telework full-time or be provided administrative leave;
4. On April 29, 2022, LRAC offered Complainant an inadequate reasonable accommodation, to provide him the opportunity to utilize Leave Without Pay (LWOP);
5. On May 13, 2022, the Associate Director (Supervisor2) overruled Complainant's decision to charge a female subordinate Absent Without Leave (AWOL);
6. On June 23, 2022, Director failed to follow through with his unofficial offer to provide Complainant telework in a different department; and
7. On August 2, 2022, management disabled Complainant's status as an employee and removed his ability to log onto his work computer.

Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ) but subsequently withdrew his request. The Agency issued a final decision, finding no discrimination or unlawful retaliation was established. Complainant appealed.

In EEOC Appeal No. 2024001125, the Commission affirmed the Agency's final decision finding no discrimination. The Commission found that Complainant did not establish a prima facie case of discrimination based on sex and reprisal with respect to his allegation that the Agency denied his reasonable accommodation request.

The Commission determined that the Agency provided Complainant an interim accommodation while conducting an undue hardship assessment and that, while the interim accommodation provided, LWOP, could be interpreted as a denial of his request, the record did not support Complainant's assertion that Supervisor1 treated him differently than similarly situated female employees or that Supervisor1 sought to deter protected EEO activity.

The appellate decision assumed for the purposes of analysis that Complainant was an individual with a disability within the meaning of the Rehabilitation Act. The Commission found that the Agency did not fail to provide Complainant with a reasonable accommodation or unreasonably delay the reasonable accommodation process. On April 22, 2022, Complainant requested full-time telework as a reasonable accommodation, and, on May 3, 2022, he provided medical documentation stating that he was cleared to telework. As of May 6, 2022, Complainant was not a qualified individual with a disability. Before the Agency rendered a decision on Complainant's request for accommodation, he provided LRAC and Supervisor1 with medical documentation stating he could not work in any capacity, including telework.

Regarding Complainant's hostile work environment claim, the Commission found that Complainant could not establish a prima facie case of harassment and there was no evidence that the alleged harassment was based on his protected classes. Complainant had also raised a constructive discharge claim. The Commission found that, based on its findings on the other claims, Complainant could not establish that he was constructively discharged. The Commission also noted that Complainant had applied for disability retirement prior to the time of events at issue in the instant complaint.

The instant request for reconsideration followed.

CONTENTIONS ON REQUEST

In his request for reconsideration, Complainant suggests that the Commission has been working with the Agency to dismiss and suppress legitimate discrimination cases, including disability discrimination cases. Complainant notes that, when the Commission issued the appellate decision on his case, he received an email from the Commission with a copy of the decision, and a number of Agency employees also received the email.

Complainant questions why ORMDI² employees needed to be notified that his appeal is being closed. Complainant asks about the facts of the claims, noting that his position had been approved for telework six months earlier without any medical documentation. Complainant contends that there is a conflict of interest and requests a fresh review of his claims.³

In response to Complainant's request for reconsideration, the Agency argues that the request is untimely and fails to meet the criteria set forth at 29 C.F.R. § 1614.405(c).

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

As a preliminary matter, we address the Agency's contention that Complainant's request for reconsideration was untimely filed. Upon review, the record reflects that Complainant is represented by an attorney of record, who was inadvertently left off the certificate of mailing for EEOC Appeal No. 2024001125. Because Complainant has designated an attorney as his representative, "time frames for receipt of materials shall be computed from

² ORMDI is the Agency's Office of Resolution Management, Diversity, and Inclusion. Pursuant to 29 C.F.R. § 1614.405(a), the Office of Federal Operations, on behalf of the Commission, shall issue a written decision setting forth its reasons for the decision and transmit the decision to the complainant and the agency.

³ Complainant uploaded additional documents to the EEOC Public Portal on September 17, 2024, October 19, 2024, and November 13, 2024. A party requesting reconsideration is required to file any supporting statement or brief at the time they file the request for reconsideration. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). Accordingly, we have not considered Complainant's subsequent submissions.

the time of receipt by the attorney.” 29 C.F.R. § 1614.605(d). We do not have a record of when Complainant’s attorney received the decision. Accordingly, we find there is insufficient evidence that Complainant’s request was untimely and will consider whether his request met the criteria set forth at 29 C.F.R. § 1614.405(c).

In the instant request for reconsideration, nothing that Complainant has submitted supports a determination that the prior decision affirming the Agency’s final decision was in error. Complainant provided medical documentation in support of his April 22, 2022, request for full-time telework as a reasonable accommodation on May 3, 2022. As of May 6, 2022, Complainant was unable to work in any capacity, including telework. We do not find that the appellate decision erred in finding that the Agency did not unreasonably delay in responding to Complainant’s reasonable accommodation request and that the record does not establish that he was denied a reasonable accommodation for his disability. Complainant contends on request for reconsideration that the Agency unlawfully deviated from procedure in processing his request for reasonable accommodation, but he has not identified any clearly erroneous interpretation of law or fact in the appellate decision and appears to reiterate some arguments that were previously raised. A request for reconsideration is not a second appeal to the Commission. EEO MD-110, at Chap. 9 § VII.A; *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. 2024001125 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