



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

[REDACTED]
Archie G.,¹
Complainant,

v.

Frank Kendall,
Secretary,
Department of the Air Force,
Agency.

Request No. 2024005013

Appeal No. 2024001859

Agency No. 8Y1G2305019

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Archie G. v. Department of the Air Force, EEOC Appeal No. 2024001859 (August 5, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2024001859 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-0081-13 Installation Fire Chief at the Kirtland Air Force Base in Albuquerque, New Mexico, filed a formal EEO complaint alleging that the Agency subjected him to discrimination and a hostile work environment, based on his race (Hispanic), national origin (Mexico), sex (male), disability (mental and physical), age (DOB: 1957), and in reprisal for prior protected EEO activity when:

1. Complainant's April 2023 performance appraisal referred to "EEO complaints filed by firefighters" and that Complainant's conduct was seen as favoritism by the Agency;
2. On August 2, 2023, Complainant's grievance regarding his 2023 performance appraisal was denied; and
3. Sometime before August 14, 2023, an Agency EEO Counselor conducted onsite inquiries with personnel, which had a chilling effect on Complainant's claim and likely deterred Complainant and others from engaging in protected activity, as well as other incidents of harassment.

The Agency dismissed the complaint for untimely EEO Counselor contact pursuant to 29 CFR § 1614.107(a)(2), and failure to state a claim pursuant to 29 CFR § 1614.107(a)(1). The Agency found that Complainant's claims lacked definitive dates and that the claims regarding Complainant's 2023 performance evaluation, presumed to occur in April 2023, were untimely as Complainant initiated EEO contact in August 2023. The Agency also determined that Complainant's claims lacked specificity and failed to allege harm or adverse actions. The Agency noted that Complainant listed reprisal as a basis but found no EEO activity on file for Complainant.

In the appellate decision, the Commission concluded that the Agency properly dismissed the complaint. The Commission reasoned that Complainant did not initiate contact with an EEO Counselor until August 14, 2023, which was well beyond the applicable statutory period for the claims related to the May 19, 2023 appraisal. The Commission similarly determined that Complainant had not articulated any specific incidents or provided any supporting documentation to establish that he suffered a present harm or loss of a term, condition, or privilege of employment. Accordingly, the Commission affirmed the Agency's dismissal decision.

CONTENTIONS ON REQUEST

In his request, Complainant first contends the Commission decision identified the wrong federal agency and respondent, naming the Secretary of the Army, instead of the Secretary of the Department of the Air Force. In addition, Complainant contends that the performance appraisal referred to "EEO complaints filed by firefighters" and Complainant's conduct which constitutes evidence of a per se reprisal. He maintains that the appraisal comment was "simply designed to chill and deter Complainant's known EEO protected activity and unreasonably interfere with his work performance and/or create an ongoing intimidating, hostile, or offensive work environment." Finally, he argues that his request meets the standards for reconsideration because there are material facts in dispute which may have a substantial impact on Commission policies and practices.

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

Initially, we acknowledge that the appellate decision listed the incorrect agency defendant and agency head. This error is harmless and not dispositive of the outcome and has been corrected in the caption above.

We have reviewed the submissions by Complainant in support of the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision. Complainant presents arguments which were previously raised and considered or could have been raised during the original appeal. The Commission emphasizes that a request for reconsideration is not a second appeal. 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. Thus, we conclude that Complainant has not presented any persuasive evidence to support reconsideration of the Commission's decision.

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. 2024001859 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 18, 2024

Date