



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

[REDACTED]
Karen J,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Intelligence Agency),
Agency.

Request No. 2024005026

Appeal No. 2022004494

Agency No. 2020-00052

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022004494 (September 5, 2024).

ISSUE PRESENTED

The issue presented is whether Complainant's request for reconsideration of EEOC Appeal No. 2022003986 meets the criteria for reconsideration 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 Officer at the Agency's Directorate for Operations in Washington, D.C. On November 9, 2020, Complainant filed an EEO complaint alleging that she was sexually harassed by being subjected to a series of escalating and unwelcomed sexual advances based on her sex (female) in 14 specific incidents. Complainant also alleged that she was discriminated against and subjected to harassment based on her sex (female) and in reprisal for prior protected EEO activity in 6 specific incidents.

At the conclusion of the investigation, Complainant elected a hearing before an Administrative Judge (AJ). On May 26, 2022, the AJ assigned to the case dismissed Complainant's hearing request as a sanction, based on Complainant's failure to respond, on two occasions, to the AJ's order to respond to a submission of the Agency. The AJ directed the Agency to issue a Final Agency Decision (FAD). The Agency issued its FAD on July 22, 2022. Complainant subsequently appealed that decision on August 19, 2022.

In the Decision, the Commission vacated the Agency's FAD, and the AJ's dismissal of Complainant's hearing request, and remanded the matter to the Agency for additional processing, to include refiling the matter into the EEOC hearing process. In its opinion, the Commission noted that the AJ's sanction of dismissal of Complainant's hearing request was too harsh and unwarranted. Specifically, the Commission found that:

when a complainant designates an attorney as their representative, service of all official correspondence shall be made on the attorney with copies to the complainant. Despite having received Complainant's notice of representation, the AJ did not serve Complainant's new counsel with the Order for Complainant Response or the Order to Show Cause. As the record fails to demonstrate that Complainant's attorney was informed of the AJ's orders, we find that Complainant was denied her right to be represented during the processing of her complaint, pursuant to 29 C.F.R. § 1614.605(a).

Karen J. v. Dep't of Defense, EEOC Appeal No. 2022004494 at 9 (Sept. 5, 2024) (Decision).

On September 11, 2024, the Agency filed this request for reconsideration.

CONTENTIONS ON REQUEST

In its request for reconsideration, the Agency contends that the Commission decision is rooted in erroneous interpretations of fact and law. More specifically, the Agency argues that the Decision falsely concluded that Complainant provided her new attorney's contact information to the AJ and Agency. The Agency also argues that the Decision erred in not considering the issue of Complainant's inability to access the email the Agency used to submit her orders. Lastly, the Agency argues that the Decision contains additional errors of fact not directly material to the final decision of the Commission.

Complainant submitted several documents explaining her perspective of the EEO process and her experience with legal representation through this case.

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

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 Agency's contentions focus on whether Complainant submitted a written designation of representative when her representation changed. However, we find that this fact is immaterial as the record clearly indicates that both the Agency and the AJ knew Complainant had retained new counsel as early as March 2022. We also note that the Commission does not solely rely on the issue of Complainant's representation to support its reversal decision, but instead on the severity of the AJ's sanction. We remind the Agency that the Commission has consistently held that a dismissal of a hearing request as a sanction is only appropriate in extreme circumstances. See e.g., Wilma B. v. Dep't of Vet. Affs., EEOC Appeal No. 2020003672 (Dec. 2, 2021).

The decision in EEOC Appeal No. 2022004494 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

The Agency shall comply with the Order as set forth below.² We shall restate the Order issued in EEOC Appeal No. 2022004494.

ORDER

The Agency is directed to submit a copy of the complaint file to the EEOC Hearings Unit of the Washington Field Office within 15 days of the date this decision is issued. The Agency shall provide written notification to the Compliance Officer at the address set forth herein that the complaint file has been transmitted to the Hearings Unit. Thereafter, the Administrative Judge shall hold a hearing and issue a decision on the complaint in accordance with 29 C.F.R. § 1614.109 and the Agency shall issue a final action in accordance with 29 C.F.R. § 1614.110.

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.

² As this complaint is remanded for another hearing process, we remind Complainant that the Commission's regulations state that a complainant is responsible for proceeding with the complaint whether or not she has designated a representative. 29 C.F.R. § 1614.605(e).

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