



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

[REDACTED]
Sandra D.,¹
Complainant,

v.

Alejandro N. Mayorkas,
Secretary,
Department of Homeland Security,
(Immigration and Customs Enforcement),
Agency.

Request No. 2024005061

Appeal No. 2023001884

Hearing No. 570-2022-00447X

Agency No. HS-ICE-00979-2018

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Appeal No. 2023001884.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023001884 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

During the relevant time, Complainant worked for the Agency as a Staff Assistant, GS-0301-09, within the Systems Management Unit (SMU) and then starting in October 2017, Student and Exchange Visitor Program Response Center (SRC), in Arlington, Virginia.

On February 20, 2018, Complainant filed a formal complaint, subsequently amended, claiming that the Agency subjected her to harassment and discrimination based on race (Black), color (black), sex (female), age (67), and reprisal for protected EEO activity when:

1. On or about October 16, 2017, Complainant became aware that Unit Chief provided false statements in her FY17 Performance Work Plan (PWP), and provided an inaccurate rating in order to preclude Complainant from obtaining employment elsewhere.
2. In January 2018, the Agency failed to place Complainant in a Mission Support Specialist position, and instead placed Complainant in a position involving stenographer work.
3. On several occasions in 2018, Complainant's documents, emails, and/or correspondence regarding EEO matters were deleted and/or taken away from her.
4. In January of 2018, after Complainant confronted an IT Specialist for hitting the back of her leg, Section Chief asked Complainant whether she was trying to start a sexual harassment case.
5. In January and February 2018, Section Chief questioned Complainant regarding her attendance, and attempted to intimidate Complainant by accusing her of committing fraud.
6. In 2017, Unit Chief prevented Complainant from being assigned to a detail beginning on September 6, 2016, and January 4, 2017.
7. Complainant was subjected to harassment regarding her work assignments, such as in May of 2018, when Section Chief repeatedly requested Complainant provide notes that she did not have.

After the investigation into the complaint, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing and the parties engaged in discovery.²

On December 20, 2022, the assigned AJ granted an Agency motion for a summary judgment decision in its favor.

The AJ found summary judgment was appropriate as Complainant failed to raise any genuine issue of material fact to warrant a hearing. The AJ dismissed Claims 2 and 6 as both stemmed from a prior settlement agreement. The AJ found Claim 2 was an untimely raised allegation of breach of the prior settlement agreement when Complainant was advised of the timeline and process to obtain the detail assignment. The AJ found that Claim 6 was the same August 2016 claim raised in the settled complaint, and was not a new claim, as Complainant stated in her formal complaint.

Regarding the remaining claims, the AJ noted Complainant failed to produce any evidence the Agency's actions were connected to her protected bases. Hence, Complainant failed to establish a prima facie case of discrimination or retaliation. The AJ stated even if a prima facie case was established, the Agency's witnesses provided legitimate, non-discriminatory reasons for its actions. The AJ also found Complainant's harassment and retaliatory harassment claims lacked discriminatory intent and failed to rise to the level of sufficiently severe or pervasive.

On January 11, 2023, the Agency issued a final order implementing the AJ's finding of no discrimination.

In Appeal No. 2023001884, the Commission affirmed the Agency's final order implementing the AJ's summary judgment decision. The instant request for reconsideration from Complainant followed.

² Complainant had previously requested a hearing, but that request was dismissed by the AJ as a sanction. See EEOC Appeal No. 2020004391 (February 8, 2022). The Commission vacated the Agency's decision and ordered the Agency to submit a new hearing request on behalf of Complainant due to an incomplete evidentiary record on appeal with which Complainant could challenge the AJ's sanction.

CONTENTIONS ON REQUEST

Complainant addresses arguments previously raised below. Complainant also states that she had the “right to file and should not receive further punishment by not allowing her case to be thrown out.” Complainant also states that the Commission should not issue a decision based on a “late submission.”

In response, the Agency argues that Complainant is not being punished for an untimely submission, and that Complainant reiterates arguments that were previously raised on appeal and which had been addressed in the prior decision.

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. We find that AJ and our prior decision properly found that the record did not support a discrimination finding regarding any of the subject claims. 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. 2023001884 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 14, 2024
Date