



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

████████████████████
Wade H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Request No. 2024005194

Appeal No. 2022003262

Hearing No. 530-2012-00025X

Agency No. 1C-081-0028-11

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Wade H. v. United States Postal Service, EEOC Appeal No. 2022003262 (August 20, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022003262 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

The record indicates that Complainant filed a formal complaint on June 20, 2021, alleging that the Agency discriminated against him on the bases of disability (chronic knee and foot pain, hip impingement, and back pain) and sex (male) when:

From February 14 to sometime in December 2011, the Agency denied Complainant a reasonable accommodation.

Following an investigation, the Agency notified Complainant of the right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing. The AJ (AJ1) held a hearing on May 31, and July 17, 2013, but did not issue a decision for reasons unspecified in the record. During the hearing, Complainant withdrew the basis of sex. The matter was reassigned to a second AJ (AJ2), who issued a decision on April 7, 2022, based on the record and the 2013 hearing transcript. Regarding the sole remaining claim of disability discrimination, AJ2 found Complainant failed to establish he was denied a reasonable accommodation.

The Agency issued a final order on May 21, 2022. The Agency's final order fully implemented the AJ's finding that Complainant failed to prove he was subjected to discrimination. Complainant appealed and the Commission's prior decision affirmed the Agency's final decision.

Subsequently, Complainant filed the instant request for reconsideration.

CONTENTIONS ON REQUEST

In his request, Complainant argues that his case should be reopened. Complainant states he is submitting evidence he previously presented as well as some evidence he did not previously submit. Complainant notes while his case was pending before AJ1, his attorney at the time dismissed his sex and race claims without discussing it with Complainant which he states is something he did not want. Complainant notes a White female custodian was granted a permanent light duty job but he was not afforded the same.

The Agency makes no contentions in response.

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

At the outset, we note that in support of his request for reconsideration, Complainant states he is providing documentation which was not included in the prior appeal file. Because Complainant did not provide any arguments or evidence to show that the new materials were not reasonably available previously, we decline to consider any newly provided evidence in this decision.

We have reviewed the various arguments raised by Complainant in the instant request for reconsideration. However, we 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. Regarding Complainant's contention that a White female coworker was given a modified job offer, the record reveals while sex was initially raised as a basis, it was withdrawn during the hearing. The record reveals race was not an accepted basis in Complainant's formal complaint. Even if race was initially raised as basis, Complainant states it was withdrawn during the hearing. Thus, we note that neither the bases of sex nor race were addressed in the AJ's decision and thus, will not be addressed in the instant request for reconsideration. Moreover, regarding Complainant's claim about the actions of his attorney surrounding the withdrawal of his additional bases, we note that Complainant himself went on record and agreed he was withdrawing sex as a basis. However, to the extent Complainant is raising a claim of ineffective assistance of counsel, the Commission notes that when a complainant has voluntarily entrusted representation to an attorney, he may not avoid the consequences of his choice by arguing that the attorney did not perform the attorney's duties in a competent manner. Kennedy v. U.S. Postal Service, EEOC Request No. 05950157 (August 10, 1995).

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. 2022003262 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 26, 2024
Date