



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

[REDACTED]
Thurman L.,¹
Complainant,

v.

Terence Emmert,
Acting Secretary,
Department of the Navy,
Agency.

Request No. 2024005288

Appeal No. 2022000920

Hearing No. 480-2021-00018X

Agency No. 19-62473-04959

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022000920 (Aug. 28, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022000920 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

At the time of events giving rise to this complaint, Complainant worked as a Production Controller (Construction), GS-1152-07, at the Agency's Naval Base in Coronado, California.

On July 11, 2017, Complainant filed a formal complaint alleging that the Agency subjected him to discrimination and hostile work environment on the bases of age and in reprisal for prior protected EEO activity when:

1. In August 2018, Complainant's first-level supervisor moved Complainant from his position of Production Controller (Construction), and temporarily placed him in a Production Controller (Dispatcher) position without the proper secret level clearance;
2. In August 2018, Complainant was not provided an accurate job description, proper training or a correct performance evaluation for his new assignment until Complainant initiated EEO contact;
3. In August 2018, Complainant's second-level supervisor stated Complainant would never receive a Standard Form (SF)-50 to document Complainant's temporary move;
4. Complainant's prior position of Production Controller (Construction), was filled (date unknown) by another employee;
5. On or about August 18, 2019, Complainant was not selected for the position of Production Controller, GS-1152-09, under job announcement Number ST-10515879-19-WTS;
6. On November 18, 2019, Complainant learned he was not accepted to the Aspiring Leadership Development Program (ALDP) based on the evaluation submitted by his first-level supervisor; and
7. In December 2019, Complainant learned he was not selected for Production Controller, GS-1152-09 (ST-10628528-20-RLW).

Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). The AJ issued a summary judgment decision in favor of the Agency finding that Complainant was not subjected to discrimination or reprisal as alleged. Thereafter, the Agency issued a final order fully implementing the AJ's decision. Complainant appealed.

In the appellate decision, the Commission affirmed the Agency's final order. The Commission found that the Agency provided legitimate, nondiscriminatory reasons for its actions. For example, Complainant was assigned Dispatcher duties based on the Agency's need for someone to fill those specific duties and his managers' belief that he was sufficiently qualified to perform those duties. Complainant was not selected for the positions he sought since his resume lacked detail regarding his work experience and because of his lower rankings in the application/interview panel's scores, including the score for his answers to financial questions. Complainant failed to show that the Agency's reasons for its actions were pretextual.

In addition, the Commission determined that the alleged incidents were insufficiently severe or pervasive to establish a hostile work environment. Further, the Commission concluded that there was no evidence demonstrating that the conduct at issue was based on discriminatory or retaliatory animus. As a result, the Commission found that Complainant was not subjected to discrimination, reprisal, or a hostile work environment as alleged.

The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

Complainant argues that the prior decision was based on false information because he and another individual both applied to the ALDP at the same time, but they did not appear on the same candidates list. Complainant also contends that Agency employees lied in their affidavits.

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 various arguments raised by Complainant in the instant request for reconsideration. However, we can find no basis to disturb the Commission's prior decision, as Complainant largely presents arguments which were previously raised and considered in the prior appellate decision.

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 § 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. Complainant's arguments touch on facts that are immaterial to the disposition of his complaint.

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. 2022000920 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)

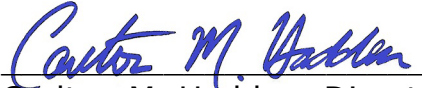
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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

February 4, 2025

Date