



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

[REDACTED]
Alvaro P.,¹
Complainant,

v.

Gary A. Ashworth,
Acting Secretary,
Department of the Air Force,
Agency.

Request No. 2025000002

Appeal No. 2022004387

Hearing No. 540-2021-00218X

Agency No. 6X1S2001005F22

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requests that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Alvaro P. v. Department of the Air Force, EEOC Appeal No. 2022004387 (Sept. 3, 2024). For the following reasons, the Commission DENIES the request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022004387 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 was an applicant for a Contract Specialist position at the Agency. Complainant's nonselection for that position was the subject of an equal employment opportunity (EEO) complaint, identified as Agency No. 6X1S17003T (hereinafter, prior complaint), which alleged that the Agency discriminated against him based on disability (hearing impairment/deaf).

Complainant requested a hearing before an EEOC Administrative Judge (AJ) on the prior complaint (EEOC Hearing No. 540-2018-00029X). Before the AJ, Complainant moved to amend the prior complaint by adding a claim that the Agency had denied Complainant's reasonable accommodation request for two sign language interpreters, disclosed Complainant's confidential medical information, and retaliated against Complainant for engaging in prior protected EEO activity. The AJ denied the motion to amend, finding that the new claim was a "spin-off" complaint about the processing of the underlying complaint. Complainant then sought EEO counseling on these "spin off" allegations.

Subsequently, on November 9, 2020, Complainant filed the instant EEO complaint, identified as Agency No. 6X1S2001005F22, alleging that the Agency discriminated against Complainant based on disability when:

1. On August 10, 2020, Complainant did not have Communication Access Real-Time Translation (CART) services as a reasonable accommodation during a telephonic/virtual conference;
2. On August 10, 2020, Agency Counsel 1 and/or Agency Counsel 2 retaliated against Complainant for engaging in protected activity by replacing previously provided American Sign Language (ASL) interpreter services with a different ASL interpreter services provider;
3. On August 21, 2020, Complainant did not have CART and ASL interpreter services as reasonable accommodations for a walk-through;² and
4. Between August 25-27, 2020, Complainant did not have ASL interpreter services as a reasonable accommodation for a previously scheduled three-day hearing.

² The walk-through appears to refer to a test of a Zoom link in preparation for the hearing on the prior complaint.

At the conclusion of the investigation into the instant complaint, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an AJ. Complainant requested a hearing (EEOC Hearing No. 540-2021-00218X), but the assigned AJ dismissed Complainant's hearing request and remanded the complaint to the Agency for a final decision, reasoning that Complainant could not show that the Agency's failure to accommodate during the processing of the prior complaint was not administrative error or that Complainant suffered any harm by the delay of the hearing in the prior complaint.

Upon remand, the Agency issued a final order dismissing the instant complaint pursuant to 29 C.F.R. § 1614.107(a)(8), finding that all of the claims alleged dissatisfaction with the processing of the prior complaint (Agency No. 6X1S17003T) and therefore constituted "spin-off" claims. On August 12, 2022, Complainant appealed the Agency's final order to the Commission.

Meanwhile, in February 2021, the AJ assigned to the prior complaint found that the Agency had subjected Complainant to discrimination and retaliation and ordered remedial relief. The Agency issued a final order on the prior complaint fully implementing the AJ's decision and remedies. Complainant later filed an appeal with the Commission for a determination as to whether the Agency had fully complied with a portion of the remedies it had implemented in its final order. While the Commission was in the process of assessing the Agency's compliance with its final order on the prior complaint, the parties entered into a settlement agreement on March 16, 2023.³ The settlement agreement provided that Complainant would withdraw the prior complaint (listed in the agreement as Agency No. 6X1S17003T and EEOC Hearing No. 540-2018-00029X) and waive any claims arising out of or related to the prior complaint.

As to Complainant's appeal of the Agency's final order dismissing the instant complaint (Agency No. 6X1S2001005F22), the Commission issued a decision affirming dismissal. However, the appellate decision affirmed the dismissal on different grounds than the Agency did in its final order, finding that 29 C.F.R. § 1614.504(a) provided that any settlement agreement knowingly and voluntarily agreed to by the parties shall be binding on both parties.

³ This was after Complainant's appeal of the dismissal of the instant complaint in August 2022.

Therefore, the appellate decision found that the instant complaint should be dismissed because all the claims were encompassed within the parties' March 2023 settlement agreement. While the appellate decision acknowledged that the settlement agreement did not expressly reference the instant complaint, it found that the claims arose out of or were related to the prior complaint because they involved the processing of the prior complaint before the AJ. The appellate decision also noted that Complainant had not submitted a statement or brief in support of his appeal. The instant request for reconsideration from Complainant followed.

CONTENTIONS ON RECONSIDERATION

The day after Complainant filed his request for reconsideration—and after he had received an acknowledgement letter from the Commission indicating that he had been required to submit any brief or supporting statement at the time he filed his request—he filed his brief, arguing it should be considered timely because the timeframe for submitting his request had not yet elapsed. In his brief, Complainant argues that the appellate decision was clearly erroneous because the instant complaint is separate from and unrelated to the prior complaint that was settled. Complainant also argues that the appellate decision violated due process by dismissing the appeal without notice that the settlement agreement would be considered and based on information not raised by either party.

The Agency opposes Complainant's request, arguing that Complainant has not provided any new facts or argument to show that the appellate decision was clearly erroneous or will have a substantial impact on the Agency's policies. The Agency maintains that Complainant failed to show that any alleged procedural due process error would have resulted in a different outcome in this case. It also maintains that the appellate decision conducted a proper de novo review and did not rely on evidence that was outside the record. The Agency also maintains that its final order dismissing the instant complaint pursuant to 29 C.F.R. § 1614.107(a)(8) was correct and that Complainant makes no assertions to the contrary.

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

As an initial matter, we find that Complainant's submissions in support of the instant request for reconsideration, including his initial brief, were untimely filed and shall not be considered herein. The appellate decision clearly informed Complainant that, if a party requesting reconsideration elects to file a statement or brief, it "must be filed together with the request for reconsideration." Appellate Decision at 6. Even if we were to consider Complainant's submissions, however, it would not alter the outcome in this matter.

Upon review of the record, we determine that there is no reason to disturb the Commission's prior appellate decision. We find the appellate decision was not clearly erroneous in concluding that, under the plain meaning of the settlement agreement, any claims arising out of or related to the prior complaint were withdrawn by Complainant. Given that the instant complaint only involves incidents that occurred during the hearing process of the prior complaint, it was not clearly erroneous for the appellate decision to find that those claims were related to the withdrawn prior complaint, as stated in the parties' settlement agreement.

The Commission emphasizes that 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.

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. 2022004387 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