



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

[REDACTED]  
Wilbur R.,<sup>1</sup>  
Complainant,

v.

Todd Hunter,  
Acting Secretary,  
Department of Veterans Affairs,  
Agency.

Request No. 2025000087

Appeal No. 2022005157

Hearing No. 450-2022-00048X

Agency No. 2003-0756-2021103180

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Appeal No. 2022005157.

**ISSUE PRESENTED**

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022005157 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

---

<sup>1</sup> 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 period at issue, Complainant worked for the Agency as an Ophthalmologist in El Paso, Texas.

On May 17, 2021, Complainant filed a formal complaint, claiming discrimination based on age. Complainant claimed that a supervisor asked Complainant "how old are you?" at their first meeting; a co-worker stated to Complainant that he was now the "old man in the clinic;" he was not provided adequate computer training; a supervisor required him to complete all patient charts on the same day of patient care; on February 24, 2021, Complainant retired; and on an undisclosed date, a supervisor stated to Complainant, "the eye clinic didn't want you two years ago."

Following an investigation by the Agency, Complainant requested a hearing before an EEOC Administrative Judge (AJ). Thereafter, the AJ issued a notice of Intent to Issue Summary Judgment, to which both parties responded. The Agency then issued a summary judgment decision finding no discrimination. The Agency subsequently issued a final order fully implementing the AJ's finding of no discrimination.

In Appeal No. 2022005157, the Commission affirmed the Agency's final order implementing the AJ's summary judgment decision. The instant request for reconsideration from Complainant followed.

### CONTENTIONS ON REQUEST

Complainant in the instant request claims that there were errors contained in the finding of no discrimination, such as the number of his scheduled patients identified on one date, or the date which Complainant received a fellowship. Complainant also reiterates the credibility of Agency employees who purportedly failed to recall making any age-related comments about him.

In response, the Agency argues that any factual errors as identified by Complainant were not material to the ultimate finding of no discrimination, and that the record supports the AJ's findings.

### 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 note that Complainant provided extensive arguments and documentation on appeal from the Agency's final order. The instant request addresses matters which either were raised, or could have been raised below. 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. 2022005157 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)

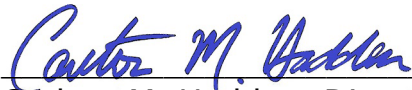
This decision of the Commission is final, and there is no further right of administrative appeal from the Commission's decision. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision.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