



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

████████████████████  
Leonard H,<sup>1</sup>  
Complainant,

v.

Judith Kaleta,  
Acting Secretary,  
Department of Transportation  
(Federal Aviation Administration),  
Agency.

Request No. 2025000173

Appeal No. 2022004990

Hearing No. 440-2021-00247X

Agency No. 2020-28951-FAA-04

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2022004990 (September 10, 2024). For the reasons discussed below, we deny the request,

**ISSUE PRESENTED**

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022004990 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

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<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

Complainant worked as an Aviation Safety Inspector, Grade GS-14, on the Agency's Safety Analysis and Promotion Division Certification and Evaluations Team in Honolulu, Hawaii.

On October 20, 2020, Complainant filed a formal complaint alleging that the Agency subjected him to a hostile work environment based on his race, color and in reprisal for his EEO-protected activity. Complainant timely requested a hearing before an EEOC Administrative Judge (AJ). On July 5, 2022, the assigned AJ issued a decision without a hearing in favor of the Agency. The Agency adopted the AJ's decision in a final order. Complainant appealed to this Commission. On September 10, 2024, the Commission affirmed the Agency's order adopting the AJ's decision. The instant request for reconsideration followed.

### 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).

### CONTENTIONS ON RECONSIDERATION

On reconsideration and through Counsel, Complainant contends that the prior decision contained erroneous credibility determinations and made mistakes of material fact. Complainant maintains that the Commission had improperly accepted, at face value, the Agency's justifications for its harassment of Complainant. Complainant avers that the matter merited a hearing before an AJ because the Agency had acted abusively and inappropriately toward Complainant. For example, Complainant asserts that when his supervisor invited a union representative to a discussion about Complainant's underperformance, this action was taken without Complainant's request and was contrary to the applicable union agreement. Complainant further states that the notes of the union representative on the meeting conflicted with his statement that supported management's version of events. Complainant additionally argues that the record established that Complainant was subjected to reprisal and discriminatory admonishments based on his race, color and EEO-protected activity.

### ANALYSIS

We have reviewed Complainant's submissions in support of the instant request for reconsideration. However, we determine there is no reason to disturb the Commission's prior decision. The prior decision properly found that the AJ's summary judgment decision was appropriate. Moreover, we observe that the arguments raised in the instant request either could have been made, or in fact were made, in the extensive appellate arguments that Complainant's Counsel has previously raised in opposing summary judgment and on appeal. After additional review, we find, that the preponderance of the evidence does not support that Complainant was subjected to discrimination as alleged. Based on this record, we find that Complainant had not demonstrated that the Agency's stated reasons for its actions were pretexts to mask unlawful animus against Complainant's race, color or EEO-protected activity.

A request for reconsideration is not a second appeal to the EEOC. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Ch. 9 § VII.A (Aug. 5, 2015); see 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. We are not persuaded that Complainant has shown factual error in the appellate decision. We are unconvinced that the appellate decision will substantially impact the Agency by discouraging complainants while encouraging unlawful behavior by Agencies.

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. 2022004990 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 10, 2025

Date