



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

[REDACTED]
Daniell H.,¹
Complainant,

v.

Pamela Bondi,
Attorney General,
Department of Justice
(Federal Bureau of Prisons),
Agency.

Request No. 2025000287

Appeal No. 2022003885

Hearing No. 420-2022-00054X

Agency No. BOP-2021-02198

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Daniell H. v. Department of Justice, EEOC Appeal No. 2022003885 (Sept. 24, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022003885 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 worked as a Cook Supervisor at the Agency's Federal Correctional Institution in Aliceville, Alabama.

On July 6, 2021, Complainant filed an equal employment opportunity (EEO) complaint alleging that the Agency subjected her to discrimination and harassment based on race (African American), sex (female and parental status), and in reprisal for prior protected EEO activity when:

1. On March 26, 2021, Complainant was issued a letter of counseling; and
2. On April 14, 2021, Complainant's performance evaluation was lowered.

We note that Complainant did not previously challenge the framing of the complaint.

Following an investigation into the claims, Complainant requested a hearing before an EEOC Administrative Judge (AJ). The Agency filed a motion for a decision without a hearing, which Complainant opposed. The AJ thereafter issued a decision by summary judgment in favor of the Agency. The Agency then issued a final order fully implementing the AJ's decision. Complainant appealed the final order to the Commission.

In the prior appellate decision, the Commission affirmed the Agency's final order. The Commission found that, regarding claim 1, Complainant called her facility the evening of March 16, 2021, to request leave the following day due to her child's daycare being closed. Complainant spoke to the Operations Lieutenant on duty about needing leave, and he told Complainant that he would contact Complainant's supervisor. Thereafter, the supervisor attempted to call Complainant's phone, but he was unable to leave Complainant a voicemail. Complainant was absent the next day, even though her request for annual leave had not been approved by the supervisor. Complainant's annual leave balance at the time was 2.25 hours. As a result, she was charged absent without leave (AWOL) for the remaining 7.75 hours she was absent. The prior decision found that when the supervisor told Complainant the next day that she needed to call him to request leave, she responded, "No thank you. I don't have to do that." Complainant's supervisor later issued Complainant a written counseling for being Absent Without Leave.

Regarding claim 2, Complainant had been on extended parental leave from April 2020 to March 2021. On April 14, 2021, Complainant's supervisor issued Complainant a performance rating of "Success" for the rating period of April 1, 2020, through March 31, 2021. The supervisor averred that this reflected Complainant's latest quarterly evaluation. Human Resources, however, informed the supervisor that based on Complainant's absence from work the previous year, the rating should instead have been based on her performance evaluation from the previous year, which was an "Exceeds" rating. Ultimately, the supervisor corrected the issue within six days.

The prior appellate decision found that the record was adequately developed, and that Complainant's mere allegations, speculations, and conclusory statements about being discriminated against were insufficient to create a genuine dispute of material fact requiring a hearing. The Commission found that Complainant failed to establish a prima facie case of discrimination or reprisal but that, regardless, the Agency articulated legitimate, nondiscriminatory reasons for its actions that Complainant failed to rebut as pretextual. The Commission also concluded that Complainant failed to show that similarly situated employees outside of her protected bases were treated more favorably. The Commission further found that Complainant could not establish her claim of harassment. The instant request for reconsideration from Complainant followed.

CONTENTIONS ON RECONSIDERATION

On reconsideration, argues that she was the only staff member under the supervisor who had prior EEO activity and whose performance evaluation was lowered. Complainant claims that several male and Caucasian staff members did not follow call-in procedures but were not placed on AWOL.

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 determine that there is no reason to disturb the Commission's prior decision. We agree with the prior decision that Complainant failed to show that similarly situated persons were treated differently. Complainant mostly reiterates arguments she previously made, or could have made, on appeal and provides no evidence to warrant granting her request. 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 § 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.

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. 2022003885 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

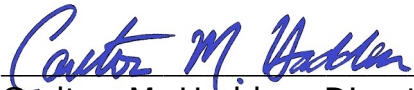
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0124)

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 25, 2025

Date