



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

[REDACTED]
Starr R.,¹
Complainant,

v.

Thomas J. Vilsack,
Secretary,
Department of Agriculture
(Farm Service Agency),
Agency.

Request No. 2025000320

Appeal No. 2022003934

Agency No. FPAC-2022-00069

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Starr R. v. Dep't of Agriculture, EEOC Appeal No. 2022003934 (Sept. 19, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2022003934 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 Program Technician, GS-7 at the Agency's Lares Field Office in Lares, Puerto Rico.

On December 20, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (carpal tunnel syndrome and back problems) and in reprisal for prior protected EEO activity when:

1. On October 4, 2021, she learned she was not selected for the GS-09, Loan Specialist (Agriculture) position, as advertised under Vacancy Announcement Number FSA-21-11204688-MP-PR-SM.
2. On several dates, she was subjected to various incidents of harassment, including but not limited to:
 - a. On unspecified dates, management subjected her to abusive treatment, unequal tasks, and unreasonable deadlines as compared to other Program Technicians in similar positions;
 - b. On unspecified dates, management did not allow her to ask coworkers or supervisors work-related questions, and referred her to seek help by reading the Program Technician's (PT) guide; and
 - c. On unspecified dates, management excluded her from agency outreach programs.

Complainant also alleged that: (i) in February 2018, the State Executive Director suggested that in order for her to be considered for the Farm Program Manager position, she would need to withdraw her union grievance; and (ii) in 2019, management failed to approve her Individual Development Plans and training requests. The Agency dismissed claims (i) and (ii) for untimely EEO Counselor contact, pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency investigated the accepted claims (claims 1 and 2). Complainant requested an Agency decision. The Agency issued a final decision concluding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant appealed the final Agency decision to the Commission. In our prior appellate decision, we affirmed the Agency's dismissal of claims (i) and (ii), and the finding of no discrimination and harassment regarding claims 1 and 2.

Specifically, in our prior decision, we found that the Agency properly dismissed claims (i) and (ii) due to untimely EEO Counselor contact. 29 C.F.R. §1614.107(a)(2). We stated that the alleged incidents occurred in 2018 and 2019, and Complainant did not contact an EEO Counselor until November 8, 2021, which was beyond the 45-day time limit set by the regulations.²

Regarding claim 1, our prior decision concluded that Complainant failed to establish a prima facie case based on either her disability or reprisal. We further concluded that the Agency articulated legitimate, nondiscriminatory for Complainant's nonselection in that the Selectee for the position had more relevant experience than Complainant.

Regarding claim 2, we found Complainant failed to establish that the Agency subjected her to harassment as alleged. Specifically, we found no evidence the alleged incidents of harassment were due to either Complainant's disability or reprisal. The instant request for reconsideration followed.

CONTENTIONS ON REQUEST

On reconsideration, Complainant reiterates the arguments that she raised previously alleging discrimination for the claims in this complaint. The Agency contends that the Commission's prior decision correctly decided in favor of the Agency. The Agency also contends that on request, Complainant, reiterating her arguments previously made, does not argue nor provide any evidence to warrant granting of the request.

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).

² We previously noted that regarding Complainant's issues related to her workers' compensation claim submitted to the Office of Workers' Compensation Program (OWCP), the proper forum for her to raise such was within the OWCP, not the EEO process.

ANALYSIS

We have reviewed the submissions by Complainant in support of the instant request for reconsideration. We determine that there is no reason to disturb the Commission's prior decision. In her request for reconsideration, Complainant reiterates arguments made and fully considered on appeal. 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. We therefore determine that there is no reason to disturb the Commission's prior decision.

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. 2022003934 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

January 22, 2025

Date