



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

[REDACTED]
Priscilla H.,¹
Complainant,

v.

General Timothy D. Haugh,
Director,
National Security Agency,
Agency.

Request No. 2025000487

Appeal No. 2023003423

Hearing No. 531-2022-00017X

Agency No. NSA 21-012

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Priscilla H. v. National Security Agency, EEOC Appeal No. 2023003423 (October 3, 2024).

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2023003423 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 for the Agency as a Cybersecurity Certification Manager (GG-13) at the Agency's Space and Weapons Division in Ft. Meade, Maryland.

On December 2, 2020, Complainant filed an EEO complaint alleging that she was discriminated against based on her age (56), race (African American), and sex (female) when on July 15, 2020, she received feedback from management that she would not be promoted to GG-14 during the Fiscal Year 2020 promotion cycle.

Following an investigation by the Agency into the claim, Complainant requested a hearing before an EEOC Administrative Judge (AJ). However, on motion of the Agency, the AJ issued a summary judgment decision concluding Complainant failed to prove discrimination as alleged. The Agency issued a final order implementing the AJ's decision. Complainant appealed.

In Appeal No. 2023003423, the Commission affirmed the Agency's final order implementing the AJ's summary judgment decision. As an initial matter, the appellate decision noted that Complainant did not submit contentions on appeal, but she submitted a supplemental affidavit. While the Agency moved to strike the supplemental affidavit, the AJ previously considered it, and it was appropriate to consider on appeal. The appellate decision then found that it was undisputed that Complainant established a prima facie case of discrimination on all her bases. However, the Agency articulated a legitimate nondiscriminatory reason in not promoting Complainant because the Agency only had funding to promote the top three (3) candidates and Complainant was ranked twelfth out of the 22 candidates. Complainant did not show pretext for discrimination.

The instant request for reconsideration from Complainant followed.

CONTENTIONS ON REQUEST

Complainant argues that there are material facts that should be reconsidered. For example, she asserts that the investigation implied that there were five members of the promotion board, but there was a sixth member; and that the board chair gave different guidance to board members from the Agency's promotion criteria. Complainant also contends that the Agency conducted the investigation, which was not independent, and that a hearing is required.

The Agency opposes Complainant's request. It asserts that Complainant has not adduced evidence or arguments establishing a clearly erroneous interpretation of material fact or law, and she has not demonstrated that the appellate decision will have a substantial impact on the policies, practices, or operations of the Agency.

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 submissions by Complainant in support of the instant request for reconsideration. However, we determine that there is no reason to disturb the Commission's prior decision. In her request, Complainant raises arguments such as a sixth member of the promotion board and guidance to board members that differed from Agency's promotion criteria. Complainant further requests a hearing, contending that the investigation was not conducted by an independent entity.

As noted in the appellate decision, Complainant did not offer any arguments on appeal, but she submitted a supplemental affidavit. A review of Complainant's formal complaint; initial and supplemental affidavits; and her opposition to the Agency's Motion for Summary Judgment,² show that she raises her arguments for the first time in her request. However, the Commission has consistently held that a party may not raise new arguments in a request for reconsideration. A request for reconsideration is not a second appeal to the Commission. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, Chap. 9 § VI.A (Aug. 5, 2015); see, e.g., Lopez v. Dep't of Agric., EEOC

² Complainant responded "Undisputed" to the Agency's fact regarding the members of the promotion board, which did not include this purported sixth member named in Complainant's request for reconsideration. Complainant's Opposition to Agency's Motion for Summary Judgment at 4.

Request No. 0520070736 (Aug. 20, 2007). A request for reconsideration is not the time to raise new arguments. 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.

To the extent that Complainant argues that the Agency's investigation was not conducted by an independent entity, and will have a substantial impact on the policies, practices, or operations of the Agency, the process for agencies to conduct investigations into complaints of employment discrimination is set forth in 29 C.F.R. § 1614.108. The Agency's compliance with the Commission's regulations is proper and will not have a substantial impact on the policies, practices, or operations of the Agency.

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. 2023003423 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 12, 2025
Date