



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

[REDACTED]
Avery S.,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Request No. 2025000497

Appeal No. 2024003442

Agency No. 23-42217-00023

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Avery S. v. Dep't of the Navy, EEOC Appeal No. 2024003442 (Oct. 30, 2024). For the following reasons, the Commission DENIES Complainant's request.

ISSUE PRESENTED

Whether Complainant's request for reconsideration of EEOC Appeal No. 2024003442 meets the criteria detailed in 29 C.F.R. § 1614.405(c).

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Engineer at the Agency's Commander, Naval Air Warfare Center Aircraft Division in Patuxent River, Maryland.

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.

The record indicates that Complainant filed his complaint on January 28, 2024, alleging that the Agency subjected him to hostile workplace discrimination based on national origin, religion, disability, and in reprisal for prior EEO activity when on August 7, 2023, he was made aware that he received his notice of decision on proposed removal of May 11, 2023.

The Agency issued a final decision dismissing the complaint due to untimely EEO Counselor contact pursuant to 29 C.F.R. § 1614.107(a)(2). The Agency stated that although the alleged incident occurred on August 7, 2023, Complainant contacted an EEO Counselor on September 27, 2023, which was beyond the 45-day time limit set by the regulations. Complainant appealed the final Agency decision to the Commission, and in our prior appellate decision we affirmed the Agency's final decision. We found that Complainant presented no persuasive arguments or evidence on appeal warranting an extension of the time limit for initiating EEO Counselor contact. The instant request for reconsideration followed.

CONTENTIONS ON REQUEST

On reconsideration, Complainant contends that the Agency's discriminatory treatment caused him serious mental health issues and sickness. The Agency makes no arguments in opposition to Complainant's reconsideration 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).

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. Complainant raises no argument to support his request for reconsideration, i.e., concerning his untimely EEO Counselor contact. 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. 2024003442 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