



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

[REDACTED]
Harlan P.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2020001428

Appeal No. 2019002960

Hearing Nos. 480-2017-00399X and 480-2018-00298X

Agency Nos. 200P-0691-2016104711 and 200P-0691-2017103333

DECISION ON REQUEST FOR RECONSIDERATION

The Agency timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2019002960 (November 26, 2019). 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).

After reconsidering the previous decision and the entire record, the Commission finds that the request meets the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the Commission to GRANT the request.

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.

ISSUE PRESENTED

EEOC Regulation 29 C.F.R. § 1614.107(a)(3) provides for the dismissal of an administrative EEO complaint that is the basis of a pending or decided civil action in a United States District Court in which the complainant is a party. Here, were Complainant's EEO complaints properly dismissed by an EEOC Administrative Judge based on this regulation?

BACKGROUND

At the time of the events at issue, Complainant was employed by the Agency as a Registered Nurse at the VA Medical Center in West Los Angeles, California.

On September 1, 2016, Complainant filed a formal EEO complaint (Agency No. 200P-0691-2016104711), later amended, alleging that, between May 14, 2015 and January 8, 2017, the Agency subjected him to a series of events that created a hostile work environment on the bases of race (African-American), sex (male), disability (anxiety and depression), age (49), and/or reprisal for prior protected EEO activity, as well as denying him reasonable accommodation for his disabilities. On June 12, 2017, Complainant filed a second EEO complaint (Agency No. 200P-0691-2017103333), alleging disability discrimination and unlawful retaliation when he was issued a 14-day suspension effective April 24, 2017, as well as conversations with management surrounding the events leading up to the suspension, and a March 2017 negative job reference.

Following investigation of both complaints, the Agency informed Complainant of the right to request a hearing before an EEOC Administrative Judge (AJ) or an immediate final agency decision. Complainant requested a hearing for both complaints, which were consolidated for processing. After an extensive period of pre-hearing conferences, motions, notices and orders, the AJ issued the parties notice of his intent to dismiss the two complaints, pursuant to 29 C.F.R. § 1614.107(a)(3), because Complainant had filed a civil action on the same or related matters. Both parties responded to the AJ's notice.

On March 7, 2019, the AJ dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(3). The AJ concluded that, on August 27, 2018, Complainant filed a civil action (identified as Civil Action No. 2:18cv8596) in the United States District Court for the Central District of California and the claims raised in that action were the same as those raised in the matter pending before the AJ. The AJ noted that, during a teleconference, he had cautioned Complainant that filing a civil action on the same matters could warrant termination of the administrative processing of his EEO complaints. The Agency fully implemented the EEOC AJ's dismissal.

Three weeks after the AJ's dismissal, on April 1, 2019, the United States District Court for the Central District of California ordered dismissal of Civil Action No. 2:18cv8596 "with prejudice," citing Complainant's failure to comply with a Court order.

Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 2019002960. The appellate decision in Appeal No. 2019002960 reasoned that because the Court had dismissed the civil action, the dismissal from the administrative EEO complaint process should now be reversed and the matter remanded to the AJ for continued processing.

The Agency filed a request for reconsideration, stating that Complainant's claim was the basis for a civil action which was dismissed with prejudice. The Agency argued that Complainant exhausted the avenues available to pursue his claim and the AJ's dismissal should be affirmed.

ANALYSIS AND FINDINGS

It is established that, in most instances in which a case is dismissed with prejudice in federal court, the Complainant may not re-enter the administrative process. See Magallanes v. Dep't of Justice, EEOC Request No. 05900176 (July 13, 1990); see also Conway v. Dep't of the Army, EEOC Request No. 05891007 (December 1, 1989); but see Patel v. Dep't of Veterans Affairs, EEOC Request No. 05920346 (May 12, 1992) (allowing a complaint to proceed despite raising the same issues as a civil action dismissed with prejudice, because dismissal of the civil action was based on the complainant's failure to exhaust administrative remedies with EEOC).

Here, a review of the civil action and other documentation prepared by Complainant in this case reflects that it broadly encompasses Complainant's claims regarding ongoing harassment/hostile work environment, reasonable accommodation issues, and disciplinary actions, including matters inextricably intertwined with the April 2017 suspension. Complainant's civil action alleges these events occurred during the same time periods as the allegations raised in his EEO complaints. As such, we concur in the AJ's conclusion that Complainant's civil action raised claims that are "either identical or inextricably intertwined with the matters raised in his EEO complaints." Additionally, Complainant included the first page of his "Acknowledgment and Order" from the Administrative Judge in a document that he sent to the district court judge, further indicating that these cases were the same.

Here, Complainant was given two opportunities to bring his complaint properly in district court and did not follow the judge's orders, resulting in his case being dismissed with prejudice. In this instance, we decline to reinstate Complainant's claim into the administrative process. See Conway, supra.

The Commission finds that its prior decision erred in remanding this matter to the EEOC AJ for further processing. For the reasons set forth above, the Commission finds that the Agency final order adopting the AJ's decision to dismiss Complainant's two EEO complaints should be affirmed.

CONCLUSION

After reconsidering the previous decision and the entire record, the Commission finds that the Agency's request meets the criteria of 29 C.F.R. § 1614.405(c), and it is the decision of the

Commission to GRANT the request. The decision of the Commission in Appeal No. 2019002960 is REVERSED. There is no further right of administrative appeal on the decision of the Commission on a Request to Reconsider.

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (P0610)

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 his or her 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:

/s/ Bernadette B. Wilson
Bernadette B. Wilson
Executive Officer
Executive Secretariat

August 13, 2020
Date