



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

[REDACTED]
Andrew L.,¹
Complainant,

v.

Alex M. Azar II,
Secretary,
Department of Health and Human Services,
Agency.

Request No. 2020003263

Appeal No. 0120182154

Hearing No. 480-2016-00451X

Agency No. HHSOS00352015

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120182154 (February 25, 2020). 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).

Complainant worked as a Physician employed by AlignStaffing as a contractor with the Agency in the Federal Occupational Health facility in Laguna Niguel, California. Complainant filed an EEO complaint alleging he was discriminated against based on age when:

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.

1. Since 2011, Complainant was passed over for training on several occasions, including on March 27, 2015, Complainant became aware that he had not been provided training on how to transition from a paper-based medical records system to an electronics-based medical records system; and
2. On March 24, 2015, Complainant was terminated by AlignStaffing.

The Agency accepted the complaint for investigation, and Complainant requested a hearing. The Agency made a motion for dismissal, arguing it was not a joint employer. Thereafter the EEOC Administrative Judge (AJ) issued a decision dismissing the complaint. The AJ found that Complainant could not be considered an employee of the Agency and noted that the Agency played no role in Complainant's termination. Our prior decision analyzed the factors in determining whether there was sufficient control for the Agency to be considered a joint employer. It found that the Agency did not have sufficient control over Complainant's employment to be a common law joint employer, agreeing with the AJ's dismissal.

In his request for reconsideration, Complainant expresses his disagreement with the previous decision. We emphasize that a request for reconsideration is not a second appeal to the Commission. See EEO MD-110, Ch. 9, § VII.A. 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.

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. 0120182154 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request.

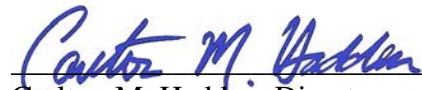
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (P0610)

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:



Carlton M. Hadden, Director
Office of Federal Operations

September 24, 2020
Date