



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

[REDACTED]  
Emelda F.,<sup>1</sup>  
Complainant,

v.

Henry J. Kerner,  
Special Counsel,  
Office of Special Counsel,  
Agency.

Request No. 2020004140

Appeal No. 2019004447

Agency No. EEO-19-0001

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Emelda F. v. Office of Special Counsel, EEOC Appeal No. 2019004447 (May 26, 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, an employee of the U.S. Department of Agriculture, filed an EEO complaint in which she alleged that the Agency discriminated against her on the bases of race (African-American), sex (female), and age when:

1. On June 19, 2018, the Agency issued Complainant an unfavorable preliminary determination with respect to her prohibited personnel practice (PPP) complaint against her employer, the U.S. Department of Agriculture;
2. The Agency closed Complainant's PPP complaint on July 11, 2018; and

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<sup>1</sup> 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.

3. The Agency denied Complainant's request for reconsideration of the closure of her PPP complaint on August 24, 2018.

The Agency dismissed her complaint for untimely EEO counselor contact and for failure to state a claim. In our previous decision, we affirmed the Agency's dismissal for failure to state a claim finding that Complainant's allegations constituted a prohibited collateral attack on the Agency's adjudicatory proceeding.

The Commission emphasizes that a request for reconsideration is not a second appeal. Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 9-18 (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. She has not presented any argument or evidence tending to establish the existence of either reconsideration criterion. Instead, she attempts to relitigate her appeal on the merits, raising contentions similar to those we considered and rejected in our previous decision.

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. 2019004447 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

October 27, 2020

Date