



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

[REDACTED]
Alonso T.,¹
Complainant,

v.

Charlotte A. Burrows,²
Chair,
Equal Employment Opportunity Commission,
Agency.

Request No. 2020002535

Appeal No. 0120162340

Agency No. 2013-0005

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 0120162340 (January 15, 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). For the reasons that follow, Complainant's request is DENIED.

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.

² In the present matter, the Equal Employment Opportunity Commission (EEOC) is both the respondent Agency and the adjudicatory authority. The Commission's adjudicatory function is separate and independent from those offices charged with in-house processing and resolution of discrimination complaints. For the purposes of this decision, the term "Commission" is used when referring to the adjudicatory authority and the term "Agency" is used when referring to the respondent party in this action. The Chair has abstained from participation in this decision.

ISSUE PRESENTED

The issue presented is whether the decision in EEOC Appeal No. 0120162340 should be vacated on the grounds that it was based on a clearly erroneous interpretation of material fact or law or will have a substantial impact on the Agency's policies, practices, or operations.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Human Resources Program Manager in the Agency's Office of the Chief Human Capital Officer (OCHCO) in Washington, D.C.

In the underlying complaint, Complainant alleged that the Agency discriminated against him and subjected him to harassment on the bases of race (Black), age (50), and reprisal for prior protected EEO activity when he was denied training and his duties as the Agency's Personnel Security Officer were reassigned to a younger, less experienced White employee. He subsequently amended the complaint to allege that the Agency discriminated against him on the bases of disability (back and feet impairments) and reprisal when it partially denied his reasonable accommodation request to telecommute two days per week.

On March 21, 2016, the Agency issued a final decision (FAD) finding that Complainant did not establish that the Agency discriminated against him on the bases of race, age, and reprisal as alleged. The Agency concluded that Complainant's reprisal claims failed as a matter of law because his protected EEO activity occurred after the actions at issue. The Agency further concluded that it articulated legitimate, nondiscriminatory reasons for its actions and that Complainant did not prove that the articulated reasons were a pretext for discrimination. Additionally, the Agency found that Complainant did not establish that the Agency subjected him to unlawful harassment.

With respect to his reasonable accommodation claim, the Agency found that Complainant did not establish that it partially denied his request for reasonable accommodation in retaliation for protected EEO activity. Assuming that Complainant was an individual with a disability, the Agency found that it provided Complainant with an effective accommodation when it granted him one day of telework per week. The Agency stated that Complainant accepted the proposed accommodation on February 8, 2013, but "inexplicably refused to meet with [the Disability Program Manager (DPM) and S1] on February 19, 2013, to discuss [DPM's] decision." According to the Agency, "Complainant unilaterally ended the interactive process, thereby eliminating any further chance that the Agency would consider granting him an additional telework day."

In EEOC Appeal No. 0121062340, the Commission modified the Agency's final decision. The Commission affirmed the determination that Complainant failed to establish that the Agency subjected him to harassment and discrimination based on race, age, and reprisal for prior protected EEO activity when it denied his request for training and reassigned his duties as the Agency's Personnel Security Officer to a younger, less experienced White employee. However, OFO found

that the Agency violated the Rehabilitation Act when it did not provide Complainant with a reasonable accommodation.

ARGUMENTS ON RECONSIDERATION

Complainant's Request

In his request for reconsideration, Complainant states that he would like to dispute allegations made against him, explain his experience at the Agency, and provide additional information concerning his complaint. He reiterates his disbelief that an investigation was conducted but notes that he was subjected to a deposition conducted in "bad faith." Complainant adds that he was adversely affected when Agency Counsel rescheduled meetings and threatened him with dismissal of his complaint during the investigation phase. He asserts that the Agency took four or five years to provide a response to his complaint and did not provide a copy of the report of investigation with the FAD. Complainant's request goes on to provide a self-assessment of his performance while at the Agency along with deficiencies that he perceives in the investigation. He argues that the responsible management officials were not truthful in their responses. Complainant attempts to provide additional examples of harassment, including the issuance of inappropriate directions and reprimands for acts that he alleges did not result in reprimands for others. He repeats his claim that he was denied a reasonable accommodation.

Agency's Response

In response, the Agency notes that Complainant failed to argue that the previous decision involved a clearly erroneous interpretation of material fact or law. According to the Agency, Complainant's request fails to demonstrate, much less argue, that the decision will have a substantial impact on the policies, practices, operations of the Agency. Rather, the Agency argues, Complainant simply reargues his version of the facts were previously addressed.

ANALYSIS

The Commission emphasizes that 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), 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.

In the instant request for reconsideration, Complainant largely reiterates arguments made and fully considered on appeal. For example, Complainant previously contended that his complaint did not receive an "objective review" and in his request for reconsideration, Complainant maintains that he does not believe an investigation was conducted. Aside from bald assertions, Complainant presented no evidence to corroborate his positions. Complainant attempts to provide additional

examples of harassing conduct and details regarding the training requests and reassignment of duties. However, we find that Complainant's arguments do not 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.

With respect to the Complainant's assertions that there was substantial delay in the issuance of his decision, the record does not indicate that the Agency unduly delayed issuing a decision. Specifically, the record indicates that Complainant initially requested a hearing, which request he later withdrew, and that he participated in discovery during the intervening period between the filing of his complaint and the FAD. Moreover, the record does not support Complainant's allegations that the Agency did not conduct a proper investigation or that Agency Counsel acted inappropriately.

To the extent that Complainant reasserts the details involving the Agency's failure to accommodate his disability, we previously determined that the Agency failed to provide Complainant an effective accommodation and neither party challenged this determination. As to the truthfulness of the responsible management officials, Complainant has not provided evidence on reconsideration that the management officials statements are unworthy of credence. Nor has he shown that reliance on these statements resulted in a clearly erroneous interpretation of material fact or law. As such, we do not find that Complainant presented arguments that were not fully considered on appeal.

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. 0120162340 remains the Commission's decision. There is no further right of administrative appeal on the decision of the Commission on this request. The Agency shall comply with the Order as set forth below.³

ORDER

Within one hundred and twenty (120) calendar days of the date this decision is issued, and to the extent that it has not already done so, the Agency is ORDERED to take the following actions:

- (1) The Agency shall continue to provide Complainant with the option to telework three days per week.

³ We note that, because Complainant has not prevailed on his request for reconsideration, he is not entitled to attorney's fees in connection therewith. However, Complainant remains entitled to attorney's fees for services rendered in connection with the appeal below, and should submit a request for attorney's fees in accordance with the attorney's fees order included in the appellate decision.

(2) The Agency shall conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages as a result of the discriminatory denial of reasonable accommodation. The Agency shall afford Complainant an opportunity to establish a causal relationship between the Agency's violations of the Rehabilitation Act and any pecuniary or non-pecuniary losses. Complainant shall cooperate in the Agency's efforts to compute the amount of compensatory damages he may be entitled to and shall provide all relevant information requested by the Agency. The Agency shall issue a new Agency decision addressing the issue of compensatory damages. The final decision shall contain appeal rights to the Commission. The Agency shall submit a copy of the final decision to the Compliance Officer at the address set forth below.

(3) The Agency shall provide eight (8) hours of in-person or interactive training to S1 and DPM regarding their responsibilities under the Rehabilitation Act, with a special emphasis on the Agency's obligation to provide reasonable accommodation.

(4) The Agency shall consider taking appropriate disciplinary action against S1 and DPM. The Agency shall report its decision to the Compliance Officer referenced herein. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the identified management officials have left the Agency's employment, the Agency shall furnish documentation of the departure date(s).

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation verifying that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Headquarters copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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/Rachel See

Rachel See
Acting Executive Officer
Executive Secretariat

March 18, 2021

Date