



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

[REDACTED]
Rena L.,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services
(Indian Health Service),
Agency.

Request No. 2021004022

Appeal No. 2020000428

Agency No. HHSIHS01072018

DECISION ON REQUEST FOR RECONSIDERATION

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Rena L. v. Dep't of Health and Human Services, EEOC Appeal No. 2020000428 (Apr. 29, 2021). 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).

On March 19, 2018, Complainant filed a formal EEO complaint alleging that she had been subjected to discrimination by the Agency, on the bases of race, color, and in reprisal for prior EEO activity 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 February 27, 2018, and continuing to the present, her second and third level supervisors ("S2" and "S3"), subjected her to harassment/hostile work environment, including but not limited to the following actions:
 - a. On a daily basis, she was directed to complete reports regarding credentialing, private insurance ("PI"), Medicaid, and Medicare.
 - b. Her Performance Management Appraisal Program ("PMAP") rating had been adversely affected by her inability to complete all duties she had been assigned, which were duties of her first level supervisor ("S1").
 - c. She was subjected to verbal beratement in a Revenue Generation Meeting for not completing cross training duties, credentialing and signing up individuals for health coverage.
 - d. She was directed to cross train for duties in the Business Office, such as posting, billing, and completing the ASM listing, without proper training for any of these duties.
 - e. She was subjected to humiliation when she was directed to send an email to several Agency employees to notify them of her whereabouts (i.e. bathroom or stepped away from her desk).
 - f. She was denied leave she had requested.
 - g. S1, who was S3's niece, called Complainant a "Dumb Indian" in a provider meeting.
 - h. She learned that S3 warned providers, "to be careful when approaching the Patient Benefit Coordinator [Complainant] as she thinks everyone is out to get her."
2. On February 9, 2018 at 10:48 a.m., S3 confronted her regarding her being a witness in an EEO complaint filed by a coworker in another office.

Complainant requested an Agency decision. The Agency issued a decision finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant appealed, and the Commission's prior decision affirmed the Agency's decision finding of no discrimination regarding claim 1. However, the Commission reversed the Agency's decision finding no discrimination regarding claim 2. The Commission found that Complainant was subjected to unlawful retaliation in the form of an attempt to discourage her from using the EEO process. Thus, the Commission ordered the Agency to post at its Wanblee Health Center facility in Wanblee, South Dakota, copies of the EEOC notice as attached.

In her request, Complainant provides no evidence to warrant granting her request. 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) (Aug. 5, 2015), at 9-18; 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.

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. 2020000428 remains the Commission's decision. Here, we are not restating the Commission's prior Order because the Agency has complied with the Order. There is no further right of administrative appeal on the decision of the Commission on this request.²

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (Q0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency or filed your appeal with the Commission. 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. **Filing a civil action will terminate the administrative processing of your complaint.**

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.**

² We note that since the Agency has already complied with the Commission's prior Order on this matter, we need not repeat the Order herein. See EEOC Compliance No. 2021003121 (August 3, 2021).

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 13, 2021

Date