



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

[REDACTED]
Brenton W.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Request No. 2021004682

Appeal No. 2020002329

Agency No. 200H-0523-2017101072

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Brenton W. v. Department of Veterans Affairs, EEOC Appeal No. 2020002329 (August 4, 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).

During the relevant time, Complainant worked as a Nuclear Medicine Technologist for the Agency in West Roxbury, Massachusetts.

On January 17, 2017, Complainant filed a formal complaint, claiming that he was discriminated against based on race (African-American) and national origin (Liberian) when: (1) in September

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.

2011, a management official referred to him as a “little monkey;” (2) Complainant was aware that co-workers made derogatory remarks about him when he was shown, on an Agency computer, a Facebook conversation between co-workers in reference to Complainant; (3) when Complainant reported this Facebook conversation, management informed him that nothing could be done as the statements were made on private Facebook accounts; (4) a management official pressured Complainant to provide her with the name of the individual who showed Complainant the Facebook messages, or else his harassment case would be “hanged and there would be no case,” and the management official characterized the messages as private, and equated reviewing the messages to “breaking into their private email;” and (5) during a staff meeting, the staff was notified that Complainant had submitted a work-related complaint that was being reviewed by Human Resources.

After an investigation, and in accordance with Complainant’s request, the Agency issued a final decision finding discrimination regarding claims (2) – (5). Regarding claim (1), the Agency found that the alleged harassment incident occurred five years before the other incidents and, by itself was insufficient to constitute a violation of Title VII.

Regarding claims (2) – (5), the Agency ordered various forms of relief, including restoration of leave taken due to harassment, a supplemental investigation of compensatory damages, attorney’s fees and costs, EEO training, consideration of discipline, and posting a notice.

On December 23, 2019, the Agency issued its decision on compensatory damages, and awarded Complainant \$10,000 in non-pecuniary compensatory damages. Complainant appealed and argued that he suffered emotional harm similar to cases where the Commission awarded between \$75,000 and \$95,000 in non-pecuniary compensatory damages.

In EEOC Appeal No. 2020002329, the Commission modified the Agency’s award of non-pecuniary damages from \$10,000 to \$70,000.

In the instant request for reconsideration, Complainant submits extensive documentation, focusing primarily upon the amount of the damages award, among other matters. However, we agree with the Agency, that the matters raised here were either raised, or could have been raised below. We emphasize 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), Chap. 9 § VI.A (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.

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. 2020002329 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

January 10, 2022
Date