



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

[REDACTED]
Julie L.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Request No. 2022000606

Appeal No. 2021003249

Agency No. 2004-0558-2021101562

DECISION ON REQUEST FOR RECONSIDERATION

Complainant timely requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in Julie L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2021003249 (Oct. 6, 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).

Complainant, a former GS-6 Advanced Medical Support Assistant at the Agency's Medical Center in Durham, North Carolina, filed a formal EEO complaint alleging that the Agency subjected her to reprisal for prior protected EEO activity when:

- a. From 2008 to 2017, the Agency failed to reinstate Complainant based on her prior career service;

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.

- b. On November 8, 2018, Complainant was not selected for the position of Advanced Medical Support Assistant, under vacancy announcement numbers CBBN-10220191-18-KLN and CBBN-10220192-18-KLN;
- c. On November 8, 2018, Complainant was not selected for the position of Medical Support Assistant, under vacancy announcement number CAYZ-10233326-18-TT;
- d. On November 5, 2019, Complainant was not selected for the position of Advanced Medical Support Assistant (PACT) under vacancy announcement number CBBN-10493205-19-MSB;
- e. On September 14, 2020, a former Human Resource Specialist, convinced Complainant to withdraw a complaint; and
- f. On September 28, 2020, Complainant was not selected for the position of Medical Support Assistant under Vacancy Announcement number 10855529-20FLM.

The Agency dismissed the complaint for untimely EEO Counselor contact. In the appellate decision, the Commission affirmed the Agency's dismissal of claims (a) – (e) but reversed the Agency's dismissal of claim (f) and remanded that claim for further processing.

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), 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. Complainant has not presented any persuasive evidence to support reconsideration of the Commission's 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. 2021003249 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.

ORDER (E0618)

The Agency is ordered to process the remanded claim (claim f) in accordance with 29 C.F.R. § 1614.108. The Agency shall acknowledge to Complainant that it has received the remanded claim **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled “Implementation of the Commission's Decision,” the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the notice that transmits the investigative file and notice of rights, and 3) a copy of Complainant's request for a hearing, a copy of Complainant's request for a final Agency decision, or a statement that Complainant did not respond within the election period.

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 CFR § 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:



Carlton M. Hadden, Director
Office of Federal Operations

March 14, 2022
Date