



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

[REDACTED]  
Iris D.,<sup>1</sup>  
Complainant,

v.

Martin J. Walsh,  
Secretary,  
Department of Labor,  
Agency.

Request No. 2022003461

Appeal No. 2021001028

Hearing Nos. 570-2019-00069X, 570-2015-01077X

Agency Nos. DOL 13-11-142, DOL-14-11-106

**DECISION ON REQUEST FOR RECONSIDERATION**

Complainant requested that the Equal Employment Opportunity Commission (EEOC or Commission) reconsider its decision in EEOC Appeal No. 2021001028 (May 4, 2022). 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 for Veterans Employment and Training Services (VETS) in Washington, D.C. On September 11, 2013, Complainant filed a formal complaint (DOL-13-11-142) alleging she was subjected to a hostile work environment and/or disparate treatment based on her race (African American), sex (female), age (57), disability (obesity and vision), and in reprisal for prior protected EEO activity.

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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.

On September 9, 2014, Complainant filed another formal complaint (DOL-14-11-106) alleging she was subjected to a hostile work environment and/or disparate treatment based on her race (African American), sex (female), age (58), and in reprisal for prior protected EEO activity.

Following an investigation on the accepted issues, Complainant timely requested a hearing on both complaints. The AJ found the matters appropriate for joint processing and consolidated the two complaints. The parties stipulated to the following claims:

Agency No. DOL-13-11-142

Whether the VETS subjected Complainant to a hostile work environment and/or disparate treatment based on her race (African American), sex (female), age (57), disability (obesity and vision), and/or in reprisal for prior EEO activity when:

1. Since June 2013, she was not allowed to function in her position of record or return to a position of equal status after taking FMLA (Family Medical Leave Act) leave;
2. Since June 2013, she was not given equal pay for her work as compared to other employees, who were paid at a higher grade level for performing the same duties;
3. On February 10, 2014, she was charged with AWOL (Absent Without Leave), and on February 12, 2014, she was charged with AWOL for the period 9:30 AM to 9:50 AM;
4. She did not receive her performance rating for the rating period of October 2012 to September 2013;
5. On July 16, 2012, she was told by District Director (Person A) that “she could not give [her] away if she wanted to;”
6. In January 2014, she was not issued her performance standards on time, as they should have been issued in October 2013; and
7. On May 13, 2014, her supervisor reviewed the Agency’s Human Resources core hours, leave and credit hour policies after Complainant requested leave for dates in May and June 2014.

Agency No. DOL-14-11-106

Whether the VETS subjected Complainant to a hostile work environment and/or disparate treatment on the bases of her race (African American), sex (female), age (58), and/or in reprisal for prior EEO activity when:

1. On a continuous basis, management monitored her more than other employees, and attempted to find issues with her timesheets;
2. On a continuous basis, management belittled and discredited her to her new supervisor; and

3. On June 30, 2014, her timesheet for Pay Period 11 (FY 2014) was adjusted to show her in non-work status, which resulted in her credit time being used, even though she was in a work status.

The Agency filed a motion for summary judgment and Complainant objected. The AJ granted summary judgment in favor of the Agency on Agency No. DOL-14-11-106 in its entirety and as to claims 3, 6, and 7 of Agency No. DOL-13-11-142. The AJ found the remaining portions of DOL-13-11-142 (claims 1, 2, 4, and 5) presented genuine issues of material fact and would proceed to hearing. The AJ found the wording of claim 5 failed to adequately capture the comments allegedly made by Person A and thus reframed that claim. Further, the AJ noted that the compensation claim was not brought solely on the basis of sex; rather, it also involved race, age, disability, and reprisal for protected EEO activity.

In a June 4, 2020 Pre-Hearing Conference Order, the AJ re-numbered and re-worded the claims for hearing as follows:

Agency No. DOL-13-11-142

Whether the VETS subjected Complainant to a hostile work environment and/or disparate treatment based on her race (African American), sex (female), age (57), disability (obesity and vision), and/or in reprisal for prior EEO activity when:

1. Since June 2013, she was not allowed to function in her position of record or return to a position of equal status after taking FMLA leave;
2. Since June 2013, she was not given equal pay for her work as compared to other employees, who were paid at a higher grade level for performing the same duties;
3. She did not receive her performance rating for the rating period of October 2012 to September 2013 (formerly Issue 4) **until April 2014 (wording added)**; and
4. On various occasions in 2012 and 2013, District Director (Person A) **used racially offensive language including “the N word” in the workplace, and at work gatherings**, and on or about July 16, 2012, she told Complainant that “she could not give [her] away if she wanted to” (formerly Issue 5 and **wording added**).

Following a hearing on these four claims, the AJ found the Agency subjected Complainant to a racially hostile work environment under the reframed and renumbered claim 4. To remedy the discrimination, the AJ ordered the Agency to: pay Complainant \$45,000 in nonpecuniary, compensatory damages; provide training to Person A; and post a notice of the finding of discrimination. Specifically, with regard to nonpecuniary damages, the AJ determined only half of Complainant’s injuries were proximately caused by the Agency’s racial harassment and reduced Complainant’s award accordingly. The AJ found the Agency was not liable for any of the remaining claims. The Agency subsequently issued a final order fully adopting the AJ’s decision. Complainant appealed the decision to the Commission.

In EEOC Appeal No. 2021001028, we found the AJ properly determined that the Agency articulated legitimate, nondiscriminatory reasons for its actions in claims 1, 2, and 3, and that substantial evidence supported the AJ's finding of no discrimination in those claims. Regarding claim 1, substantial evidence supported the AJ's conclusion that Complainant failed to show that the Agency's explanation, for her placement in the correspondence role in 2013 or for the scope of the position's responsibilities, was untrue or a pretext for retaliation or discrimination. Regarding claim 2, we found the AJ properly determined that Complainant failed to establish a prima facie case of discrimination under the Equal Pay Act because she failed to show that she performed work that was substantially equal in skill, effort, and responsibility to the work performed by another employee of the opposite sex. Additionally, as a result of the significant differences in work responsibilities between Complainant and the comparators she identified, the prior decision found that the AJ properly concluded Complainant failed to establish a prima facie case of compensation discrimination under Title VII, the ADEA, or the Rehabilitation Act. Substantial evidence supported the AJ's finding that there were significant differences between the duties. As for claim 3, the AJ properly found that Complainant failed to present evidence that Person D's explanation for the delay in issuing the rating was untrue or based on discriminatory or retaliatory motives.

With respect to the finding of a racially hostile work environment (claim 4), Complainant requested an increase in nonpecuniary, compensatory damages from the Agency's award (adopting the AJ's award) of \$45,000 to at least \$90,000. We declined the increase, finding that the Agency's award reflected the severity of her psychological harm, the duration of the harassment, and the fact that 50 percent of Complainant's harm was not caused by the Agency's discriminatory acts.<sup>2</sup>

In her request for reconsideration, Complainant argues the appellate decision in EEOC No. 2021001028 made a clear error that affected the outcome of the decision. She states the Appellate Decision "incorrectly decided the facts" and made inaccurate factual assertions, including the statement that Complainant worked as a Veterans Correspondence Specialist at VETS at the time of events giving rise to her claims. With respect to Claim 1, Complainant argues the comments made by Person A spoke volumes considering Person A was the deciding manager regarding whether Complainant would take over the management of Executive Correspondence. Complainant argues, as to claim 3, there are several documents showing the Agency's explanation for the delay in issuing her rating is pretextual and retaliatory. Complainant also contends that the time between her protected activity and the alleged retaliation was "very close," and that the Agency engaged in actions the Commission has referred to as "the most obvious types of retaliation."

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<sup>2</sup> We also found that Complainant did not contest the AJ's decision granting summary judgment in favor of the Agency. Therefore, we did not address the claims decided on summary judgment in the decision.

In response, the Agency argues Complainant has not demonstrated that the prior decision relied on erroneous interpretations of material fact or law or that the Commission committed legal error. Further, contends the Agency, she has not shown or even argued that the Commission's decision will have a substantial impact on the policies, practice, or operations of the Agency. According to the Agency, Complainant's request largely rests on unsubstantiated assertions.

In order to merit the reconsideration of a prior Commission decision, the requesting party must submit written argument or evidence which tends to establish that at least one of the criteria of 29 C.F.R. §1614.407(c) is met. The Commission's scope of review on a request for reconsideration is narrow. Lopez v. Dep't. of the Air Force, EEOC Request No. 05890749 (September 28, 1989). A request for reconsideration is not merely a form of a second appeal. Regensberg v. U.S. Postal Serv., EEOC Request No. 05900850 (September 7, 1990). Instead, it is an opportunity to submit newly discovered evidence, not previously available; to establish substantive error in a previous decision; or to explain why the previous decision will have effects beyond the case at hand. Lyke v. U.S. Postal Serv., EEOC Request No. 05900769 (September 27, 1990). Here, Complainant simply reiterates contentions and arguments raised, or that should have been raised, during the original 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. 2021001028 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

September 29, 2022

Date