

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

KELVIN BANKS, ALISON BEAVERS,)	CIVIL NO. 11-00798 LEK-KSC
DAVID "FLYING WITH EAGLES")	
BEVETT, CHARLES W. DICKEY,)	
MARCEAU DOZE-GUILLORY, EDWARD)	
MANIGAULT, TAMANEE MUNDY,)	
WANDA THOMAS, SYLVIA VEGA,)	
and CHINY WANG,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
JOHN McHUGH, SECRETARY)	
DEPARTMENT OF THE ARMY;)	
LEON E. PANETTA, SECRETARY,)	
DEPARTMENT OF DEFENSE,)	
)	
Defendants.)	
_____)	

**ORDER DENYING PLAINTIFF TAMANEE MUNDY'S MOTION
FOR RECONSIDERATION OF ORDER GRANTING DISMISSAL AND
SUMMARY JUDGMENT ON THE CLAIMS OF TAMANEE MUNDY**

On August 29, 2014, this Court issued its Order Granting Defendant's Motion for Dismissal and Summary Judgment on the Claims of Plaintiff Tamanee Mundy; and Granting Defendant's Motion for Dismissal and Summary Judgment on the Claims of Plaintiff Chiny Wang ("8/29/14 Mundy Order").¹ [Dkt. no. 135.²]

¹ Defendant John McHugh, Secretary, Department of the Army, ("Defendant") filed his Motion for Dismissal and Summary Judgment on the Claims of Plaintiff Tamanee Munde ("Summary Judgment Motion") on May 13, 2014. [Dkt. no. 84.]

² The 8/29/14 Mundy Order is also available at 2014 WL 4276646.

On September 9, 2014, Plaintiff Tamanee Mundy ("Mundy") filed her Motion for Reconsideration of Order Granting Dismissal and Summary Judgment on the Claims of Tamanee Mundy ("Motion for Reconsideration"). [Dkt. no. 141.] On September 18, 2014, Defendant filed his memorandum in opposition to the Motion for Reconsideration. [Dkt. no. 143.] After careful consideration of the motion, the supporting and opposing memoranda, and the relevant legal authority, the Court HEREBY DENIES the Motion for Reconsideration for the reasons set forth below.

BACKGROUND

In the 8/29/14 Mundy Order, this Court, *inter alia*:

- dismissed Mundy's allegations related to her supervisor prior to 2008, Colonel Kenneth Batts, because Mundy failed to exhaust her administrative remedies as to Col. Batts; 2014 WL 4276646, at *2-3;
- granted the Summary Judgment Motion as to all of Mundy's other claims, including claims for a hostile work environment, discrete acts of discrimination, and retaliation on the basis of race - all based on acts by her supervisor in 2008, Captain Kenneth Kelly, and colleague James Scott Hallmark; id. at *3-6; and
- found that Mundy did not allege discrimination on the basis of disability in her Complaint; id. at *5 & n.6.

In the instant Motion for Reconsideration, Mundy argues that these rulings should be reversed due to newly discovered evidence. [Mem. in Supp. of Motion for Reconsideration at 2.]

STANDARD

In order to obtain reconsideration of the 8/29/14 Mundy Order, Mundy's Motion for Reconsideration "must accomplish two goals. First, a motion for reconsideration must demonstrate reasons why the court should reconsider its prior decision. Second, a motion for reconsideration must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior decision." See Davis v. Abercrombie, Civil No. 11-00144 LEK-BMK, 2014 WL 2468348, at *2 (D. Hawai'i June 2, 2014) (citation and internal quotation marks omitted). This district court recognizes three circumstances where it is proper to grant reconsideration of an order: "(1) when there has been an intervening change of controlling law; (2) new evidence has come to light; or (3) when necessary to correct a clear error or prevent manifest injustice." Tierney v. Alo, Civ. No. 12-00059 SOM/KSC, 2013 WL 1858585, at *1 (D. Hawai'i May 1, 2013) (citing School District No. 1J v. ACandS, Inc., 5 F.3d 1255, 1262 (9th Cir. 1993)). "'Evidence is not newly discovered if it was in the party's possession at the time of summary judgment or could have been discovered with reasonable diligence.'" Waikoloa Dev. Co. v. Hilton Resorts Corp., Civil No. 13-00402 DKW-BMK, 2014 WL 3735446, at *2 (D. Hawai'i July 25, 2014) (quoting Wallis v. J.R. Simplot Co., 26 F.3d 885, 892 n.6 (9th Cir. 1994)).

DISCUSSION

Mundy argues that "[m]aterial evidence that was not available when the parties filed briefs on the summary judgment issue has become available and provides a basis for the reconsideration here requested." [Mem. in Supp. of Motion for Reconsideration at 2.] The Court FINDS, however, that the evidence is neither new nor does it provide a basis for reconsidering the 8/29/14 Mundy Order.

The evidence consists entirely of deposition excerpts from Mundy's own deposition, taken August 14, 2014. [Id. at 2-8, Decl. of Anthony P.X. Bothwell, Exh. A.] While the deposition itself occurred after Mundy filed her memorandum in opposition to the Summary Judgment Motion, it is not "newly discovered" insofar as all of the information described therein was in Mundy's possession from the time of the purported discrimination and retaliation in 2004 through 2009. See Wallis, 26 F.3d at 892 n.6. Further, the content of the testimony - Mundy's allegations about specific discriminatory and retaliatory incidents - was already submitted by Mundy in a declaration along with her memorandum in opposition to the Summary Judgment Order, considered by the Court, and expressly rejected in the 8/29/14 Mundy Order. Since Mundy has not presented a proper basis for the Court to reconsider the 8/29/14 Mundy Order, let alone any facts "of a strongly convincing nature to induce the court to

reverse its prior decision," see Davis, 2014 WL 2468348, at *2, the Court DENIES the Motion for Reconsideration.

There being no remaining claims in this case, the Court DIRECTS the Clerk's Office to enter judgment and close the case.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 31, 2014.



/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

KELVIN BANKS, ET AL. VS. JOHN MCHUGH, ET AL; CIVIL 11-00798 LEK-KSC; ORDER DENYING PLAINTIFF TAMANEE MUNDY'S MOTION FOR RECONSIDERATION OF ORDER GRANTING DISMISSAL AND SUMMARY JUDGMENT ON THE CLAIMS OF TAMANEE MUNDY