



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Washington, DC 20507

██████████
Alex L.,¹
Complainant,

v.

Janet Dhillon,²
Chair,
Equal Employment Opportunity Commission,
Agency.

Appeal No. 0120162407

Agency Nos. 2014-0010
2014-0050
2013-0006

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a determination by the Agency dated June 20, 2016, finding that it was in compliance with the terms of the settlement agreement into which the parties entered. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405. For the following reasons, we **AFFIRM** the Agency’s determination which found that the Agency did not breach the settlement agreement.

ISSUE PRESENTED

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.

² As a procedural matter, we note that the Equal Employment Opportunity Commission (EEOC) is both (1) the respondent Agency and (2) the adjudicatory authority issuing this decision. For the purposes of this decision, the term “Commission” is used when referring to the adjudicatory authority and the term “Agency” is used when referring to EEOC in its role as the respondent party. In all cases, the Commission its adjudicatory capacity operates independently from those offices charged with in-house processing and resolution of discrimination complaints.

Whether the Agency's failure to notify an Administrative Judge that it had resolved an EEO complaint with Complainant was a breach of the settlement agreement requiring the reinstatement of one of his underlying EEO complaints.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Lead Investigator at the Agency's St. Louis District Office in St. Louis, Missouri. Believing that the Agency subjected him to unlawful discrimination based on his sex and disability when he received a Letter of Warning, among other actions, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On September 2, 2015, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part:

1. The parties hereby agree to settle all disputes between the Complainant and the Agency arising out of his employment with the Agency, including but not limited to EEO Complaint No. 2014-0050, EEO Complaint No. 2014-0010, EEO Complaint No. 2013-0006, a complaint filed with the U.S. Office of Special Counsel, and any and all claims arising out of, or related to, Complainant's employment with the Agency occurring on or before the date of execution of this Agreement.
2. In consideration of the undertakings by the Complainant, as provided in this agreement, for releasing his claims in EEO Complaint Nos. 2014-0050, 2014-0010, 2013-0006, the Agency agrees to pay the Complainant a lump sum payment of Twenty Thousand dollars (\$20,000) in settlement of all claims of financial harm allegedly suffered by him including, but not limited to, claims for wages allegedly lost, compensatory damages, and attorney fees and costs. Said payment will be made by electronic funds transfer within sixty (60) days of this Agreement being fully executed, or within sixty (60) days of Complainant executing and returning to the Agency by email the completed ACH Form and W-9 Form (Request for Taxpayer ID) - whichever comes later.
3. By executing this Agreement, Complainant hereby withdraws and releases in their entirety EEO Complaint No. 2014-0050, EEO Complaint No. 2014-0010, EEO Complaint No. 2013-0006, corresponding appeals filed with the EEOC's Office of Federal Operations, and a complaint filed with the U.S. Office of Special Counsel. It is understood that tender of consideration described in Paragraph 2 above by the Agency is contingent upon the withdrawal and release of any and all claims that were or could have been asserted prior to the date of the execution of this Agreement.
4. By executing this Agreement, Complainant hereby releases any and all claims

arising out of, or related to, Complainant's employment with the Agency, occurring on or before the date of execution of this Agreement.

5. It is further agreed that the Complainant's withdrawal of his complaints and his release of claims is made without any threat, coercion, intimidation, or inducement other than the terms set forth in this Agreement.

6. This Agreement sets forth the entire agreement between the parties thereto, and fully supersedes any and all prior agreements or understandings, between the parties hereto pertaining to the subject matter of the complaint.

By letter to the Agency's EEO Director dated May 11, 2016, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency reinstate the processing of EEO Complaint No. 2014-0010. According to Complainant, the Agency, after executing the settlement agreement, continued with the administrative processing of EEO Complaint No. 2014-0010, and therefore was not in compliance with the terms of the agreement. Specifically, Complainant noted that he had recently received two emails from an Administrative Judge pertaining to EEO Complaint No. 2014-0010.

In its June 20, 2016, determination, the Agency indicated that, due to a miscommunication, it did not notify the Administrative Judge assigned to EEO Complaint No. 2014-0010 that the matter had been resolved by the September 2, 2015, settlement agreement. Consequently, the Administrative Judge, on September 25, 2015, granted the Agency's motion to dismiss one of the accepted claims in the complaint because it did not state a claim and Complainant had not been harmed as a matter of law; and, on May 11, 2016, granted the Agency's motion for Findings and Conclusions of Law Without a Hearing on the remainder of the complaint. The Administrative Judge indicated that her ruling concluded the hearing process.

The Agency found that, notwithstanding its failure to notify the Administrative Judge, it had fulfilled its obligations under the settlement agreement, and had not breached its terms. In this regard, the Agency noted that it transmitted the agreed payment of \$20,000 to Complainant on October 14, 2015. In accordance with the agreement, Complainant returned his W-9 form on September 2, 2015. Thirty-five days later, on October 7, 2015, per the agreement, the Agency initiated payment to Complainant in the Interior Business Center (IBC) financial system and the payment was transmitted to Complainant's financial institution on October 14, 2015 (45 days after receiving Complainant's W-9 Form).

CONTENTIONS ON APPEAL

On appeal, Complainant contends, among other things, that contrary to the Agency's arguments he was harmed by the Agency's actions. Complainant states:

The harm results not only from what the Agency describes as a miscommunication to the Administrative Judge, it results from the Agency's [October] 13, 2015

Motion, [an Office of Federal Operations' employee's] involvement, the content of the email from [the Administrative Judge to the Office of Federal Operations' employee] and the content of the [Administrative Judge's] May 11, 2015 Order. I now find myself having to expend time and effort and endure the stress of exercising my rights to notify the Agency in writing of its failure to comply with the terms of the Agreement and to appeal to the EEOC Office of Federal Operations for a determination as to whether the Agency complied with the terms of the Agreement and for denying my request that the EEO process be reinstated with respect to EEO Complaint No. 2014-0010.

In response, the Agency concedes that it did not notify the Administrative Judge, nor the Agency's legal representative, of the September 2, 2015, settlement agreement. However, it maintains that it complied with the agreement, and that Complainant was not harmed by the subsequent actions of the Agency or the Administrative Judge.

ANALYSIS

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that any settlement agreement knowingly and voluntarily agreed to by the parties, reached at any stage of the complaint process, shall be binding on both parties. The Commission has held that a settlement agreement constitutes a contract between the employee and the Agency, to which ordinary rules of contract construction apply. See Herrington v. Dep't of Def., EEOC Request No. 05960032 (December 9, 1996). The Commission has further held that it is the intent of the parties as expressed in the contract, not some unexpressed intention, that controls the contract's construction. Eggleston v. Dep't of Veterans Affairs, EEOC Request No. 05900795 (Aug. 23, 1990). In ascertaining the intent of the parties with regard to the terms of a settlement agreement, the Commission has generally relied on the plain meaning rule. See Hyon O v. U.S. Postal Serv., EEOC Request No. 05910787 (Dec. 2, 1991). This rule states that if the writing appears to be plain and unambiguous on its face, its meaning must be determined from the four corners of the instrument without resort to extrinsic evidence of any nature. See Montgomery Elevator Co. v. Building Eng'g Servs. Co., 730 F.2d 377 (5th Cir. 1984).

The only issue before us is whether the Agency's failure to notify the Administrative Judge was a violation of the agreement, which would require the reinstatement of EEOC Complaint No. 2014-0014 and Complainant having to reimburse the Agency \$20,000. We do not so find. At the outset, we note that, although the settlement agreement clearly obligated Complainant to withdraw and release his claims in, among other things, EEO Complaint No. 2014-0010, the Agency's only obligation was to pay him \$20,000. Complainant does not dispute the fact that the Agency complied with Paragraph 2 of the settlement agreement, i.e., he received the \$20,000 payment that the Agency was obligated to provide him. Accordingly, we do not find that the settlement agreement was breached.

We also do not find that the Agency's continued processing of the complaint at issue requires that the settlement agreement be set aside. Although we do *not* find that the Agency provided an

adequate explanation for why it did not notify the Administrative Judge³ or the Agency's own legal representative about the settlement agreement, we find no persuasive evidence that Complainant was harmed by the Agency's failure in such a manner that would require voiding the settlement agreement. In an August 17, 2016, memorandum, an Associate Director of the Office of Federal Operations informed the parties that, "[s]ince this matter was settled prior to the AJ's orders, the matter should have ceased on September 2, 2015. As a result, we consider the AJ's orders voided by the prior settlement agreement." We agree.

CONCLUSION

We AFFIRM the Agency's June 20, 2016, determination that it did not violate its September 2, 2015, settlement agreement with Complainant.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which tend to establish 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.

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

³ Where the EEOC is the respondent Agency, in accordance with Commission policy, a case is assigned to an independent contract Administrative Judge not employed by the Commission. See Logan-King v. Equal Emp't Opportunity Comm'n, EEOC Request No. 05A10082 (Jan. 3, 2002).

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your request for reconsideration. The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT’S RIGHT TO FILE A CIVIL ACTION (S0610)

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. If you file a request to reconsider and also file a civil action, **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.** 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:

/s/ Bernadette B. Wilson
Bernadette B. Wilson
Executive Officer
Executive Secretariat

November 27, 2019
Date