



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

[REDACTED]  
Susie K,<sup>1</sup>  
Complainant,

v.

Linda McMahon,  
Administrator,  
Small Business Administration,  
Agency.

Appeal No. 0120170341

Agency No. SBA0507027

**DECISION**

Complainant filed an appeal with this Commission from a decision by the Agency dated September 23, 2016, finding that it was in compliance with the terms of the settlement agreement into which the parties entered.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Information Technology Specialist at the Agency's facility in Columbia, South Carolina. Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On December 20, 2007, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

4. Within forty-five (45) calendar days of the effective date of this Agreement, the Agency agrees to reassign Employee to the position of GS-12, Information Technology Specialist. Employee will be under the direction of a Team Lead in the Office of the Chief Information Officer (OCIO). Employee's duty location following this reassignment will be Columbia, South Carolina, providing support to offices other than the South Carolina District Office. Employee acknowledges that the duty location pertains to this action only. The Employee will occupy an office outside the South Carolina District Office.

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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.

The agreement also provided that Complainant would receive certain performance ratings for certain years and would receive a performance award.

By letter to the Agency dated August 31, 2016, Complainant alleged that the Agency was in breach of the settlement agreement, and requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency violated the above term when on August 16, 2016, the Agency sent a notice to the American Federation of Government Employees (AFGE) Council 228 which stated in part that the Office of the Chief Information Office determined the need to relocate six bargaining unit employees, including Complainant, to its Washington, D.C. duty station (for efficiency purposes).

In its September 23, 2016 decision, the Agency concluded that the plain language of the agreement clearly reflects that Complainant and the Agency negotiated the terms of the agreement in good faith and reached a meeting of the minds on the terms, which included Complainant acknowledging that the duty location pertained to the reassignment action only. However, Complainant states that the intent of the settlement agreement was to ensure that she remain at the Columbia, South Carolina duty location indefinitely.

The instant appeal followed.

#### ANALYSIS AND FINDINGS

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 Complainant 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. Complainant v. Dep't of Veterans Affairs, EEOC Request No. 05900795 (August 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 Complainant v. U.S. Postal Serv., EEOC Request No. 05910787 (December 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).

In the instant case, we find that the Agency complied with provision 4 of the settlement agreement. Although Complainant may have preferred to be located in Columbia, South Carolina indefinitely, the agreement does not state that Complainant's duty station would remain indefinitely in Columbia, South Carolina. Complainant did not bargain for the location of her position to be for any definite period of time. Furthermore, we note that Complainant was, pursuant to the agreement, placed in that location for over 8 years. There is no indication

of bad faith on part of the Agency. The Commission has held that a settlement agreement that places a complainant into a specific position, without defining the length of service or other elements of the employment relationship, will not be interpreted to require the agency to employ the complainant in the identical job specified forever. See Parker v. Department of Defense, EEOC Request No. 05910576 (August 29, 1991); Papac v. Department of Veterans Affairs, EEOC Request No. 05910808 (December 12, 1991); Elliott v. United States Postal Service, EEOC Appeal No. 01970474 (August 27, 1997).

### CONCLUSION

Accordingly, the Agency's determination that it was not in breach of the December 20, 2007 settlement agreement is **AFFIRMED**.

### STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0416)

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 or **within twenty (20) calendar days** of receipt of another party's timely request for reconsideration. 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. The requests 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 request or opposition must also include proof of service on the other party.

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:



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Carlton M. Hadden, Director  
Office of Federal Operations

March 9, 2017  
Date