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

[redacted]
Jacqueline L.,[1]
Complainant,

v.

Richard V. Spencer,
Secretary,
Department of the Navy,
Agency.

Appeal No. 0120180062

Agency No. DON-15-42158-01658

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated August 28, 2017, 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Welder, WG-10, at the Agency's Norfolk Naval Shipyard facility in Portsmouth, Virginia. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On July 27, 2015, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

> (1) Within ninety (90) days from the date of this agreement, Management will issue a decision to suspend Complainant for five (5) days for failure to follow proper leave procedures and excessive unauthorized absence, second disciplinary offense. This will cover all dates of failure to follow proper leave procedures and excessive unauthorized absence up to and including the date of this agreement; and

[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) Within ninety (90) days from the date of the agreement, the EEO office will provide Prevention of Sexual Harassment training to C920.

The settlement agreement also stated that Complainant understood the agreement, read it, and entered into it voluntarily.

By letter to the Agency dated July 24, 2017, Complainant alleged that the Agency was in breach of the settlement agreement, and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency breached the settlement agreement when:

1. The Deputy Superintendent (RMO) failed to make management aware of a pre-action investigation against an alleged harasser (H1);

2. The RMO failed to investigate her sexual harassment claim against H1 utilizing proper procedures;

3. Paragraph (2) under "What the Agency Agrees to Do" is too vague and misleading because it does not list H1's name;

4. Paragraph (1) under "What the Agency Agrees to Do" is illegal because a pre-action investigation was not conducted prior to imposing Complainant's five-day suspension; and

5. The Agency knowingly and intentionally included other illegal provisions in the Agreement to include:

    a. The last sentence in Paragraph (2) on page two of the Agreement, which Complainant alleges was retaliatory and has interfered with her right to file charges with the EEOC, as well as limited her communication with the EEOC; and

    b. The seventh paragraph on page three of the Agreement, which Complainant claims is retaliatory because the Agency did not provide consideration and the entire Agreement benefits the Agency.

In its August 28, 2017 FAD, the Agency concluded that Complainant's allegations of non-compliance, vagueness, and illegality of provisions in the settlement agreement have no merit and that Complainant failed to show that the Agency breached any terms of the settlement agreement. The Agency reasoned that the settlement agreement had nothing to do with a sexual harassment claim against H1 and the allegations failed to allege a breach of the settlement agreement, as the actions related to sexual harassment were not part of the settlement agreement. Additionally, the Agency noted that Paragraph (2) was expressed in clear, plain English and Complainant had 30 days after the settlement agreement was signed to raise her concerns that the settlement agreement terms were vague and misleading.

Likewise, the Agency found Complainant's claim of illegal provisions untimely and noted that not only did Complainant waive her rights and voluntarily sign the agreement, but the provisions were standard in settling EEO complaints and not contrary to law or regulation.

CONTENTIONS ON APPEAL

On appeal, Complainant maintains that the Agency has failed to comply with the settlement agreement and requests a review of the settlement agreement. Complainant reiterates that she finds that the settlement agreement contains vague, misleading, and illegal provisions.

In response to Complainant's appeal, the Agency contends that Complainant does not argue that the Agency failed to comply with the actual terms of the settlement agreement, but that Complainant's concern is really that the Agency did not comply with terms that were not part of the agreement. Specifically, the Agency argues that the agreement did not contain any provisions that could be construed as requiring the Agency to make management aware of a pre-action investigation or investigate Complainant's sexual harassment claim against H1. The Agency further contends that Complainant tries to invalidate the agreement by alleging various terms of the agreement are illegal, vague, misleading, and retaliatory because she no longer finds the terms favorable.

In terms of the provision in Paragraph (2) under "What the Agency Agrees to Do," which required the Agency to provide Prevention of Sexual Harassment training, the Agency contends that this language is written in clear, plain terms and that Complainant voluntarily signed the agreement. The Agency adds that the allegation is untimely and lacks merit.

As for Complainant's allegations of illegal provisions, the Agency reasoned that the settlement agreement did not contain provisions contrary to law or regulation. The Agency further contends that Complainant voluntarily agreed to the settlement agreement, including a provision that waived her rights and a severability clause.

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 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 (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 Hyon O 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).

Although Complainant asserts defects in each of the Agency's responsibilities under the settlement agreement, the record does not support Complainant's allegations. For example, Complainant purports that the last sentence of Paragraph (2) on page two of the agreement is illegal. The provision states:

> "The Complainant will refrain from using any facts and information related to any allegations of discrimination whether reported or not, that occurred up to and including the date of this agreement as evidence or background evidence in any proceeding before any court or administrative body including the MSPB or EEOC."

As additional support for the illegality of the settlement agreement, Complainant offers the following provision:

> "The parties agree that if it is determined by a court of competent jurisdiction, that this Agreement contains an illegal provision, then the illegal portion of the Agreement will be disregarded, and the balance of the Agreement enforced as if the illegal portion had not been part of the Agreement."

We find that Complainant has failed to provide evidence that these provisions are illegal.

With regard to Complainant's assertions that the Agency breached the settlement agreement with actions related to a sexual harassment claim, as Complainant references in claims (1) and (2), we find that the settlement agreement does not provide that the Agency must complete those particular alleged tasks. Therefore, even assuming the Agency failed to make management aware of a pre-action investigation against H1 or investigate Complainant's sexual harassment claim, such allegations fail to state a claim of breach under the terms of the agreement signed on July 27, 2015. We note that Complainant filed a separate EEO complaint against the Agency regarding her claim of sexual harassment stemming from incidents which occurred in 2017. The Agency dismissed her complaint, but in EEOC Appeal No. 0120173002 (Jan. 4, 2018), the Commission reversed the dismissal of the sexual harassment claim and remanded the matter for an investigation.

We find that Paragraph (2) is not vague or misleading. The settlement agreement does not include H1's name and the record does not reveal evidence showing that the settlement agreement required H1's name. If Complainant had wanted the Agency to include H1's name, she should have included the matter as part of the settlement agreement. See Jenkins-Nye v. General Services Administration, EEOC Appeal No. 01851903 (March 4, 1987). The record reflects that the Agency's affirmative obligations pursuant to the settlement agreement were met.

If coercion, misrepresentation, or mistake occur during the formation of the contract, assent to the agreement is impossible, and the Commission will find the contract void. See Shuman v. Dep't of the Navy, EEOC Request No. 05900744 (July 20, 1990). The Commission examines coercion claims with close scrutiny. The party raising the defense of coercion must show that there was an improper threat of sufficient gravity to induce assent to the agreement and that the assent was in fact induced by the threat. Such a threat may be expressed, implied or inferred from words or conduct, and must convey an intention to cause harm or loss. A complainant's bare assertions will not justify a finding of coercion. Lenihan v. Dep't of the Navy v. Dep't of the Navy, EEOC Request No. 05960605 (December 5, 1995).

Complainant contends that she accepted the settlement agreement because she was under the influence of medication and she adds that she also signed the agreement due to the stress of potentially losing her job. To the extent that Complainant claims she was under duress because of medical reasons, Complainant provides no evidence that she was incapacitated or mentally deficient at the time she signed the agreement and did not assert this claim for over two years after signing the agreement. Complainant provided letters indicating that she was under the care of a physician, but she has not shown that she was incapacitated at the time that she signed the agreement. See Sullivan v. Dep't of the Army, EEOC Request No. 05A60240 (Feb. 3, 2006) (complainant's assertions that she was under the effects of prescription medication and was coerced into signing settlement agreement insufficient to void agreement where, although complainant submitted evidence of her medical condition, she presented no evidence of incapacity). A settlement agreement made in good faith and otherwise valid will not be set aside simply because it appears one of the parties made a bad bargain. See Miller v. Dep't of the Treasury, EEOC Request No. 05960622 (December 5, 1997). Complainant has not articulated conduct that reflects that she was induced to sign the agreement because she was threatened with harm or loss. Therefore, because Complainant has not provided any evidence which would indicate that she was coerced into signing the agreement, and because she was represented by a union representative during the process, we find that there is no indication that Complainant signed the settlement agreement under duress or coercion.

CONCLUSION

Therefore, the Agency's finding of no breach of the July 27, 2015, settlement agreement is AFFIRMED.

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.

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:

Carlton M. Hadden, Director
Office of Federal Operations

September 27, 2018
Date