



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

[REDACTED]  
Greta F,<sup>1</sup>  
Complainant,

v.

Robert Wilkie,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 0120182644

Agency No. 200405902015102365

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated June 20, 2018, 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 compliance action, Complainant worked as a Clinical Nurse II, at the Agency's VA Medical Center facility in Hampton, VA

On July 28, 2015, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter. The settlement agreement provided, in pertinent part, that:

- (2.1) The Agency agrees that [Complainant's] tour of duty will be adjusted to four ten-hour days per week, with a regular day off, only during the temporary detail assignment as a (Nurse III) in Home Base Primary Care, beginning the date of the signed Settlement Agreement.
- (2.2) The Agency agrees to provide [Complainant] with a onetime priority consideration for a position as a (Nurse III) in Home Base Primary Care

---

<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.

Unit (HBPC). Once a position becomes available for priority consideration, the selecting official will give priority to the aggrieved party for selection.

...

- (4b) This Agreement constitutes the entire understanding between the Parties. No other oral or written terms or commitments exist between the Parties.

Prior to the signing of the Agreement, by letter dated April 24, 2015, the Chief Nurse notified Complainant that she would be temporarily detailed effective April 24, 2015, to the Home Based Primary Care (HBPC) area for a period not to exceed 180 days. Thereafter, on July 28, 2015, the parties entered the subject Agreement which formalized the temporary detail, effective as of the date of signing the Agreement. The record indicates that Complainant remained working in the HBPC on the 4-10 shift until March 2018, following her return to work from a three-month absence for surgery.

In a memorandum dated March 15, 2018, Complainant was informed that upon her return to work she would be detailed to the VA Community Care unit, with a tour of duty from 7:30 AM to 4:00 PM Monday through Friday. Complainant further contends she was assigned clerical work at Community Care rather than nursing duties. In discussions with management in March 2018, Complainant asserted that the 2015 settlement agreement required that Complainant be detailed to HBPC until such time as she was offered priority consideration for a Nurse III position. However, she stated that management told her that her settlement agreement had "expired."

By letter to the Agency, dated April 27, 2018, Complainant alleged that the Agency was in breach of the settlement agreement because the settlement required her to work in HBPC where she would be functioning as a Nurse III. She requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency failed to provide her with a Tour of Duty with four ten-hour shifts and did not provide her with a priority consideration for a position as a Nurse III in the HBPC Unit because no Nurse III position had been posted since the date of the settlement.

#### Agency Decision

In its June 20, 2018 final decision, the Agency found that, when the agreement was finalized on July 29, 2015, a 180-day temporary detail to the HBPC was already in effect for Complainant. Next, the Agency concluded that there had been another mutual mistake to the extent that the Agency agreed to provide Complainant priority consideration for a position as a Nurse III. The Agency asserted that the Nurse Professional Standards Board (NPSB) reviewed Complainant's qualifications and determined that Complainant did not meet the qualification criteria necessary to advance to the Nurse III grade level. The record includes two NPSB Actions, dated December 28, 2015 and March 23, 2016. The Agency reasoned that Complainant's subsequent disqualification by the NPSB precluded priority consideration to any Nurse III position.

The Agency further reasoned that the mistake had a material effect on the settlement agreement because the it rendered that provision “void and unenforceable.” The Agency also reasoned that nothing of value was conferred in exchange for the abandonment of the complaint, because a temporary detail was already occurring prior to the execution of the Agreement. Consequently, the Agency found the stipulation was alternatively rendered void for lack of consideration. Finally, the Agency concluded that Complainant’s concerns would be addressed in Complainant’s new formal EEO complaint concerning her detail out of the HBPC, which occurred subsequent to the execution of the settlement agreement.

This appeal followed. Neither party submitted a brief on appeal.

### 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 (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).

We find the Agreement was valid and remains binding on both parties. The Agreement did not “expire.”

However, the Agreement specified that the detail obligation would begin on the date the Agreement was fully signed, which was July 29, 2015. The Agreement at paragraph 2.1, stated that the Agency agreed that Complainant’s tour of duty would be adjusted to four ten-hour days per week, but only during the “temporary detail assignment” as a Nurse III in the HBPC unit. It is undisputed that Complainant was detailed and did receive the benefit of the four ten-hour days per week while the then-existing 180-day detail was in effect. The 180-day detail officially expired in late October 2015, but the record shows Complainant was permitted to remain in HBPC working the 4-10 schedule until early 2018, well beyond this date. We find, therefore, that Complainant did not show any breach regarding the detail or the ten-hour tour of duty provision of the Agreement.

The Agreement at paragraph 2.2 also required the Agency provide Complainant with a onetime priority consideration for a position as a Nurse III, once a position became available for priority consideration, and after Complainant applied and requested priority consideration. The Agreement did not ensure that Complainant would receive the permanent promotion. Rather, it required that she be given priority consideration once a position became available. The Agreement did not include an end date for this provision. However, the record does not establish that this provision was breached because there is no evidence that the Agency ever posted a vacancy for a Nurse III position for which Complainant applied or requested consideration.<sup>2</sup>

Moreover, we find that Complainant's concerns regarding detailing her to a clerical position in Community Care in March 2018 will be addressed as part of her new formal EEO complaint. For the reasons stated herein, we find that Complainant did not show that the Agency has breached this Agreement.

### CONCLUSION

Accordingly, we AFFIRM the Agency's Final Breach Determination.

### 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 tends 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.

---

<sup>2</sup> We recognize that the Agency maintains that the NPSB determined Complainant was ineligible for the Nurse III position on March 23, 2016, and that this matter is now the subject of a new EEO complaint.

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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

December 20, 2018

Date