



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

[REDACTED]  
Deandre C.,<sup>1</sup>  
Complainant,

v.  
Janet Dhillon  
Chair,  
Equal Employment Opportunity Commission,<sup>2</sup>  
Agency.

Appeal No. 0120182681

Agency Nos. 2015-0052  
2017-0052

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated July 6, 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 complaint, Complainant worked as an Alternative Dispute Resolution Mediator at the Agency's St. Louis District Office in St. Louis, Missouri. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On August 29, 2017, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

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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.

<sup>2</sup> In the present matter, the Equal Employment Opportunity Commission (EEOC) is both the respondent agency and the adjudicatory authority. The Commission's adjudicatory function is housed in an office that is separate and independent from those offices charged with in-house processing and resolution of discrimination complaints. For the purposes of this decision, the term "Commission" or "EEOC" is used when referring to the adjudicatory authority and the term "Agency" is used when referring to the respondent party to this action.

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- (1) The [Agency] will reinstate Complainant to his employment with the [Agency], effective August 6, 2016, and place him in Leave Without Pay [hereinafter referred to as “LWOP”] status beginning on August 6, 2016, through and including December 11, 2016. The [Agency] shall be responsible for payment of its portion of Complainant’s health insurance benefits and retirement contributions for the period of time between August 6, 2016, and December 11, 2016.
- (2) The [Agency] further agrees to accept from Complainant the Letter of Resignation effective December 11, 2016, appended hereto as Attachment A, and place that Letter of Resignation together with an appropriate SF-50 effecting Complainant’s resignation effective December 11, 2016, in Complainant’s eOPF in place of the SF-50 dated August 6, 2016, which is currently in Complainant’s eOPF.

By letter to the Agency dated June 7, 2018, 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 failed to comply with the above paragraphs of the settlement agreement. Complainant subsequently asserted that he was harmed by the Agency’s delay with regard to his pension calculation.

On July 6, 2018, the Agency issued a response stating that although the Agency did not process the personnel actions until March 2018 (seven months after the settlement agreement execution), there was no deadline for these actions set forth in the agreement. The Agency provided documentation to show its compliance. Additionally, the Agency noted that Complainant did not submit evidence showing that he suffered any harm by the Agency’s delay. Accordingly, the Agency concluded that it did not breach the August 29, 2017, settlement agreement as alleged.

On July 31, 2018, Complainant filed an appeal of the Agency’s determination that it did not breach the settlement agreement. On August 31, 2018, the Agency filed an opposition to Complainant’s appeal.

#### CONTENTIONS ON APPEAL

On appeal, Complainant noted that as of May 14, 2018, the Office of Personnel Management (OPM), had not shown that the Agency had acted. Complainant also requested a 90-day extension for filing a brief in support of his appeal.<sup>3</sup>

The Agency responded that it showed compliance with the settlement agreement and noted that OPM was responsible for the delay in the recalculation of Complainant’s pension. The Agency requested that the Commission dismiss Complainant’s appeal because it fully complied with the agreement; it was OPM, and not the Agency, who was responsible for the delay; and Complainant’s claim that the Agency did not take “action visible to OPM in accordance with OPM

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<sup>3</sup> On September 5, 2018, the Commission granted Complainant an extension of ten (10) business days, with a deadline of September 28, 2018. Complainant did not submit a brief.

standards” is false. The Agency also opposed Complainant’s request for an extension to file an appeal brief.

### 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).

In the instant case, the Agency provided documentation showing that it complied with the above terms of the settlement agreement. On March 9, 2018, the Agency canceled Complainant’s retirement action, and generated a new SF-50 stating that Complainant resigned from his position to start a new position with the Department of Veterans Affairs (VA), effective December 10, 2016.<sup>4</sup>

On March 13, 2018, the Agency amended Complainant’s Time and Attendance Reports for pay periods 2016-18, through 2016-25. Additionally, on March 27, 2018, the Agency created a bill for Complainant’s portion of his health benefits during his LWOP period in the amount of \$901.62. On April 11, 2018, OPM’s Federal Employees Retirement System was sent a Notice of Correction of Complainant’s retirement record to change his August 6, 2016, voluntary retirement, to a December 10, 2016, resignation.

The Agency also provided an affidavit from a Human Resources Specialist, who stated that the Agency processed the actions required by the settlement agreement in March 2018. She also stated that the Agency notified OPM of Complainant’s changes in April 2018 and has no knowledge or control over OPM’s actions.

### CONCLUSION

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<sup>4</sup> The Agency noted that it adjusted Complainant’s resignation date from December 11, 2016, to December 10, 2016, because he commenced employment with the VA on December 11, 2016. OPM regulations prohibit Complainant’s simultaneous employment by the Agency and the VA.

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Accordingly, it is the decision of this Commission to AFFIRM the Agency's decision finding that it did not breach the relevant terms of the settlement agreement.

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

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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

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Bernadette B. Wilson  
Executive Officer  
Executive Secretariat

December 27, 2019

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Date