



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

[REDACTED]
Natacha M,¹
Complainant,

v.

Alex M. Azar II,
Secretary,
Department of Health and Human Services
(Health Resources and Services Administration),
Agency.

Appeal No. 2019003184

Agency No. HHS-HRSA-0112-2019

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency, dated April 17, 2019, 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 Nurse Consultant at the Agency's Health Resources Division and Services Administration (HRSA) facility in Rockville, Maryland.

On January 31, 2019, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter. The settlement agreement provided, in pertinent part, that:

- (1a) . . . [Complainant] withdraws her EEO complaint, as referenced in paragraph 1 [File Number HHS-HRSA-0112-2019].
- (1b) [Complainant] agrees that any potential complaint, grievances, or any other matters arising from or related to this EEO complaint prior to the

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.

effective date of this Agreement shall be covered and resolved by the terms of this Agreement.

...

In consideration for the Aggrieved Party/Complainant withdrawing and dismissing, with prejudice, the above-captioned complaint/appeal, the Agency agrees:

(2a) [Two named management officials] have agreed to allow [Complainant] to ask for help and to ask questions to seek clarity regarding work assignments without being judged. To the extent possible, questions to seek clarification should be asked within 24 hours of receipt of assignment(s).

(2b) Prior to reviewing documents with [the two named officials], [Complainant] is expected to be proactive and use all resources available, such as independent research, first line/second line supervisors, other subject matter experts, [named individuals], and the HSB staff or the Executive Secretariat to prepare documents prior to discussion.

...

(2d) [Complainant] will send discussion draft documents for review before consultation meetings at least 24 hours prior to any meetings with [the two named officials].

(2e) [Complainant] has agreed to withdraw her request for a desk audit at this time; however, her request for a desk audit can be revisited and her final decision will be made no later than 90 days from the date of this signed agreement.

The Agreement constitutes the entire Agreement between the parties, and there are no other representations or obligations except for those enumerated herein....

..

6) Sole Agreement: The terms set forth in this Agreement constitute the complete understanding between the parties. The Agreement may not be modified except in writing and signed by all parties.

By letter to the Agency dated February 26, 2019, Complainant alleged that the Agency was in breach of the settlement agreement. Complainant alleged that the Agency disregarded the requirement in paragraph 2a to “allow [Complainant] to ask for help and to ask questions to seek clarity regarding work assignments without being judged.” In support of her breach claim, Complainant cited several instances where she felt demeaned by her supervisor’s reactions to her asking a question. She requested that the Agency reinstate her underlying complaint.

In its April 17, 2019 FAD, the Agency concluded that Complainant failed to prove that the Agency breached paragraph 2a of the Agreement. The Agency reasoned that management had provided Complainant with clear instructions when assigning her tasks and projects and offered her the opportunity to ask questions “after proactively using all resources available, including conducting independent research.” The Agency found that the settlement agreement did not resolve or address the topic of inadequate performance.

The instant appeal followed. On appeal, Complainant indicated that she pursued the settlement with the Agency based on her understanding that the Agency would permit her to ask questions “without judgment” and that the matters that predated the Agreement were resolved and that prior performance issues could not be used against her. She asks that her complaint be reinstated.

In response, the Agency stated that it complied with the terms of the Agreement and that the Agreement said nothing about “inadequate performance.”

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. See 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 Agreement shows that the parties agreed that Complainant would withdraw her complaint and, in exchange, the Agency would permit Complainant to ask questions without judgment, but with preconditions for her being allowed to ask the questions. The Agreement did not specify what the parties intended by the term “seek clarity regarding work assignments without being judged.” We find that paragraph 2a is void for vagueness.

Further, we note that the Agreement did not provide Complainant with any monetary benefits or any other identified benefits beyond what is expected of management in a work place. The Commission is not generally concerned with the adequacy or fairness of the consideration in a settlement agreement, as long as some legal detriment is incurred as part of the bargain.

When, however, one of the contracting parties incurs no legal detriment, the settlement agreement will be set aside for lack of consideration. See Complainant v. Department of Defense Intelligence Agency, EEOC Appeal No. 0120130184 (December 24, 2013). Without paragraph 2a, we find that the Agreement is void for lack of consideration.

Therefore, because we find this Agreement is void, the Agency shall reinstate Complainant's complaint from the point where processing ceased.

CONCLUSION

Based on the record evidence, we REVERSE the Agency's Decision and REMAND Agency Complaint No. HHS-HRSA-0112-2019 for further processing in accordance with the ORDER below.

ORDER

The Agency is ordered to reinstate the underlying EEO complaint that was settled by parties in the January 31, 2019 settlement agreement and shall continue processing the remanded claims in accordance with 29 C.F.R. § 1614.108, from the point where processing ceased as a result of the settlement. The Agency shall acknowledge to the Complainant that it has received the remanded claims **within thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights **within one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 CFR § 1614.503(f) for enforcement by that agency.

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. 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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

October 1, 2019

Date