



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

████████████████████
Wayne C.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Western Area),
Agency.

Appeal No. 2019004273

Agency No. 1G-701-0046-18

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated December 7, 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 Motor Vehicle Operator, Level 7, at the Agency's New Orleans Processing and Distribution Center facility in New Orleans, Louisiana.

On August 6, 2018, Complainant and the Agency entered into a settlement agreement to resolve an EEO matter. The settlement agreement provided, in pertinent part, that:

- (2) The USPS agrees to authorize [Complainant] to go for his currently due commercial drivers' license (CDL) test; and to reimburse [Complainant] for the late or additional fees related to his applying late for the CDL, if he presents an itemized bill or other official document to his manager showing the actual costs and what they are for, from the testing authority.

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.

(To be clear, [Complainant] will cover his own normal license fees as he always would to apply for the CDL: but if there are additional fees because he had to apply late, the USPS will cover those).

- (3) By way of background and for informational purposes only, the parties discussed [Complainant's] current restrictions which appear to limit his ability to work more than four (4) hours per day. To address that, [Complainant] may, if he chooses discuss with his doctor how the motor vehicle operator job works and how the restrictions, in the way they are currently written, affect [Complainant's] ability to work more than four (4) hours (that included the limit on using his hands more than four (4) hours per day for fine manipulation and grasping as well as the other limitations). Should the doctor choose to change the restrictions, the USPS, or course, will review and take appropriate action including potentially offering a new 2499 (modified job offer) as appropriate under applicable law, USPS policy, and labor contract provisions.
- (4) Likewise, for informational purposes, the parties discussed [Complainant's] work, pay and benefits situation since he has under the OWCP process and agree that those are matters for [Complainant] to discuss with DOL. In that vein, [Complainant] is currently working under a modified job offer that provides four (4) hours of work per day. If he chooses, he may ask DOL whether he is entitled to pay for the remainder of hours he has not worked by submitting his CA-7s and modified job offer to DOL; and what his rights are if any regarding sick and annual leave and any other matters he cares to review with them. The USPS would respond to any request for information from DOL to assist in that matter if requested in the normal course of business.
- (5) [Complainant] waives his right to bring, and releases the Agency, its agents and employees in both their official and individual capacities from, any and all claims, suits, legal or other proceedings whether at the EEOC or any other forum such as the MSPB (Merit Systems Protection Board), U.S. Department. of Labor, or any court, whether such claims are known yet, or not, or filed yet, or not, arising out of his employment or lack thereof with the Agency up until the date of this Agreement. This includes, but is not limited to, EEO complaint. No. 1G-701-0046-18.
- (6) . . . [Complainant] agrees to ask his union to withdraw and/or not file whatever sister grievance may be filed on this EEO or related matters (having to do with the discrimination and other claims in the EEO complaint mentioned above and/ or related matters.

By letter to the Agency dated October 17, 2018, Complainant alleged both that the Agency was in breach of the settlement agreement, paragraph 3, and that the Agreement should be nullified because the Agency was imposing new terms and conditions. Specifically, Complainant asserted that he submitted updated documentation from his physician concerning the restriction on simple grasping. As a result, on January 15, 2016, he was provided with a new limited duty job offer doing “clerk work” in the plant that he believed exceeded his medical restrictions (especially the lifting restrictions) and was outside his craft and tour. Complainant asserts that during the settlement negotiations, he was told that if his doctor would extend his hours in the area of simple grasping, that eight hours of works would be available in his craft in Motor Vehicle Services on his tour. He declined the new job offer and was told that he now reverted to light duty status. He asked that the agreement be deemed null and void and that his underlying EEO complaint be reinstated.

In its December 7, 2018 FAD, the Agency concluded that the August 6, 2018 agreement had not been breached. In addition, the Agency reasoned that the settlement provision 3, at issue, lacks adequate consideration and is, therefore, legally unenforceable. The Agency stated that provision 3 lacks consideration because it does not obligate the Postal Service to do anything more than it was already required to do under existing law. The Agency reasoned, however, that its decision regarding this provision does not impact the remainder of the settlement agreement. The Agency also opined that Complainant’s allegation (that the January 15, 2016 modified job offer exceeds an employee’s medical restrictions) is a collateral attack on the workers’ compensation process. The Agency found no breach.

This appeal followed. Neither party filed 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).

In this case, we find that this Agreement is not valid and binding because it lacks consideration and is too vague to be enforced.

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 will be set aside for lack of consideration. See Complainant v. Dep't of Defense (Defense Intelligence Agency, EEOC Appeal No. 0120130184 (December 24, 2013)).

Here, we note the Agency's recognition that paragraph 3 was too vague and did not provide adequate consideration. After a fair reading of the entire settlement agreement, we find that the Agency has not provided consideration beyond which is normally provided to all employees. Therefore, we find this agreement is null and void for lack of consideration.

The Agency is ordered to reinstate Complainant's underlying EEO complaint from where processing ceased. In addition, to the extent that Complainant wishes to raise new claims pertinent to actions that occurred after the agreement, he should bring the claims to the attention of an EEO Counselor.

CONCLUSION

Accordingly, we REVERSE the Agency's decision. We order the reinstatement of the pre-complaint and the continued processing of Complainant's claims.

ORDER

Within thirty (30) calendar days of the date this decision is issued, the Agency is ordered to reinstitute the underlying EEO complaint, referenced as 1G-701-0046-18, that was settled by the parties on August 6, 2018, and shall continue processing pursuant to the provisions of 29 C.F.R. Part 1614 from the point where processing ceased as a result of the settlement agreement. In addition, we direct that the matter be coordinated with any new claims that Complainant raises with the EEO Counselor, including regarding the modified job offer as it relates to Complainant's medical restrictions. The Agency shall acknowledge to the Complainant that it has received the remanded complaint(s) within thirty (30) calendar days of the date of this decision.

A copy of the Agency's letter of acknowledgement to Complainant must be sent to the Compliance Officer as referenced below. The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he 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 C.F.R. § 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

December 17, 2019

Date