



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

[REDACTED]  
Luvenia S.,<sup>1</sup>  
Complainant,

v.

Alejandro N. Mayorkas,  
Secretary,  
Department of Homeland Security  
(Transportation Security Administration),  
Agency.

Appeal No. 2022001662

Hearing No. 450-2020-00303X

Agency No. HS-TSA-00681-2020

**DISMISSAL OF APPEAL**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's decision dated November 15, 2021, concerning her complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Transportation Security Officer, SV-1802, at the Agency's Dallas-Fort Worth Texas Airport facility.

On February 10, 2020, Complainant filed a formal complaint alleging that the Agency subjected her to discrimination on the bases of race (African American), national origin (Congolese), color (dark brown), disability (mental), and in reprisal for prior protected EEO activity when:

1. On December 31, 2019, management issued Complainant a fitness-for-duty review letter;

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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.

2. In January 2020, management refused to respond and accept documents from Complainant; and
3. On or about February 28, 2020, management found Complainant unfit for duty.<sup>2</sup>

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing.

The AJ determined *sua sponte* that the complaint did not warrant a hearing and issued a decision without a hearing on October 14, 2021, following the issuance of a Notice of Proposed Summary Judgment. The Agency subsequently issued a final order adopting the AJ's finding that Complainant failed to prove that the Agency subjected her to discrimination as alleged. Complainant then filed the instant appeal.

During the pendency of the instant appeal, the parties entered into a settlement agreement on August 15, 2022, to resolve Complainant's pending appeal before the Merit Systems Protection Board (MSPB). The settlement agreement also globally resolved all matters "pending in any forum against the Agency" and expressly included the instant appeal.

#### ANALYSIS AND FINDINGS

The Agency requests that the Commission dismiss Complainant's appeal pursuant to the terms of the agreement executed on August 15, 2022.

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 (Dec. 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 (Aug. 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 (Dec. 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).

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<sup>2</sup> The Agency removed Complainant from federal service by letter dated September 11, 2020, which removal Complainant appealed to the MSPB.

In this case, the settlement agreement between the parties specifies that the agreement “withdraws with prejudice [Complainant’s] appeal pending under MSPB Docket No. DA-4324-22-0162-I-1. This withdrawal includes the aforementioned appeal, MSPB DA-3330-22-0152-I-1, EEO Appeal No. 2022001662 associated with HS-TSA-00681-2020, as well as any other claim pending in any forum against the Agency.” Settlement Agreement at 1. As the parties clearly and unequivocally agreed to resolve the instant appeal by settlement, we shall DISMISS Complainant’s appeal pursuant to the settlement agreement and § 1614.504(a).<sup>3</sup> See Alesia v. Dep’t of the Army, EEOC Appeal No. 2022003882 (May 17, 2023) (dismissing appeal due to settlement agreement).

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC’s Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party’s request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant’s request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

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<sup>3</sup> In dismissing Complainant’s appeal, we note that Complainant does not challenge the validity of the settlement agreement.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0124)

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 their 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

January 23, 2024

Date