



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

[REDACTED]  
Refugia S,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Bureau of Alcohol, Tobacco, Firearms & Explosives),  
Agency.

Appeal No. 2023004364

Agency No. ATF-2023-000163

**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 30, 2023, 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.

**ISSUES PRESENTED**

Whether the agency was in breach of the settlement agreement entered into by the parties.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Assistant Director, Human Resources and Professional Development (OPM Certified Senior Executive Service Member) at an undisclosed Agency facility

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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.

in an undisclosed city and state. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On December 29, 2022, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

(4)(a)(ii) The Agency will credit [Complainant]'s leave balance for the Annual Leave taken in 30 calendar-day increments as follows:

- (1) Annual Leave taken January 3, 2023, through February 2, 2023, will be credited to [Complainant]'s leave balance no later than February 9, 2023;
- (2) Annual Leave taken February 3, 2023, through March 4, 2023, will be credited to [Complainant]'s leave balance no later than March 10, 2023;
- (3) Annual Leave taken March 5, 2023, through April 3, 2023, will be credit to [Complainant]'s leave balance no later than April 10, 2023;
- (4) Annual Leave taken April 4 through May 3 will be credited to [Complainant]'s leave balance no later than May 10, 2023.

By email to the Agency dated May 21, 2023, 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 credit her for her leave.

In its June 30, 2023, FAD, the Agency concluded there was no breach of the settlement agreement (Agreement). Specifically, the FAD found that:

You separated from [the Agency] on May 6, 2023. Because [the Agency] agreed to credit annual leave through May 3, 2023, you used 16 hours of annual leave for May 4-5, 2023, reducing your annual leave balance from 287.75 hours to 271.75 hours. After the close of the pay period, your LES [sic] for pay period 9 showed your annual leave balance was 47.75 hours. On May 3 and May 5, 2023, records show that [the Agency] adjusted your annual leave balance consistent with the Agreement. On May 16, 2023, [the Agency] processed an SF 1150, Record of Leave Data, which showed that as of the date of your separation from [the Agency], your leave balance was 271.75 hours. The SF

1150 is the official record demonstrating the amount of leave transferred to your new Agency. On May 18, 2023, your [electronic personnel file] was successfully transferred to the Department of Transportation.

As such, the FAD concluded, the Agency had not breached the Agreement.

### CONTENTIONS ON APPEAL

Complainant contends that the Agency failed to credit her with 359 hours of leave and submits a document that indicates that on May 3, 2023, her annual leave was adjusted from 167:45 to 359:45 hours and on May 5, 2023, her annual leave was adjusted from 359:45 to 343:45 hours. The Agency makes no contention on appeal.

### STANDARD OF REVIEW

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).

### ANALYSIS

In the instant case, we note that in her initial claim to the Agency alleging breach of the Agreement, Complainant merely alleged that the Agency failed to credit her for her leave but did not provide any specifics regarding the nature of such a breach, such as explaining how the Agency failed or how

many hours she felt were missing. The FAD explains in detail how the Agency processed her leave and when such leave was restored to her leave balance. On appeal, Complainant for the first time provides a specific number, referring to 359 hours of leave. We note, however, that the Agreement makes no specific reference to Complainant's leave balance being restored to a balance of 359 hours. Instead, the Agreement promises to restore unspecified amounts of leave taken each month over a four-month period and provides a date by which each such restoration is supposed to occur. Thus, even assuming Complainant could show the Agency failed to credit her with 359 hours of leave, that would not show that the Agency breached the Agreement because it does not show that the Agency failed to credit her with leave taken in the months of January, February, March, and April 2023 as per the Agreement. However, even Complainant's evidence shows that on May 3, 2023, her leave balance was credited with leave sufficient to bring her balance up to 359.45 hours, thus contradicting her claim that the Agency failed to credit her with 359 hours of leave.

While the record does show that the Agency failed to meet the timelines set in the Agreement, the record does not show that such delays resulted in a material breach and we find that notwithstanding any such delay, the Agency substantially complied with the Agreement. We further note that, while the record shows that after crediting Complainant's leave balance to bring it up to 359.45 hours, the Agency, two days later, re-adjusted her balance to 343:45 hours, Complainant has not shown that such a re-adjustment resulted in a breach because, as previously mentioned, the Agreement itself makes no reference to Complainant's leave balance being restored to 359 hours. We therefore find that Complainant has not shown that a breach occurred.

### CONCLUSION

The FAD is AFFIRMED.

### 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.

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

February 6, 2025  
Date