



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Robert B.,¹
Complainant,

v.

Scott Bessent,
Secretary,
Department of the Treasury
(Internal Revenue Service),
Agency.

Appeal No. 2023004933

Agency No. IRS-23-0578-F

DECISION

Complainant appeals to the Equal Employment Opportunity Commission (EEOC or Commission) regarding her allegations that the Agency failed to comply with the terms of the settlement agreement into which the parties entered. See 29 C.F.R. § 1614.504. For the reasons below, we find the Agency was not in breach of the settlement agreement.

ISSUES PRESENTED

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

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked at the Agency's Wage and Investment Customer Account Services in Atlanta, Georgia. He was demoted from his position as a GS-05 Tax Examining Clerk to a GS-04 Clerk.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On June 6, 2023, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (1) The Agency agrees to the following: Within 30 days of this Agreement, the Department Manager . . . or designee will initiate a personnel action request (PAR) reassigning the aggrieved party from a GS-0303-04 Clerk position in . . . Team 103 to a GS-0303-05 Tax Examining Clerk position in . . . Team 104, night shift with a tour of duty of 3:00 pm – 11:30 pm. This action returns aggrieved party to his previous position prior to the requested downgrade. Team 104 is moving to the Customer Service Building located at 2385 Chamblee-Tucker Road on June 12, 2023. The Aggrieved party will move with the team at that time.
- (7) The parties understand that if the Aggrieved believes that the Agency has failed to comply with the terms of this Agreement, the Aggrieved shall notify the Director, Office of Civil Rights and Diversity in writing of the alleged noncompliance within 30 days of when the Aggrieved should have known of the alleged noncompliance . . . Any claims that the Agency is not complying with the terms of the Agreement must be addressed to: Department of the Treasury, Office of Civil Rights and Diversity, 1500 Pennsylvania Avenue NW, Washington, DC 20220.

On September 2, 2023, Complainant filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant claims that he fulfilled his part of the agreement by reporting to a new duty station on June 12, 2023, and he began working in the GS-0303-05 Tax Examining Clerk position. However, the Agency did not initiate the PAR action, and he was still being paid as a GS-0303-4 Clerk. He also submits a letter dated July 28, 2023, addressed to the Agency, alleging breach of the settlement agreement.

In response, the Agency argues that Complainant's appeal is premature because it did not receive written notification of the breach. Alternatively, the Agency asserts that Complainant's PAR was initialed as agreed and Complainant was reassigned to a GS-0303-5 Tax Examining Clerk position. The Agency initially acknowledged there was still the matter of back pay, but subsequently submitted documentation indicating it has since been paid.

ANALYSIS

Breach Notification

EEOC Regulation 29 C.F.R. § 1614.504(a) provides that if a complainant believes that a settlement agreement has been breached, they shall notify the EEO Director of the agency, in writing, of the alleged breach.

Here, we note that provision 7 of the settlement agreement also requires notification of any alleged noncompliance in writing. Complainant submitted a letter from July 28, 2023, addressed to the EEO Director of the Agency, at 1500 Pennsylvania Avenue NW, Washington, DC 20220, where he notified the Director of the alleged breach. On appeal, the Agency claims that it did not receive the letter and points out that Complainant did not provide a receipt or proof of delivery. In response, Complainant insists that he sent the letter and asserts that there were no instructions in the settlement agreement stating that he was required to produce proof of delivery. Assuming *arguendo* that Complainant sent notice as alleged, the record still supports finding the Agency was not in breach of the settlement agreement.

Breach of Settlement Agreement Claim

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, the settlement agreement is plain and unambiguous on its face with respect to the obligations as provided in provision 1. Provision 1 imposed upon the Agency the duty to initiate a PAR returning Complainant from a GS-04 position to his previous position as a GS-05 Tax Examining Clerk, within 30 days of signing the settlement agreement. The settlement agreement was signed on June 6, 2023. The Agency has submitted a copy of an SF-50 indicating that Complainant received a promotion from a GS-04, Step 10 level Clerk to a GS-05, Step 8 level Clerk effective July 2, 2023. Thus, the record supports finding that the Agency fulfilled this obligation. Further, the Agency submitted documentation showing that Complainant received a retroactive salary in the gross amount of \$574.20 (\$338.34 net) by direct deposit on October 2, 2023. Thus, we find the Agency is in substantial compliance with the settlement agreement.

We recognize that Complainant argues that he should have been paid the higher, GS-05 salary from the date he began working with his new team, on June 12, 2023. However, the settlement agreement does not obligate the Agency to promote Complainant to a GS-05 Clerk prior to 30 days after the signing of the settlement agreement.

CONCLUSION

Accordingly, we find the Agency was not in breach of the 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.

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)

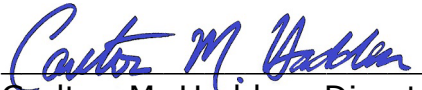
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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