



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

[REDACTED]
Kandi M,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024001194

Agency Nos. 20DR-0010-2023150207, 20DR-0010-202110179

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated October 27, 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 is in breach of the settlement agreement entered into by the parties.

BACKGROUND

During the period at issue, Complainant worked as a Health Systems Specialist at the Agency's facility in Washington, D.C. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

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.

On March 10, 2023, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- 1.3 **Restoration of Leave:** The Agency will submit to the Defense Finance Accounting Service (DFAS) within 90 days of the effective date of this Agreement all paperwork necessary to restore to Complainant 61 hours of sick leave and 19 hours of Annual Leave that Complainant took from October 1, 2020 to the date of the execution of this agreement. The parties acknowledge that it is the DFAS that actually restores leave, and that DFAS is [a] separate agency over which the Agency has no control. Consequently, the Agency can make no representation concerning when DFAS will restore the Complainant's leave or the accuracy of the of DFAS' calculations. Notwithstanding that it is DFAS the restores leave, the Agency acknowledges that it will make an effort, as needed, to identify the status of the DFAS' efforts as to the restoration of leave.²

By Breach of Settlement Agreement Allegation Form dated August 30, 2023, Complainant alleged that the Agency was in breach provision 1.3 of settlement agreement. Specifically, Complainant alleged that the Agency failed to restore to her 61 hours of sick leave and 19 hours of annual leave. Complainant asserted that in April 2023, the Agency improperly deducted 61 hours of sick leave and then returned back to her 51 hours. However, Complainant stated that the leave, set forth in the agreement, still has not been restored.

In its October 27, 2023 FAD, the Agency concluded that it was not breach of provision 1.3 of the settlement agreement. The Agency reasoned:

[o]n September 25, 2023, [Complainant] submitted a copy of [her] leave summary for the period September 24, 2023 to October 7, 2023, showing that a total of 19 hours of annual leave was restored to [her] leave balances. On October 23, 2023, the Agency provided our office with a copy of [her] leave balances showing the restored leave after DFAS made the required adjustments. Specifically, the record shows that 10 hours of sick leave was restored in pay period 18 (August 27, 2023-September

² The agreement also obligated the Agency to provide Complainant other consideration which is not at issue in the instant appeal.

9, 2023) and 51 hours of sick leave was restored in pay period 9 (April 23, 2023-May 6, 2023).

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant reasserts that the Agency has not properly restored her leave. Complainant states that the Agency's final decision "does not address the fact [it] took 61 hours of my sick leave in pay period 8, before any hours were restored. Essentially, [the Agency] took 61 hours of my leave and then restored 51 hours and then the other 10 hours of my leave. I was never given the 61 hours due to me from the EEO case."

The Agency does not submit a brief or statement in opposition to Complainant's appeal.

STANDARD OF REVIEW

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

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 the instant case, we are unable to ascertain from the record whether the Agency is in breach of provision 1.3 of the agreement because the record is not adequately developed. The Agency did not provide any documentation reflecting whether it is in compliance with the agreement. While the Agency provided copies of the underlying complaint files and report of investigation, the Agency did not provide affidavits and/or other documentation reflecting whether it is in compliance with provision 1.3.

We acknowledge that Complainant, on appeal, submitted copies of printouts of her leave balances for various pay periods. We acknowledge that the record contains a copy of pay period 8 (April 9, 2023-April 22, 2023), after the execution of the March 2023 settlement agreement, reflecting that 61 hours were deducted from Complainant's sick leave balance. A printout for pay period 9 (April 23, 2023-May 6, 2023), further reflects that the Agency restored 51 hours of sick leave. Complainant, on appeal, asserts that the Agency subsequently returned another 10 hours of sick leave. Complainant, however, asserts that these restorations of leave were for leave the Agency improperly deducted in April 2023 (rather than the restored leave referenced in the EEO settlement agreement); thus, she alleges that the Agency has still not properly restored her leave pursuant to the settlement agreement.

CONCLUSION

Accordingly, we VACATE the Agency's final decision finding no breach of the settlement agreement and REMAND this matter to the Agency for further processing in accordance with the ORDER below.

ORDER

Within 45 days from the date this decision is issued, the Agency shall take the following actions:

1. The Agency shall supplement the record with affidavits and other documentary evidence clearly reflecting whether it has complied with provision 1.3 of the agreement. The Agency shall respond to Complainant's allegation that the sick leave returned to her was for the leave that the Agency improperly deducted from her in April 2023, subsequent to the execution of the agreement, and that the Agency has still not restored to her the leave identified in the March 2023 settlement agreement.
2. The Agency shall then issue a new determination, with appeal rights to the Commission, as to whether it is in breach of provision 1.3 of the agreement. A copy of the new final decision must be included in the Agency's compliance report as set forth in the paragraph below entitled "Implementation of the Commission's Decision."

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 (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 (R0124)

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 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. **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 12, 2024

Date