



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

[REDACTED]
Merle S,¹
Complainant,

v.

Xavier Becerra,
Secretary,
Department of Health and Human Services,
Agency.

Appeal No. 2024003222

Agency No. HHS-OS-0493-2022

Hearing No. 410-2023-00379X

DECISION

Complainant filed an appeal with this Commission claiming that the Agency was not 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 Lead Logistics Management Specialist, GS-13, in the Assistant Secretary of Preparedness Response, Strategic National Stockpile, Organizational

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.

Logistics Branch. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. However, after a formal complaint was filed and a hearing requested, Complainant and the Agency entered into a settlement agreement on November 1, 2023 to resolve the matter. Subsequently, the assigned EEOC Administrative Judge dismissed this matter on November 3, 2023, pursuant to the settlement agreement reached by the parties. The settlement agreement provided, in pertinent part, that:

- (1B) The Agency will restore Complainant's annual leave of 424 hours and sick leave of 724.50 hours with no "use or lose restrictions."
- (1C) The Agency will cancel the sum of 188 sick leave hours that the Complainant had been paying back.

By notification to the Agency on March 20, 2024, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency failed to comply with (1B) and (1C) above.

The record reflects that because the Agency did not issue a final decision addressing Complainant's breach claims, Complainant appealed this matter to the Commission on April 20, 2024. Complainant asserted that the Agency is still in breach.

In its July 22, 2024 appeal response, the Agency concluded that it had not breached the settlement agreement. The Agency explained:

[It] was alerted by [Complainant] in January 2024, that the leave restoration had not been completed and at once sought to have the situation remedied. The Agency, however, is not in control of leave restoration as all restorations are handled by the Defense Finance and Accounting Service (hereinafter "DFAS"). Since the notice that [Complainant's] leave had not been restored, the Agency has pressed DFAS to swiftly remedy the situation and communicated its efforts to the [Complainant]. In working with DFAS, [Complainant's] leave was restored in June 2024. As such, any perceived delay in the restoration of [Complainant's] leave occurred within a reasonable amount of time after notice from [Complainant] especially as the restoration was not under the DHHS's control. Further, as [Complainant's] leave has been restored, this action is moot.

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 find that the Agency has breached the settlement agreement. While the Agency has indicated that it restored Complainant's leave in June 2024, the current record on appeal does not provide any evidence that Complainant's leave has been restored. The record is devoid of supporting documentation showing compliance with either (1B) or (1C).

Under the Commission's regulations, a breach may be remedied by either ordering the Agency to undertake specific performance of the breached provision or reinstate the underlying complaint for processing. See 29 C.F.R. § 1614.504(c). Here, because Complainant has requested specific performance of the breached provisions at issue, we find that specific performance is the appropriate remedy.

CONCLUSION

Accordingly, we REMAND this matter to the Agency for further processing in accordance with the Order below.

ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency is ordered to take the following actions:

1. The Agency will ensure that Complainant is credited annual leave of 424 hours and sick leave of 724.50 hours with no "use or lose restrictions" and cancel the sum of 188 sick leave hours that Complainant had been paying back.
2. The Agency is further directed to submit documentation to the Commission that it has completed the ordered actions as set forth below in the section 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

November 14, 2024

Date