



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

[REDACTED]
Felicidad S.,¹
Complainant,

v.

Lloyd J. Austin III,
Secretary,
Department of Defense
(Defense Health Agency),
Agency.

Appeal No. 2024003260

Hearing No. 560-2021-00246X

Agency No. 9V12100072P21

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 set forth herein, we find the Agency was not in breach of the settlement agreement.

ISSUES PRESENTED

Whether the Agency breached the September 19, 2023, 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 as a Pharmacy Technician, GS-6 at the Agency's Air Force Base (AFB) Pharmacy in Oklahoma City, Oklahoma.

Believing that the Agency subjected her to unlawful discrimination, Complainant initiated the EEO complaint process. On August 16, 2021, Complainant requested a hearing before an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ). On September 19, 2023, the parties entered into a settlement agreement and the AJ dismissed the complaint on the ground that Complainant's claims were resolved. The settlement agreement provided, in pertinent part, that:

- (1) The Agency agrees to electronically transfer funds to pay Complainant a lump sum of thirty thousand and sixteen dollars (\$30,016.00) for settlement of all claims against the Agency within 60 days after receipt of financial institution information from Complainant or Complainant's Representative. Complainant or Complainant's Representative shall provide to the Agency Representative within 10 calendars of the effective date of this Agreement all necessary financial institution information to effect payment. Failure to provide this information will delay payment.
- (21) If Complainant believes that DHA has failed to comply with the terms of this Settlement Agreement, Complainant shall notify the Defense Health Agency, 7700 Arlington Blvd, Suite 5101, ATTN: EODM Director, Falls Church, VA 22042-5101 in writing of the alleged noncompliance within 30 days of when Complainant knew or should have known of the alleged noncompliance . . . If the EODM Director has not responded to the writing or if Complainant is not satisfied with the attempts to resolve the matter, Complainant may appeal to the EEOC for a determination as to whether DHA has complied with the terms of the Settlement Agreement. Complainant may file such an appeal 35 days after service of the allegation of noncompliance upon DHA but no later than 30 calendar days after the receipt of the DHA determination . . .

On February 8, 2024, Complainant notified the Agency's Office of General Counsel that Complainant had not received the \$30,016.00 payment that she was promised under provision 1.² An Attorney from the Office of General Counsel explained that the payment had not been made because the Agency never received the necessary financial institution information to make the payment. Complainant acknowledged that she submitted her bank information on the wrong form. However, she revealed that on February 26, 2024, a Paralegal gave her the correct form and "walked [her] through filling out the form." Therefore, the Agency received the necessary information to effectuate payment on February 26, 2024.

Three days later, on February 29, 2024, Complainant wrote a letter to the Agency's EEO Director (DHA EODM Director), where she expressed that the Agency breached the Agreement because it failed to make payment the \$30,016.00 payment. The letter is in the record, but there is no indication from the record of when she sent the letter to the Agency. It appears that Complainant is suggesting that the letter was sent to DHA EOM Director on or around February 29, 2024. However, contrary to this assertion, the Agency denied receiving the letter. In fact, the Agency did not issue a final decision on the matter because it claims that the DHA EODM Director never received notification of the breach.

CONTENTIONS ON APPEAL

Complainant did not submit a brief or statement with her appeal. Instead, she provided a copy of the February 29, 2024, letter that she wrote to the DHA EODM Director expressing that the Agency breached the Agreement.

The Agency submitted a brief in opposition to Complainant's appeal, arguing that her appeal is premature because she failed to notify the DHA EODM Director of the breach. Alternatively, the Agency asserts that it satisfied its obligations and that the appeal should be dismissed as moot.³

² Complainant stated that on November 10, 2023, she contacted an official at the Department of the Air Force and gave him her bank information. She later learned that the Department of the Air Force was not a party to the matter, so reached out to DHA instead.

³ Although the Agency did not issue a final decision on the alleged breach, we will consider its brief on appeal as its final decision.

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 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 Complainant the duty to provide her financial institution information to the Agency within 10 days of September 19, 2023. However, by her own admission, Complainant provided the correct information to the Agency late, on February 26, 2024.

Provision 1 had specific instructions on the time frame that the Agency had to issue the funds to Complainant after receiving her bank information. The provision specifically stated that the Agency had 60 days after February 26, 2024, to issue the funds. Instead of waiting for payment during the 60-day compliance period, Complainant gave the Agency 3 days to issue the funds by notifying the Agency on February 29, 2024, that it had breached the Agreement. Complainant's claim of breach was premature because the time period for Agency compliance had not expired. Furthermore, the Agency was not given an opportunity to investigate the matter or issue a final decision. Therefore, Complainant filed the instant complaint prematurely.

Nonetheless, the record shows that Complainant received the funds that she was promised under the Agreement.

The Agency submitted paperwork which shows that on May 9, 2024, it disbursed a payment of \$30,016.00 to Complainant. Therefore, the Commission finds that the Agency has substantially complied with the settlement agreement.

CONCLUSION

Accordingly, we AFFIRM the Agency's contention that it did not breach 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 4, 2025

Date