



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

[REDACTED]
Vance C,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Field Areas and Regions),
Agency.

Appeal No. 2024003307

Agency No. 4J-493-0094-03

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated April 29, 2024, 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

Complainant is a former postal employee. However, believing that the Agency had subjected him to unlawful discrimination in 2003, Complainant initiated an informal and formal EEO complaint which resulted in a

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.

settlement agreement with the Agency on November 18, 2005. The settlement agreement provided, in pertinent part, that:

1) [Complainant] agrees to withdraw EEOC No. 230-2005-00025X/Respondent No. 4J-493-0094-03. **2)** The parties agree that this Settlement Agreement fully resolve the issues in appeal as settled. The Equal Employment Opportunity Commission shall retain jurisdiction of this action as may be necessary to enforce the terms of this Settlement Agreement. **3)** The Respondent, Postal Service, agrees to change the entry on Complainant's last Notification of Personnel Action, Form 50, issued by the Postal Service, in the "Nature of Personnel Action" from "Removal" to "Resignation." **4)** To settle all claims for compensatory damages, Respondent shall pay Complainant the sum of \$444.00. To settle all claims for attorneys' fees, Respondent shall pay Wheeler Upham, P.C. the sum of \$2056.00. **5)** In exchange for the promise in 3 and 4, Complainant agrees not to apply for employment with the Postal Service. However, the parties agree that Complainant is not similarly barred from applying for employment with another federal agency . . . **10)** "[Complainant] agrees that after reviewing this entire document he freely and voluntarily enters into it and recognizes that this document will bind him to the Settlement Agreement."

The agreement also includes handwritten text under term No. 1, which states that "[Complainant] is not waiving his pending OWCP claim through this Agreement" and is initialed by two individuals.

By letter to the Agency dated March 19, 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 has failed to honor the above handwritten text under term No. 1, which states that "[Complainant] is not waiving his pending OWCP claim through this Agreement." Complainant stated:

I am alleging breach of settlement agreement because I did not waive any rights associated with my OWCP claim and restoration to employment is a right. On the settlement agreement there is a handwritten addendum that explicitly states that I am not waiving my OWCP claim through this agreement. . . . [I]f the Agency believes that I signed my restoration rights away, the settlement agreement lacks adequate consideration. . . . If the Agency believes that I signed my restoration rights away, I am alleging that there was no meeting

of the minds, there may have been a unilateral mistake on the Agency's part, or mutual mistake on my part and the Agency's part. I was attempting to preserve my restoration rights with the handwritten addendum to term 1 of the settlement agreement, while the Agency was attempting to encompass my restoration rights within the signing of the settlement agreement. Terms 1 handwritten addendum and term 5 contradict each other. In term 5, the Agency believes that they were getting a universal bar to employment with the agency. However, with the handwritten addendum to term 1, I was seeking to preserve my restoration or re-employment rights. The terms are ambiguous and butt heads. . . . [I] have "sought restoration . . . and have received no response or acknowledgement from the Agency."

In its April 29, 2024 FAD, the Agency explained:

While March 1, 2024 is the most recent submission requesting restoration – re-employment as partially recovered, it has not been [Complainant's] only request. The claims regarding restoration have been adjudicated multiple times in both EEOC and MSPB forums. In the breach allegation dated March 19, 2024, [Complainant] stated, 'within an OWCP award lies restoration rights at 5 USC § 8151(b)(2)' and the MSPB (CH-0353-17- 0093-I-1) ruling stated, "the fact that [Complainant] received an OWCP disability award does not give rise to restoration rights as [Complainant] suggests." The Board also stated, 'an employee who is removed for cause or who is separated from his position by resignation or retirement does not become entitled to restoration under 5 C.F.R. Part 353 simply by receiving an OWCP award after his separation.' Furthermore, 'even if the Board could reach these issues pursuant to its restoration jurisdiction, [Complainant] waived their adjudication in a November 2005 settlement agreement.' As such, '[Complainant] asked the Board to review an alleged failure to restore him to duty following his partial recovery from a compensable injury' and that appeal was also dismissed.

The Agency concluded that contrary to Complainant's contention, consideration was, in fact, provided in the settlement agreement when Complainant's "removal" and inability to reapply for employment with the U.S. Postal Service was exchanged for financial compensation and a Form 50 citing a resignation.

The Agency also concluded that it was in full compliance with the terms of the settlement agreement and no further action is warranted.

CONTENTIONS ON APPEAL

Complainant reargues his breach claim. Complainant also asserts that the settlement agreement is unenforceable because of Agency coercion. The Agency asks that we affirm its final determination.

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).

Adequate Consideration

The Commission is not generally concerned with the adequacy or fairness of the consideration in a settlement agreement, as long as some legal detriment is incurred as part of the bargain. When, however, one of the contracting parties incurs no legal detriment, the settlement agreement will be set aside for lack of consideration. See Complainant v. Department of Defense Intelligence Agency, EEOC Appeal No. 0120130184 (December 24, 2013).

In the instant case, while the heart of Complainant's contention, both in his breach claim to the Agency and in his appeal submissions, is that the settlement agreement lacks adequate consideration for enforcement, we find to the contrary. Both parties incurred a legal detriment. Complainant's removal and inability to reapply for employment with the Agency was exchanged for financial compensation and a Form 50 citing a resignation. Essentially, in exchange for the Agency's promises in 3 and 4 above, **Complainant agreed not to apply for employment with the Postal Service.** However, Complainant persistently argues that he is allowed employment restoration with the Agency because of his handwritten note on the settlement agreement "not waiving my OWCP claim through this agreement." This, Complainant argues, poses a contradiction or a quandary. We disagree. Complainant knew when he added this handwritten language to the settlement agreement that *he was also agreeing to not seek re-employment with the Postal Service.* **If Complainant was not in agreement with the terms before him, he and his Attorney could have declined to sign the settlement agreement.**

No Coercion

The Commission has held that the party raising coercion or duress must show that there was an improper threat of sufficient gravity to induce assent to the document and that the assent was in fact induced by the threat. Such a threat may be expressed, implied or inferred from words or conduct, and must convey an intention to cause harm or loss.

A Complainant's bare assertions will not justify a finding of coercion. Cannella v. Dep't. of Veterans Affairs, EEOC Appeal No. 01995444 (Dec. 5, 2000). We find that beyond his bare assertions, Complainant has *not shown* that there was an improper threat of sufficient gravity to induce assent to the settlement agreement in this matter and that the assent was in fact induced by the threat. Furthermore, the record reflects that Complainant was represented by an attorney when he entered into the settlement agreement with the Agency.² Finally, Complainant has not shown that the Agency acted in bad faith.

CONCLUSION

Accordingly, we AFFIRM the Agency's finding of compliance in this matter.

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 (EOO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

² Additionally, none of the remaining arguments raised by Complainant attempting to void the settlement agreement's enforcement have merit here.

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

November 14, 2024

Date