



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

[REDACTED]
Kenny C,¹
Complainant,

v.

Carlos Del Toro,
Secretary,
Department of the Navy,
Agency.

Appeal No. 2024003308

Agency No. 23-67001-00753

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 15, 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

At the time of events giving rise to this complaint, Complainant worked as a Supervisor in the Agency's Public Works Department at Camp Lejeune, North Carolina. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO

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.

complaint process. On June 15, 2023, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (1) b. The Agency agrees to conduct training in Reasonable Accommodations and Equal Employment Opportunity for the Public Works Wastewater Treatment Facility supervisors and staff no later than 31 December 2023 and annually thereafter.
- c. The Agency agrees to conduct an investigation into the implementation of Equal Opportunity regulations and policies by the Public Works Wastewater Treatment Facility supervisors.
- d. The Agency agrees to furnish the Public Works division Family Medical and Leave Act pamphlets for dissemination in breakrooms and common areas.

By e-mail to the Agency dated April 11, 2024, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency implement its terms. Complainant explained in his e-mail:

The breached terms should have been implemented, it is my understanding, no later than December 31 of 2023. I became aware of the non-compliance in mid-March 2024, less than 30 days from today.

I do not believe all staff and supervisors in the Public Works Wastewater Treatment Facility on Camp Lejeune received both Reasonable Accommodations and Equal Employment Opportunity training by December 31, 2024.

Further, it is my understanding pamphlets regarding the Family Medical and Leave Act have not been made available in break rooms nor common areas in the Public Works department.

Because of the above-mentioned breaches, I am not confident the Agency conducted an investigation into the implementation of Equal Opportunity regulations and policies by the Public Works Wastewater Treatment Facility supervisors. Please send me proof this occurred and the results. Please send me all documentation I am entitled to related to any training on Reasonable Accommodations and Equal Employment Opportunity for the Public Works Wastewater Treatment

Facility supervisors and staff related to this Agreement, including the recipients and also those supervisors and staff discovered to have been excluded. I request evidence/documents related to the dissemination of the Family Medical and Leave Act pamphlets as I believe the Public Works Division failed to provide them in the breakrooms and common areas.

In its April 15, 2024 FAD, the Agency responded:

Per paragraph 1(b), all required supervisors attended EEO training no later than October 2, 2023. All other personnel completed EEO training no later than 31 December 2023. Per paragraph 1(c) at least one fact finding inquiry involving supervisory implementation of EEO regulation and policies was completed no later than July 25, 2023. Per paragraph 1(d), Family Medical Leave Act information was disseminated to employees and posted in breakrooms and/or employee read boards within the Public Works Division on or about June 14, 2023.

You are not entitled to copies of any of documents and rosters substantiating paragraphs 1 (b) through (d) as they are protected under FOIA and the Privacy Act.

The Agency also noted that on September 28, 2023, Complainant and his wife were observed, by numerous witnesses who have provided statements, trespassing in the Water and Wastewater Maintenance Shop breakroom and taking pictures in violation of base access regulation MCIEAST-MCB CAMPLEJO 5530.15B. The Agency further noted that if Complainant suspected a failure of the Agency to adhere to the terms of the Agreement, his opportunity to notify the Agency in writing expired on October 28, 2023.

CONTENTIONS ON APPEAL

Complainant primarily asserts that he is not convinced of the Agency's compliance in this matter. Complainant maintains that the Agency has provided insufficient documentation showing compliance with the settlement agreement, and he seeks further documented proof of compliance. Complainant also urges continued monitoring of the Agency's EEO program. The Agency did not submit a brief in response.

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. See 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).

EEOC Regulation 29 C.F.R. § 1614.504(a) further provides that if a complainant believes that an agency failed to comply with the terms of a settlement agreement, a complainant shall notify the EEO Director, in writing, of alleged noncompliance within 30 days of the date of when a complainant knew or should have known of the alleged noncompliance.

In the instant case, the Agency implies that Complainant should have known of its alleged noncompliance sooner. However, assuming, *arguendo*, Complainant's claims of breach are timely, we find that the Agency has complied with all provisions at issue above. The record contains documentation consisting of attendance rosters and certificates earned supporting Agency compliance with provision 1(b), providing EEO Training to Agency staff and supervisors. The record contains Agency documentation pertaining to a fact-finding inquiry involving supervisory implementation of EEO regulation and policies supporting Agency compliance with provision 1(c); and the record contains well-defined illustrations (colored photographs) demonstrating that the Agency furnished the Public Works Division Family Medical and Leave Act pamphlets for dissemination in breakrooms and common areas supporting Agency compliance with provision 1(d). While Complainant insists that the Agency provide copious details of its current compliance, and continued compliance with every provision above, we, again, find that the Agency has provided adequate evidence of compliance with the settlement agreement. 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 (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

November 20, 2024
Date