



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Jaqueline L. ,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Benefits Administration),
Agency.

Appeal No. 2024003425

Agency No. 200I-10N9-2023152014

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated May 2, 2024, finding that it was in compliance with the terms of an August 10, 2023 settlement agreement. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405. For the reasons discussed below, we reverse the Agency's final decision.

ISSUES PRESENTED

Whether the agency breached the subject settlement agreement by determining that the agreement provision at issue was void due to lack of consideration.

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

During the relevant time, Complainant worked for the Agency at the Agency's Mid-South Healthcare Network, VISN 9 in Nashville, Tennessee. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

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

(1) Withdrawal and Waiver

- a. In consideration of the settlement terms referenced in Paragraph 2 and any other covenant made by the Agency in this Agreement, Aggrieved Person/Complainant hereby voluntarily withdraws and all pending informal and formal EEO complaints, any appeals to the Merit Systems Protection Board, any complaints before the Office of Special Counsel, any grievances, whether formal or informal, any court actions, and all other claims arising under any federal, state, or local law, regulation, or ordinance, against the Agency, its past and present administrators or employees, in their personal or official capacities, in any capacities, in any stage of processing in their entirety, including, but not limited to EEO case No 200I-10N9-2023-152014.
- b. Except as provided for in this Agreement and in exchange for the terms provided, Aggrieved Person/Complainant hereby settles, withdraws, and forever discharges the Agency, its past and present administrators or employees, in their personal or official capacities, from any and all complaints, claims, grievances, appeals, expenses, and damages of any kind, which are or may be asserted by the Aggrieved Person/Complainant's execution of this Agreement.

- (2) Agency Obligations: As due Consideration for the Parties' mutual undertakings and obligation(s) provided for in this Agreement, including but not limited to Aggrieved Person/Complainant's immediate dismissal of all complaints discussed heretofore, the Parties hereby agree to the following:

- a. Within fourteen (14) calendar days or one pay period of the signing and execution of this agreement, the agency agrees to grant the Aggrieved Person/Complainant four hours of telework every Friday from 7:30 am – 11:30 am, to include nine-hour workdays Monday-Thursday, with a tour of duty from 8:00 am to 5:30 pm. This provision is enforced as long as the Aggrieved Person/Complainant is employed at the Tennessee Valley Health Care System (TVHCS) in her current position of record.
- b. The Aggrieved Person/Complainant will not incur a debt if a decision is made to leave TVHCS prior to their relocation term of service as per the statement in their relocation agreement: *"(I understand that VA may unilaterally terminate this agreement solely on the management needs of VA. If this occurs, I will be entitled to all incentive payments that are attributable to completed service and to retain any portion of an incentive payment received that is attributable to uncompleted service.)"*. Therefore, within fourteen (14) calendar days or one pay period upon the signing of this agreement, the agency will unilaterally terminate the relocation agreement, as it will not be for cause, and it will be based on the VA's management needs, the Aggrieved Person/Complainant will retain any overage of monies and will NOT incur a Bill of Collection. The Aggrieved Person/Complainant understands that once the agency terminates the relocation agreement, it CANNOT be reinstated, therefore if for some reason the Aggrieved Person/Complainant decides to continue at TVHCS beyond this first year, no more payments will be received for the additional years covered in the original RSA.
- c. If the Aggrieved Person/ Complainant chooses to transfer out of TVHCS, the agency will release said person within 3 weeks from the time the receiving station requests an End of Duty (EOD), the Aggrieved Person/Complainant understands, the actual EOD is ultimately the determination of the receiving station, therefore if there is a delay on the receiving end, the agency cannot be held accountable for that delay and does not void this agreement.

- d. The agency agrees to mandate refresher Reasonable Accommodation Training for the Aggrieved person's supervisor within 180 days of the signing of this agreement. The training will consist of Training in Talent Management System (NFED 4503928) COMPLIANCE SHORT: Religious Accommodation and (NFED 4504561) Reasonable Accommodation for the Federal Workplace.
- (4) Enforcement: If the Aggrieved Person/Complainant believes that the Agency has breached this Agreement, he/she must notify the Deputy Assistant Secretary for Resolution Management (ORM) in writing, within 30 calendar days after the date of the alleged breach. If ORM determines a breach has occurred, the Aggrieved Person/Complainant may elect to have this Agreement implemented, or to have any waived or withdrawn complaint(s) or other actions reinstated and processed from the point in the process where processing ceased. Pursuant to 29 CFR § 1614.504, the Aggrieved Person/Complainant may appeal to the Equal Employment Opportunity (EEOC) if he or she believes that the Agency has either not fully implemented this Agreement or has improperly failed to reinstate his or her complaint.
- (5) Further Understandings:
- b. This Agreement constitutes the entire understanding between the Parties and fully supersedes any and all prior agreements or understandings pertaining to the subject matter. No other oral or written terms or commitments exist between the Parties.

By letter to the Agency dated March 22, 2024, Complainant alleged that the Agency breached the subject settlement agreement and requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency failed to comply with Provision 2(d), that required Complainant's supervisor to undergo the forementioned training within 180 days of August 10, 2023.

In its May 2, 2024 final decision, the Agency concluded that Paragraph 2(d) lacked consideration, and was rendered void. The Agency further determined that the provision in Provision 2(d), by being void, was not a flaw that rendered the entire agreement void, and therefore, and that no breach had therefore occurred.

CONTENTIONS ON APPEAL

On appeal, Complainant states that her consideration was the withdrawal of her complaint and that she would not have done so, but for the Agency's promises, including the matter identified in provision 2(d). She further states that the supervisor training was to prevent her supervisor from "committing similar offenses against other employees in the future."

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, the Agency does not dispute that Provision 2(d) was a term of the Settlement Agreement. Instead, the Agency argues that the term lacked consideration. The plain meaning rule loses its relevance when a settlement agreement lacks adequate consideration because such agreements are unenforceable. See Collins v. U.S. Postal Service, EEOC Request No. 05900082 (April 26, 1990) (a settlement agreement that was not based upon adequate consideration was unenforceable). Generally, the adequacy or fairness of the consideration in a settlement agreement is not at issue, as long as some legal detriment is incurred as part of the bargain. Here, Complainant withdrew her complaint and waived her claims in consideration of the Agency's compliance with the provisions in Provision 2. In Provision 2(d), the Agency agreed to have Complainant's supervisor take particular trainings within 180 days of August 10, 2023, which tolled on February 6, 2024. The Agency agree to perform a specific action, not one that it would generally have performed, in exchange for Complainant's withdrawal and waiver of claims. We find that the Agency breached the settlement agreement by construing provision 2(d) as void for lack of consideration.

CONCLUSION

We find that the Agency is in breach of the Settlement Agreement and REMAND this decision to the Agency for compliance in accordance with the ORDER below.

ORDER

The Agency is hereby ORDERED to implement the provision in Paragraph 2(d) within one hundred-eighty (180) calendar days of the date of issuance of this decision.² Specifically, the Agency is directed to provide a refresher course to the party identified in Provision 2(d) with training which will consist of Training in Talent Management System (NFED 4503928) COMPLIANCE SHORT: Religious Accommodation and (NFED 4504561) Reasonable Accommodation for the Federal Workplace

² We recognize that provision 2(d) provided an affirmative Agency obligation to implement the provision within 180 days from the date of execution. As that 180-day period has passed, we will adjust the deadline for implementation to an additional 180 days, as noted in the ORDER above.

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 12, 2024

Date