



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

[REDACTED]
Valentin G,¹
Complainant,

v.

Christine Wormuth,
Secretary,
Department of the Army,
Agency.

Appeal No. 2024003771

Agency No. ARBRAGG22SEP03707

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated June 3, 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 Equal Employment Opportunity Specialist at the U.S. Army Special Operations Command in Fort Liberty, North Carolina.

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.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On January 27, 2023, Complainant and the Agency entered into a settlement agreement to resolve the matter. The paragraph 3.a(2) of the settlement agreement provided, in pertinent part, that:

Complainant will continue to work under his current position description. Complainant will perform the duties of his position description as an Equal Employment Specialist, PD# DN396415 (Enclosure 1). Complainant will operate as the USASOC anti-harassment coordinator and reasonable accommodation program manager.

By letter to the Agency dated May 7, 2024, Complainant alleged that the Agency was in breach of the settlement agreement, and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency breached the settlement agreement on May 1, 2024, when his supervisor emailed instructions to receive training on the process for sending drug testing notification emails to newly hired civilians. Complainant maintains that the drug testing program is out of the scope of his duties stated within his position description.

In its June 3, 2024 FAD, the Agency concluded that it did not breach the settlement agreement. The Agency explained that Complainant's EEO Specialist position description included: "Performs special projects and other duties as assigned" and, as a result, it had the authority to assign complainant to serve as a drug testing notification coordinator as a collateral duty.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that the under the plain meaning rule, the Agency's May 1, 2024 email instructions to Complainant to participate in the drug testing program were not covered by his position description and therefore a breach of the settlement agreement. Complainant stated in January 2024, that management had previously breached the settlement agreement when it involuntarily reassigned him as a Staff Action Analyst. In February 2024, that reassignment was rescinded on account of Complainant's successful breach allegation. Complainant asserts that his position description limits him to EEO duties and functions such as reasonable accommodations coordinator and anti-harassment Program manager.

According to Complainant, management has violated the settlement agreement by assigning him collateral drug-testing duties that were unrelated to EEO and not expressly mentioned in his EEO Specialist position description. Finally, Complainant requested an advisory opinion about an Agency article on appropriate and inappropriate uses of the "other duties as assigned" clause in Agency position descriptions.²

The Agency countered that the drug testing notification coordinator duties are not an area of special expertise. They are considered non-major duties in that they do not take up more of that 25 percent of the employee's work week. The Agency stated that drug testing notification coordinator duties were rotated among the members of Complainant's training and employee relations team.

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).

EEOC carefully reviewed the settlement agreement and Complainant's position description that the settlement agreement incorporated by reference.

² This Commission declines to issue an advisory opinion on the documentation identified by Complainant. Our decision to do so does not affect our disposition of the instant appeal.

Neither of these documents contains language that can be plainly read as excluding Complainant from being assigned work that was only EEO-related or work that was not expressly mentioned. The phrase "Performs special projects and other duties as assigned" appears following the notation 10 percent after the end of the Major Duties section. This means that that Complainant's position description did not limit him only to work concerning EEO and related personnel actions. In other words, while the position description enumerated his major duties such as reasonable accommodation coordinator and anti-harassment manager, it also provided management with discretion to assign Complainant to other duties and to other special projects. Consistent with the settlement agreement, Agency management continued to have Complainant operate as the anti-harassment coordinator and reasonable accommodation program manager despite having adding duties of drug testing notification coordinator.

In the instant case, we concur with the Agency in finding that the settlement agreement was not breached.

CONCLUSION

The Agency's decision finding no breach of the instant settlement agreement is AFFIRMED.

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)

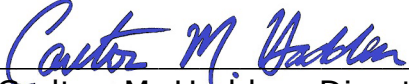
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

December 16, 2024

Date