



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

[REDACTED]
Edgardo D.,¹
Complainant,

v.

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

Appeal No. 2024003895

Agency No. 4G-770-0086-24

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated May 30, 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. For the following reasons, we REVERSE the Agency's final determination finding no breach of the settlement agreement and we REMAND this matter to the Agency.

ISSUES PRESENTED

Whether the agency was in breach of the 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 full-time regular employee at the Agency's Long Point Post Office facility in Houston, Texas. Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

On March 19, 2024, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

[Complainant] agrees to provide [Manager] with pay stubs for Pay period 25 & 26 of 2023 & Pay Period 1 of 2024 by March 26, 2024. [Manager] agrees to review documents for loss of leave and participation in Thrift Savings. Upon completion of the review of documents [Manager] will then make [Complainant] aware of her finding. If any leave or thrift savings contributions are owed [Complainant] will be made whole by April 2, 2024, and provided a copy of submission.

By email from his representative to the Agency dated April 9, 2024, Complainant alleged that the Agency was in breach of the settlement agreement. By letter dated April 29, 2024, Complainant's representative alleged that Agency was in breach, and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that he had timely provided the relevant documents, but the Agency had failed to respond or comply with the settlement agreement.

In its May 30, 2024 FAD, the Agency concluded it was not in breach of the subject settlement agreement. The Agency stated that during the breach inquiry Manager confirmed the appropriate pay stubs were provided by Complainant and that she determined no additional leave and/or Thrift Savings Contributions (TSP) were due Complainant. Manager noted that when Complainant submitted the pay stubs, he indicated he should have been paid overtime and included calculations regarding the overtime pay he should have received. However, the settlement agreement had not addressed overtime. Manager reported she made Complainant aware of her findings regarding his leave and TSP via a written statement on May 10, 2024.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that he is not requesting overtime pay. He states his calculations of leave and TSP are based on the hours that he worked during those days. Because he was not allowed to work a full week in Pay Periods 25 & 26 of 2023 & Pay Period 1 of 2024, his leave accrual was affected. Similarly, if he had been allowed to work his guaranteed hours, his TSP would have been higher than what is reflected in his pay stubs.

The Agency did not file a brief or statement in connection with this appeal.

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, Complainant admits he accrues four hours of leave per pay period. Although the statement provided by Manager addressed only sick leave, the pay stubs provided by Complainant show that he accrued four hours each of sick and annual leave in Pay Period 25 of 2023, zero hours in Pay Period 26 of 2023, and eight hours in Pay Period 1 of 2024. Therefore, the record reflects that he received 12 hours each of sick and annual leave over three pay periods, and he is not due any additional leave.

However, the record is not clear regarding Complainant's TSP. Complainant's pay stubs reflect that for Pay Period 24 of 2023, he received \$2,084.11 in gross pay with a TSP of \$105.76. For Pay Period 25 of 2023, he received \$2,555.15 in gross pay with a TSP of \$118.98. For Pay Period 26 of 2023, Complainant received \$1,468.03 in gross pay with a TSP of \$66.10. In Pay Period 1 of 2024, Complainant received an adjustment for 58 hours, leading to gross pay of \$3,485.91, but a TSP of only \$105.76.

TSP is contributed as a percentage of basic pay. Basic pay typically does not include overtime, and as noted by the Agency, the settlement agreement does not address overtime. The employee elects the specific percentage of basic pay to be contributed to TSP.

The TSP shown on the pay stubs is not a consistent percentage and neither Complainant nor the Agency has identified the percentage TSP contribution Complainant had elected during the relevant pay periods. It is not clear that any TSP contribution was made to account for the 58-hour adjustment. Therefore, we are unable to determine whether the Agency is in breach of the settlement agreement regarding Complainant's TSP contributions. It is not clear that the review by Manager was correct and whether or not Complainant is owed money. It is clear that if the TSP contributions are incorrect, Complainant has not been "made whole" as required by the settlement agreement.

CONCLUSION

Accordingly, the Agency's finding that it is now in full compliance with the March 19, 2024 settlement agreement is REVERSED and the matter is REMANDED to the Agency for a supplemental investigation in accordance with the ORDER herein.

ORDER

Within sixty (60) days from the date this decision becomes final, the Agency is ORDERED to take the following action:

1. The Agency shall supplement the record with documentation showing the percentage TSP contribution Complainant had elected during the relevant pay period, and how the TSP contributions amounts listed on the pay stubs were calculated (to include the amount of his "basic pay" per pay period and how that was calculated).
2. The Agency shall issue a new final decision regarding whether it is in compliance with the March 19, 2024 settlement.

A copy of the Agency's supplemental investigation and new final decision shall be provided to the Compliance Officer as referenced herein.

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

December 9, 2024

Date