



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Alex W,<sup>1</sup>  
Complainant,

v.

Lloyd J. Austin III,  
Secretary,  
Department of Defense  
(Defense Health Agency),  
Agency.

Appeal No. 2024003973

Agency No. DHA-202304-0051

**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 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**

At the time of events giving rise to this complaint, Complainant worked as a Health System Specialist at the Agency's Landstuhl Regional Medical Center (LRMC) in Landstuhl, Germany.

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<sup>1</sup> 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. However, after a formal complaint was filed and a hearing requested, Complainant and the Agency entered into a settlement agreement on April 15, 2024 to resolve the matter. Subsequently, the assigned EEOC Administrative Judge dismissed this matter on April 18, 2024, pursuant to the settlement agreement reached by the parties. The settlement agreement provided, in pertinent part, that:

The Agency agrees to:

(a) Submit a helpdesk ticket to revise the Complainant's DPMAP elements within 30 calendar days of the NSA execution date in the following manner:

- i. Remove Element #4 (IDP) and #5 (DMHRSI & AATAPS Timecard) from 2024 DPMAP Appraisal and recalculate 2024 rating to reflect changes,
- ii. Remove Element #3 (IDP) from 2023 DPMAP Appraisal and recalculate 2023 rating to reflect changes, and
- iii. Remove Element #2 (IDP) and #4 (Finance and DTS) from 2022 DPMAP Appraisal and recalculate 2022 rating to reflect changes.

By letter to the Agency dated May 27, 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 adhere to any of the listed settlement provisions above. Complainant requests that the Agency comply with its agreed-upon promises.

In its May 29, 2024 FAD, the Agency indicated that it directed the Army Civilian Human Resources Agency ("CHRA," as reflected in the record, handles the Agency's human resource matters) HR Specialist to submit a ticket to Help Desk on April 18, 2024, requesting changes to Complainant's 2022, 2023, and 2024 Appraisals, per the EEOC settlement. The Agency noted that it "has no control on how long CHRA . . . takes to make corrections."

### CONTENTIONS ON APPEAL

Complainant reasserts his claim that the Agency has not carried out its promises as detailed in the settlement agreement. 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. 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, we find that the Agency has breached the settlement agreement. While the Agency has promised in the settlement agreement to submit a helpdesk ticket to revise Complainant's DPMAP elements, the Agency's response in this matter reflects that the responsibility of submitting a helpdesk ticket is actually delegated to CHRA. Although this procedural (technical) distinction is arguably small, this very well may be why there has been continued delay in revising Complainant's appraisal elements, and the Agency, therefore, is in breach of the settlement agreement. Further, the Agency is unable to at least produce a help desk ticket showing that the appraisal revisions are in process.

Under the Commission's regulations, a breach may be remedied by either ordering the Agency to undertake specific performance of the breached provision or reinstate the underlying complaint for processing. See 29 C.F.R. § 1614.504(c). Here, because Complainant has requested specific performance of the breached provisions at issue, we find that specific performance is the appropriate remedy.

### CONCLUSION

Accordingly, we REMAND this matter to the Agency for further processing in accordance with the Order below.

### ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency is ordered to take the following actions:

1. The Agency will ensure that a helpdesk ticket to revise Complainant's DPMAP elements has been submitted, as promised, requesting changes to Complainant's 2022, 2023, and 2024 Appraisals, per the EEOC settlement.
2. The Agency is further directed to submit documentation to the Commission that it has completed the ordered actions as set forth below in the section entitled "Implementation of the Commission's Decision."

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

January 22, 2025  
Date