



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

[REDACTED]
Ela O,¹
Complainant,

v.

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

Appeal No. 2024003974

Agency No. 4B-230-0246-22

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 21, 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 full-time level Q-02 T-6 Carrier Technician at the Agency's Virginia Beach Princess Anne Station in Virginia Beach, Virginia.

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 her 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 January 19, 2024 to resolve the matter. Subsequently, the assigned EEOC Administrative Judge dismissed this matter on January 22, 2024, pursuant to the settlement agreement reached by the parties. The settlement agreement provided, in pertinent part, that:

FIRST: The Postal Service agrees to issue a check made payable to [Complainant] in the amount of ONE HUNDRED FORTY THOUSAND DOLLARS (\$140,000), which represents compensatory damages for emotional pain and suffering. The Postal Service will make all reasonable efforts to issue this check within sixty (60) days of the date this Agreement is fully executed. The Postal Service will report this amount to the Internal Revenue Service on Form I099-MISC. The Postal Service makes no representation regarding the taxability of this payment.

SECOND: The Postal Service agrees to increase [Complainant's] step from a Level 4/Step BB to a Level 4/Step B in her current position as a Part-Time Regular Laborer Custodial at the Portsmouth, VA Post Office.

THIRD: The Postal Service agrees to restore one-hundred seventy-two (172) hours of sick leave and one-hundred seventy-two (172) hours of annual leave to [Complainant].

By e-mail to the Agency dated May 6, 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 "regarding the pay step-increase to [purportedly] offset the LWOP [Leave Without Pay] in the EEOC settlement agreement in EEOC 430-2023-00084X, Agency 4B-230-0246-22, the Agency has failed to fulfill this aspect of the agreement **within** the specified timeframe."

In its May 21, 2024 FAD, the Agency explained that it breached Complainant's settlement agreement when it failed to submit the adjustment to increase her Step Level from a Level 4/Step BB to a Level 4/Step B. However, the Agency determined that the breach of the settlement agreement has been cured.

The Agency noted that its Attorney of the Employment Law Office-East ("Agency Attorney") became aware on May 9, 2024 that Complainant's Step Level increase from a Level 4/BB to a Level 4/B had not been completed. Agency Attorney e-mailed the Human Resources Manager on May 9, 2024 to request that the Step Level increase from a Level 4/BB to a Level 4/B be processed immediately. The Agency also noted that on May 20, 2024, it received an e-mail from the Human Resource Shared Service Center Form 50 Team stating that Complainant's Step Level change from Level 4/BB to Level 4/B was completed on May 20, 2024, and back dated to January 27, 2024. The Agency further noted that on May 20, 2024, it reviewed Complainant's PS Form 50 which indicates that her Step Level was increased to Step Level 4/B on May 20, 2024, with a backdate effective date of January 27, 2024.

The Agency additionally indicated that in Complainant's e-mail correspondence on May 6, 2024, Complainant alleged new claims of discrimination in addition to her breach allegation. Specifically, Complainant alleged as follows:

On February 7th, 2024, I was offered a full-time maintenance position in the City, (...) of Virginia Beach and the offer was ultimately rescinded. On February 6th, 2024, I was offered a full-time maintenance position in the City of Chesapeake, and I was not chosen for the position because of the **forced outstanding LWOP that remains in my employment history**. On April 2nd I again was offered a position but due to the existing LWOP in my employment history I was not chosen for the position. On April 9th, 2024, I was again offered a full-time maintenance position in the City of Virginia Beach, and it is now May 6th and I have yet to receive any correspondence regarding this position. The settlement date was on January 4th, 2024.

The Agency explained that Complainant's new claims of non-selection for positions on February 6, 2024, February 7, 2024, April 2, 2024, and April 9, 2024 are being processed with Agency Case# 48-230-0098-24.

CONTENTIONS ON APPEAL

Complainant mainly reasserts her argument that she agreed to settle the present matter for a pay step-increase to offset LWOP she accumulated. In response, the Agency explained:

The fully executed settlement agreement entered into by the Parties (which is also signed by Complainant's representative) is plain and unambiguous on its face, and it clearly does not say anything about Complainant's LWOP. Indeed, the only leave referred to in the agreement is Complainant's sick leave and annual leave. Since there is no settlement term regarding Complainant's LWOP, and the Agency has already complied with all of the actual terms of agreement, the appeal should be denied.

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 any alleged breach was cured when Complainant's Step Level change from Level 4/BB to Level 4/B was completed on May 20, 2024, and back dated to January 27, 2024. Though no timeframe was specified in the January 19, 2024 agreement, previous Commission decisions have indicated that failure to satisfy a time frame specified in an agreement does not prevent a finding of substantial compliance, especially when all required actions were subsequently completed. See Lazarte v. Department of the Interior, EEOC Appeal No. 01954274 (April 25, 1996); Owens v. Department of the Army, EEOC Appeal No. 01955828 (July 1, 1996). Here, we find that the Agency's failure to immediately process Complainant's Step Level change does not preclude a finding of substantial compliance in this matter. Furthermore, because the January 19, 2024 settlement agreement did not include any provision for the offsetting of LWOP, Complainant is not entitled. Finally, Complainant has not shown that the Agency acted in bad faith.

CONCLUSION

Accordingly, we AFFIRM the Agency's finding of substantial 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

December 9, 2024
Date