



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

[REDACTED]
Louise S,¹
Complainant,

v.

Pete Buttigieg,
Secretary,
Department of Transportation
(Federal Aviation Administration),
Agency.

Appeal No. 2024004021

Agency No. 2023-29832-FAA-06

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 a January 29, 2024 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 find no Agency breach.

ISSUES PRESENTED

Whether the agency was in breach of the subject settlement agreement.

BACKGROUND

During the period at issue, Complainant worked as a Support Specialist at the Agency's Denver International Air Traffic Control Tower in Denver, Colorado.

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.

On January 29, 2024, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that the Agency would take the following affirmative obligation:

1.b. Approve a situational/ad-hoc telework agreement through January 1, 2026, within forty-five (45) calendar days of the date the Aggrieved submits the situational/ad-hoc agreement for approval.

By letter to the Agency dated April 2, 2024, Complainant alleged breach, and requested that the Agency implement the settlement agreement's terms. Specifically, alleged two breach allegations. First, Complainant claims that the Agency failed to provide "a work environment free of hostility, retaliation, harassment, increased scrutiny, change in work assignments and expectations, and discrimination. Second, Complainant claims that instead of denying her request to telework from 0600 to 0830 on April 1, 2024 for lack of prior approval, the Agency should have immediately approved the telework request.

In its May 21, 2024 final decision, the Agency found no breach. Regarding Complainant's first breach claim, the Agency determined that the matter was beyond the scope of the settlement agreement. Regarding Complainant's second breach claim, the Agency found that it had complied with the relevant provision of the settlement agreement.

CONTENTIONS ON APPEAL

On appeal, Complainant contends that, due to the unpredictable nature of her disability (proctalgia fugax), it was not feasible for her to have requested prior approval for her telework on April 1, 2024. Complainant maintains that the settlement agreement did not call for prior approval but rather required management to approve her for telework upon request or in "real time." Complainant asserts that the settlement agreement included a verbal guarantee from her second-level supervisor who had signed the settlement agreement that any request for telework on account of her disability would be approved.

Regarding the hostile work environment claim (first breach claim), Complainant argued that it was supported by preponderant evidence and that her first-line supervisor and acting first-line supervisor had stated that they would create a hostile work environment for Complainant and had done so continuously despite the execution of the settlement.

IN response, the Agency argues that Complainant's breach allegation was untimely. The Agency stated that the paragraph 1.b. of settlement agreement had only required management to execute an ad-hoc telework agreement with Complainant and that the Agency had done so. The Agency further stated that the settlement agreement did not contain a prohibition on harassment and further denied that it had created a hostile work environment.

STANDARD OF REVIEW

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).

ANALYSIS

First Breach Claim – Hostile Work Environment/Harassment

In the instant case, applying the plain meaning rule to the settlement agreement at issue, we find that the settlement agreement did not contain any language addressing or prohibiting a hostile work environment or harassment.

The settlement agreement expressly imposed four obligations on the Agency in paragraph 1.a. through paragraph 1.d. None of these mentioned the words "harassment" or "hostile work environment." Consequently, we concur with the Agency in that Complainant's first breach claim must fail because the Agency did not violate any obligation expressed within the four corners of the settlement agreement. Complainant's allegation of a hostile work environment constitute new and separate claims and she should contact an EEO Counselor if she wishes to pursue those matters.

Second Breach Claim – Denial of Telework Upon Request

As to Complainant's position, that her second-level manager verbally assured her that any request for telework based on her disability would be automatically approved in real-time or upon request, we find that this verbal guarantee is unenforceable. Such a guarantee was not included within the settlement agreement. Moreover, applying the plain meaning rule the settlement agreement, at paragraph 16., stated:

The Parties agree this Resolution Agreement sets forth all the terms and conditions of their Agreement and that no other promises, oral or written, have been made or relied upon in executing this Agreement.

In other words, Complainant agreed that the settlement agreement expressed the complete understanding between the parties and that she could not enforce oral promises outside of that which was written within the settlement agreement.

Additionally, paragraph 1.b. expressly required the Agency to enter with Complainant into an situational/ad-hoc telework agreement and it did so. The record contains the situational/ad-hoc telework agreement that was executed on January 26, 2024. Nothing in that situational/ad-hoc telework agreement or in the settlement agreement can be construed to require the Agency to authorize Complainant any and all telework, in real time or upon request. To the contrary, paragraph 6) of the situational/ad-hoc telework agreement specified that short-term variations to Complainant's telework schedule, such as the one Complainant requested on April 1, 2024, needed to be "mutually agreed to in advance by the employee and the manager."

We find that Complainant did not have her supervisor's advance mutual assent to work from 6:00 AM to 8:30 AM on April 1, 2024, as required by the situational/ad-hoc telework agreement that was incorporated by reference into the settlement agreement. Therefore, the Agency's refusal to credit Complainant for working for that period was not a breach of the settlement agreement.

CONCLUSION

The Agency's final decision finding that there was no breach of the settlement agreement is AFFIRMED.²

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>

² Because of our disposition of this case, we find it unnecessary to address whether the breach claim was untimely filed.

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 31, 2024
Date