



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

[REDACTED]
Marcel M,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2024004023

Agency No. 200P-0346-2021-104054

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 23, 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 reasons set forth herein, we AFFIRM the Agency's final decision finding no breach of the settlement agreement.

ISSUES PRESENTED

Whether the Agency's final decision properly found no breach of the settlement agreement.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Veterans Service Representative in Seattle, Washington.

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. In September 2023, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement contained, in pertinent part, the following provisions:

(2)(e) Agency agrees to code the period of time between August 1, 2021 to September 10, 2022 taken as leave without pay (LWOP) to paid administrative leave.²

On February 23, 2024, Complainant alleged that the Agency breached provision (2)(e), and requested that the Agency specifically implement its terms.

In its May 23, 2024, final decision, the Agency found no breach. The Agency reasoned that "[t]he Agency provided a copy of the corrected timecards which show the leave without pay being converted to administrative leave. The Agency also provided copies of the [Notification of Personnel Action Forms, SF-50s]..."

The instant appeal followed

CONTENTIONS ON APPEAL

Complainant filed various submissions in support of his appeal and reiterates that the Agency is in breach of provision (2)(e) of the settlement agreement.

In response, the Agency requests that we affirm its final decision finding no breach. The Agency sets forth that it completed the coding of all LWOP between August 1, 2021-September 10, 2022 to reflect a change to administrative leave. The Agency asserts that the change to the SF-50s was effectuated on April 16, 2024. The Agency further asserts that it corrected its timecards for Complainant to show the conversion to administrative leave for the specified period. Finally, the Agency sets forth that on or around July 19, 2024, it paid Complainant for the conversion to administrative leave for the

² The settlement agreement also contained a provision requiring the Agency to pay Complainant a lump sum of \$50,000 (provision (2)(a)). In addition, the settlement agreement provided that Complainant would resign from his position with the Agency (provision (2)(c)). These provisions are not at issue in the instant appeal.

specified period at issue. The Agency submits affidavits from management officials in support of its response brief.

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. (rev. 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).

The Agency is in substantial compliance with provision (2)(e) of the settlement agreement. The record contains copies of numerous SF-50s for Complainant reflecting that his LWOP during the period in question was cancelled.

Breach File at 12-20.³ The SF-50s were effectuated March 4, 2024. The record also contains copies of corrected Timesheet Summary forms for Complainant reflecting that on November 8, 2023, the Agency converted Complainant's LWOP to administrative leave for the period in question. Breach File at 22-96. The Agency submits, with its response brief, an affidavit from the Agency's Chief, Support Services Division for the Seattle Regional Benefit Office (Chief). Therein, she asserts that payment was released to Complainant's address of record on July 19, 2024, for the adjustments pertaining to Complainant's administrative leave.⁴ The Chief specifies the various deductions to Complainant's payment i.e. Retirement, Medicare, etc.

The settlement agreement does not expressly provide a specific time frame for the Agency to code Complainant's LWOP as administrative leave. Breach File at 120. In addition, the agreement does not expressly provide a specific time frame for the Agency to provide Complainant with the payment associated with converting his LWOP to administrative leave.⁵ Moreover, as set forth above, Complainant requested that the terms of the agreement be specifically implemented. Based on the foregoing, we find that the Agency is now in substantial compliance with provision (2)(e) of the agreement. Finally, to the extent Complainant may be requesting damages for any delay in the Agency executing this provision, the settlement agreement does not expressly provide for this remedy.

CONCLUSION

Accordingly, we AFFIRM the Agency's final decision finding no breach of the settlement agreement.

³ Our citations to the Breach File reference the page number of the pdf document before us on appeal.

⁴ The record also contains an email to Complainant dated July 19, 2024, from the Chief, Human Resources. Therein, the Human Resources Official informed Complainant that the check related to the coding of his administrative leave was being mailed to him on that date and provided him with instructions to follow in the event Complainant did not receive the check. Agency Response Brief Exhibit A.

⁵ While other provisions of the settlement agreement set forth specified timeframes, provision (2)(e) did not set forth a specified timeframe.

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

November 25, 2024
Date