



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

[REDACTED]
Milford R,¹
Complainant,

v.

Martin J. O'Malley,
Commissioner,
Social Security Administration,
Agency.

Appeal No. 2024004039

Agency No. DAL-23-0386

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) alleging a breach of a June 11, 2024 settlement agreement. The first notice to the Agency of the alleged breach was the instant appeal. The Agency therefore has not issued a final decision. However, as documented in its brief, the Agency states it was in compliance with the terms of the 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 breach.

ISSUES PRESENTED

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

BACKGROUND

During the relevant time, Complainant worked for the Agency as a Customer Service Representative, GS-08, in Bellaire, Texas.

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. After his formal complaint was investigated, Complainant requested a hearing before an EEOC Administrative Judge (AJ). Thereafter, both parties informed the AJ a settlement agreement had been reached, and the AJ therefore issued a dismissal of Complainant's request for hearing.

On June 11, 2024, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, within sixty (60) calendar days, that the Agency agreed to take the following affirmative actions:

1. Permit Complainant to telework five (5) days a week from the alternate duty station as identified in his telework agreement and in accordance with the terms of the telework agreement;
2. Restore 218 hours of leave as follows: 21.5 hours of LWOP, 8 hours advanced annual leave, 188.5 hours of advanced sick leave; and,
3. Pay \$5,000 to Complainant.

The settlement agreement informed Complainant of the process if Complainant believes the Agency has failed to comply with any term of the Settlement Agreement, in conjunction with the requirements of 29 C.F.R. § 1614.504. Per the settlement agreement, Complainant is assigned with notifying the Director of Equal Employment Opportunity (EEO Director), Office of Civil Rights and Equal Opportunity in writing within thirty calendar days of the date Complainant knew or should have known of the alleged noncompliance.

By an appeal to this Commission dated June 26, 2024, Complainant alleged that the Agency breached the settlement agreement, and requested that the Agency specifically implement its terms. The appeal to this Commission was the Agency's first notice of Complainant's breach allegation.

As the Agency's first notice of the breach allegation was this appeal, the Agency has not issued a final decision on the breach issue. Instead, the Agency submitted a brief on appeal as detailed below.

CONTENTIONS ON APPEAL

In his appeal, Complainant alleged that the Agency breached the terms of the settlement by reviewing of his EEOC activity, including emails and

documents he uploaded to the EEOC portal on or about May 13, 2024. Complainant alleges he was subjected to a Weingarten meeting on June 25, 2024, regarding potentially personal emails sent after working hours from the Complainant's Agency issued email address. Additionally, Complainant alleges the Agency was in breach when on June 25, 2024, he received a request from his manager asking him to please delete a personal email.

In response to his claim of breach, the Agency argued on appeal it was in compliance with the terms of the settlement agreement. On the contrary, the Agency maintains Complainant raises *new* claims of discrimination as delineated above, which were not a part of his settled EEO complaint. Additionally, the Agency argues by failing to notify the EEO Director of alleged breach, Complainant is in breach of the settlement agreement.

STANDARD OF REVIEW

The Agency's decision to dismiss a complaint is subject to de novo review by the Commission, which requires the Commission to examine the record without regard to the factual and legal determinations of the previous decision maker and issue its decision based on the Commission's own assessment of the record and its interpretation of the law. 29 C.F.R. § 1614.405(a). The Commission should construe the complaint in the light most favorable to the complainant and take the complaint's allegations as true. See Cobb v. Department of the Treasury, EEOC Request No. 05970077 (March 13, 1997). Thus, all reasonable inferences that may be drawn from the complaint's allegations must be made in favor of the complainant.

ANALYSIS

As an initial matter, we address Complainant's allegations do not relate to part of his prior formal complaint. Complainant instead seeks to raise new claims of discrimination. Specifically, Complainant asserts that he was subjected to discriminatory harassment based on his prior protected EEO activity when he was investigated for sending emails from his work address, as well as requested to delete certain emails. These claims are separate from Complainant's claims regarding his reasonable accommodation and occurred after settlement. Complainant is advised that if she wishes to pursue these additional allegations raised for the first time on appeal, she should initiate contact with an EEO Counselor. The Commission will not accept a new claim raised on appeal.

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 first address the Agency's arguments on notice. We agree with the Agency. Per the terms of the settlement agreement, Complainant was to notify the Agency in order to allow the Agency to rectify any breach and issued a final decision on the issue. Complainant failed to do so. Instead, Complainant filed the instant appeal without seeking recourse with the Agency. Now Complainant is seeking this Commission enforce the terms of the agreement against the Agency, when he failed to do so.

The Commission finds Complainant has not met his burden to establish that a breach of the settlement agreement has occurred. Complainant's brief on appeal reflects that none of the allegations raised by Complainant stem from his prior EEO complaint or the settlement itself. Complainant fails to even allege (a) how the Agency breached or (b) how the Agency has failed to execute the terms of the agreement. Complainant vaguely states "I do not believe that the Agency is operating in good faith to ensure that the settlement agreement is successful." Without more specificity, we cannot find the Agency is in breach, especially because the Agency has not had the opportunity to cure any alleged breach per the terms of the agreement.

CONCLUSION

Accordingly, we find no breach of the settlement agreement for the reasons discussed above.

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 27, 2024
Date