



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

[REDACTED]
Chrystal S.,¹
Complainant,

v.

David Bernhardt,
Secretary,
Department of the Interior
(Fish and Wildlife Service),
Agency.

Appeal No. 2019002579

Agency No. FWS-12-0267

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated December 13, 2018, finding that it was in compliance with the terms of a May 24, 2012 settlement agreement. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

During the relevant time, Complainant worked at the Agency's Division of Budget, Planning, and Financial Services facility in Atlanta, Georgia. Believing that she was subjected to unlawful discrimination, Complainant filed a formal EEO complaint.

On May 24, 2012, Complainant and the Agency entered into a settlement agreement to resolve the matter. The May 24, 2012 settlement agreement provided, in pertinent part, that:

- 3.(a) The Agency will amend Complainant's written performance appraisal for the 2010-2011 performance period from a "4.0" to "5". Complainant will receive the same benefits as all employees receiving a Level 5 rating within the Division of Budget, Planning, and Financial Services.

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.

The Agency will complete the actions in this Paragraph within thirty (30) days of the effective date of this Agreement.

- (b) No later than June 30, 2012, management will meet with Complainant to outline the duties, responsibilities, and expectations of the Lead Management Analyst. Within seven (7) days of the date that this meeting is held, [Employee B], [Employee H] and Complainant, along with other staff, as appropriate, will meet to clarify the Lead Management Analyst role.
- (c) Complainant's immediate supervisor will conduct weekly meeting[s] with Complainant beginning the week of May 28, 2012 through September 30, 2012. The weekly meeting may be extended beyond the end date, if mutually agreed upon by both parties.
- (d) Management will meet with Complainant to develop an Individual Development Plan (IDP) within thirty (30) days of the effective date of this Agreement. IDP will include at least forty (40) hours of professional development training within the next twelve (12) month[s].

Complainant asserted that on July 12, 2018, she was issued a Notice of Proposed Removal and placed on administrative leave. Complainant's Lead Management Analyst duties were reassigned to her colleagues. The Notice of Proposed Removal was rescinded on August 30, 2018. However, Complainant's Lead Management Analyst duties and responsibilities were not restored. Subsequently, by letter to the Agency dated September 26, 2018, Complainant alleged breach of the May 24, 2012 settlement agreement, and requested that the Agency specifically implement its terms.

In its December 13, 2018 decision, the Agency found no breach. Citing the Commission's prior decision on the Agency's Petition for Clarification², the Agency reasoned that it had already provided sufficient proof of compliance with the order to specifically comply with the agreement. Therefore, the Agency "fail[ed] to see how any changes made to those duties approximately five years after . . . constitute a breach." In closing, the Agency believed Complainant was raising a new claim, separate from the 2012 agreement, and noted that Complainant would need to file a new complaint to obtain a remedy.

Complainant filed the instant appeal. She explains that after alleging breach in September 2018, her first-line supervisor sent her a FY 2019 Employee Performance Appraisal Plan (EPAP) that neither included her Lead Management Analyst title, nor the accompanying duties. Instead, the EPAP contained travel-related duties and responsibilities.

² Complainant v. Dep't of Interior (Fish and Wildlife Service), EEOC Petition No. 0420150001 (July 28, 2016).

According to Complainant, after she explained to the supervisor that her Lead Management Analyst position duties were part of an earlier settlement agreement, he said he was mistaken and resubmitted an updated FY 2019 EPAP reflecting Lead Management Analyst duties as set forth in prior EPAPs. Nonetheless, Complainant contends she is not performing the Lead Management Analyst position duties. In Complainant's opinion, the updated FY2019 was simply "a paperwork drill or sham" to appease her. Complainant asserts that in reality, she is performing lower level travel duties that are outside of her position description. Complainant asserts that approximately eighty percent of her Lead Management Analyst duties are still being performed by her colleagues.

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. See 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, Complainant contends that the Agency's removal of her Lead Management Analyst duties, in 2018, breaches the May 24, 2012 settlement agreement. A review of the settlement language reflects actions to be taken by the Agency in 2012. Further, the Commission has previously determined that sufficient evidence was provided by the Agency to establish that Complainant was placed in the position, was offered the opportunity to meet with another supervisor, and offered the requisite training. See EEOC Petition No. 0420150001 (July 28, 2016). The Agency was found to have specifically performed its obligations under the agreement. See id.

Moreover, Complainant contends on appeal that the agreement did not include a time frame, regarding how long she would perform the Lead Management Analyst position, and she would not have entered the agreement if a time was specified. We find Complainant's reasoning is flawed. When an employee bargains for a specific position, but fails to request terms as to length of service in the position, the agency is not obligated to retain the employee in that position indefinitely. See e.g., Donelan v. U.S. Postal Service, EEOC Appeal No. 01956930 (March 4, 1997) (citing Parker v. Department of Defense, EEOC Request No. 05910576 (August 29, 1991)).

As noted by the Agency, we find Complainant has raised a new claim of discrimination. Complainant believes she has been retaliated against when her Lead Management Analyst duties were taken from her and she was assigned lower level responsibilities. If Complainant wishes to pursue her claims involving the Agency's subsequent actions, she must initiate contact with an EEO Counselor thereon.

CONCLUSION

The Agency's final decision was proper and is hereby **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 his or her 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

March 10, 2020

Date