



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

[REDACTED]  
Terrance A.,<sup>1</sup>  
Complainant,

v.

Steven T. Mnuchin,  
Secretary,  
Department of the Treasury,  
Agency.

Appeal No. 2019005518

Agency Nos. TIGTA-18-0349-F; TIGTA-19-0197-F

EEOC Hearing No. 570-2019-00149X

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated July 24, 2019, 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.

**BACKGROUND**

At the time of events giving rise to this compliance action, Complainant worked as an Assistant Special Agent at the Agency's Office of the Treasury Inspector General for Tax Administration (TIGTA) facility in Washington, D.C.

On April 24, 2019, Complainant and the Agency entered into a settlement agreement to resolve several EEO matters. The settlement agreement provided, in pertinent part, that:

- (1) The Complainant agrees that his execution of this Settlement Agreement operates as his complete and voluntary withdrawal, with prejudice, of the appeals and claims in the following administrative proceedings: Complainant v. Department

---

<sup>1</sup> 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.

of the Treasury, EEOC No 570-2019-00149X and TD Case No. TIGTA-19-0197-F, and all claims raised, or which could have been raised therein.

...

- (3a) Complainant shall have priority consideration for any acting assignment for Special Agent in Charge (SAC) or Deputy Special Agent in Charge (DSAC) positions that become available in the 48 months after execution of this Agreement. An acting assignment will last no more than one week to 30 calendar days. The Agency commits to giving Complainant this priority consideration for no more than four acting assignments in the 48 months after execution of this Agreement. Acting SAC/DSAC opportunities that are declined by Complainant will not count towards the four acting assignments in the 48 months after execution of this Agreement.

...

- (3i) Complainant will be considered for Acting SAC-Operations opportunities in the normal course of business, consistent with workload and schedules.

...

- (10) This Agreement represents the parties' entire agreement. No other provisions or amendments thereto shall have any force or effect unless set forth in writing and signed and dated by all parties or their designees and attached to this Agreement. By executing this Agreement, the parties further acknowledge: that they each understand its terms; that such terms are acceptable to each; that there are no additional obligations, either written or oral, to be performed by either party beyond those set forth herein; that such terms are final and binding as to all claims that have been brought or could have been advanced on behalf of the Complainant against TIGTA or the Department of the Treasury; and that the parties voluntarily enter into this Agreement without duress, coercion, or undue influence.

By letters to the Agency dated May 21, 2019, June 5, 2019, and June 18, 2019, Complainant alleged that the Agency was in breach of the settlement agreement provision 3a and 3i. Specifically, Complainant alleged that the Agency failed to provide priority consideration for acting assignments for Special Agent in Charge (SAC) or Deputy Special Agent (DSAC) positions that became available after the execution of the Agreement and did not consider him for Acting SAC-Operations opportunities in the normal course of business, consistent with workload and schedules.

Complainant identified the following instances of his being bypassed for consideration that occurred after the execution of the Agreement.

1. On May 6, 2019, Complainant learned that another employee would be reporting to TIGTA Headquarters to serve on a detail/shadowing assignment as the Acting SAC, to begin in June. This opportunity was not offered to Complainant.
2. From May 6-18, 2019, another individual served as the Acting SAC – Northeastern Field Division, an opportunity not offered to Complainant.
3. In May 2019, Complainant was informed by the SAC that in order to act in his absence, he needed to be in the office rather than teleworking. Complainant was told that he if he chose to telework, another employee “needs to act.” Complainant believed other managers were allowed to act while teleworking.
4. On May 20, 2019, the SAC took sick leave for one day and designated another employee as his Acting SAC, although Complainant was in the office and available to act.
5. From May 20-25, 2019, another individual served as the Acting SAC – Northeastern Field Division, an opportunity not offered to Complainant.
6. On June 3, 2019, the SAC designated another employee as his Acting SAC (for that one day) without first offering the opportunity to Complainant.

The Agency conducted an inquiry into Complainant’s allegations. On July 23, 2019, the Agency issued its final decision concluding no breach of the settlement agreement had occurred. It provided the following justifications for this conclusion:

- Allegation #1. The Agency concluded that this was not a detail as contemplated by the terms of the agreement. Instead, an employee from the field who was in Washington for a few days shadowed the SAC for several hours on one day during the week of June 3.
- Allegation #2. The Agency asserts this detail assignment was made prior to the execution of the Agreement. Complainant disputes this by noting the Agency’s “CRIMES” data base shows the assignment was made after the settlement agreement. However, the Agency produced a March 26 email informing staff of who would be acting.
- Allegation #3. The SAC offered Complainant the opportunity to be acting on May 10, but he chose to telework instead. The SAC indicated he required all his subordinate managers to act from headquarters or a field office, but never from home. He stated the those who worked in the field (outside of D.C.) reported to their local offices when they were acting.

- Allegation #4. The Agency reasoned that this was a last-minute acting assignment resulting from the SAC being on sick leave for one day only. The Agency reasoned that this was not the type of event contemplated by the agreement as it referenced acting assignments of 1 week to 30 days.
- Allegation #5. Same rationale as that for Allegation #2 above.
- Allegation #6. Another last-minute one day acting opportunity.

The Agency also found that Complainant did act for the SAC for the week of June 10, 2019.

This appeal followed. On appeal, Complainant noted that the Department in its decision admitted that the “precise meaning” of the two disputed provisions is “ambiguous.” Complainant asks that the Agency decision be reversed and that the Agency be required to abide by the provisions. He stated that he provided documentary evidence to support his claims the Agency violated the Agreement by showing there were acting assignments, post-execution of the Agreement, which were not provided to Complainant.

### 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).

Here, however, we find that critical language in the settlement agreement is too vague to be enforced. The Agency concedes in its final decision that “the precise meaning of the two [settlement agreement] provisions at issue, paragraphs 3(a) and 3(i), is ambiguous.” We agree. Most critically, there is no definition for what was meant by the term “priority consideration” in paragraph 3(a). Much of the Agency’s justification for its actions was that Complainant was treated in the same manner as the other three similarly situated managers considered for acting assignments. Complainant, on the other hand, seems to argue that he was entitled for more favored treatment. In addition, in paragraph 3(i), there is no definition for the phrase “in the normal course of business, consistent with workload and schedules.”

It is very unclear what this means and there are numerous disputes between the parties about what sort of details are contemplated under the agreement and what are not. The Commission has previously held that a binding settlement agreement requires a contemporaneous meeting of the minds. Brown v. Department of Defense, EEOC Request No. 05940628 (November 3, 1994); Mullen v. Department of the Navy, EEOC Request No. 05890349 (May 18, 1989). Due to the vagueness and lack of meeting of the minds, the Commission determines that the settlement agreement in this case is unenforceable and void. The Agency shall be ordered to reinstate the settled matter from the point processing had ceased.

### CONCLUSION

We REVERSE the Agency's decision and REMAND the matter to the Agency to reinstate Complainant's settled EEO matter from the point where processing had ceased.

### ORDER

The Agency shall reinstate Complainant's settled EEO matter from the point processing ceased, in accordance with 29 C.F.R. Part 1614. The Agency shall acknowledge to Complainant that it has reinstated processing of the settled EEO matter within 30 days of the date this decision is issued. A copy of the Agency's letter to Complainant resuming processing of the settled EEO matter shall be sent to the Compliance Officer referenced below.

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0610)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

January 24, 2020  
Date