



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

[REDACTED]
Otto D.,¹
Complainant,

v.

William P. Barr,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Appeal No. 2020005445

Agency No. FBI-2019-00205

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated August 26, 2020, finding that it was in compliance with the terms of an August 12, 2019 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 period at issue, Complainant worked for the Agency in Manassas, Virginia.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On August 12, 2019, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (1) Within the next two weeks, Information Management Division (IMD) will facilitate a contact in the Washington Field Office that Complainant can contact with questions about job openings in the [redacted] office.

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.

- (2) Complainant will be permitted to begin his work day between 4:00 p.m. to 6:30 p.m. for an eight (8) hour day.
- (3) Complainant will be permitted to take one Family [&] Medical Leave Act (FMLA) day per week.
- (4) Complainant may take an extended lunch break, and will extend the workday to accommodate the extra time taken over half (1/2) hour lunch break.
- (5) Until November 30, 2019, Complainant will not be available for traditional team lead activities, but will focus on strengthening his skill set. This agreement will be in place until November 30, 2019.

By letter to the Agency dated April 13, 2020, Complainant alleged breach, and requested that the Agency implement the terms of the subject agreement. Specifically, Complainant alleged that the Agency failed to remove a Letter or Requirement (LOR), a negative Performance Appraisal Report (PAR), and Performance Improvement Plan (PIP) from Complainant's official record.

In its August 26, 2020 final decision, the Agency concluded that the removal of the LOR, PAR, and PIP from Complainant's official record were not affirmative Agency obligations expressly memorialized in the subject agreement.

The instant appeal followed. In his appeal, Complainant recounts the underlying EEO complaint and claims, along with the settlement agreement discussions.

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).

In the instant case, one of Complainant's assertions is that, during mediation discussions, the removal of the LOR, PAR, and PIP from Complainant's record was agreed to.

However, despite any conversation relating to these matters during mediation, the executed settlement agreement does not reflect any agreement regarding the removal of the LOR, PAR, and PIP from Complainant's record. In fact, the settlement agreement does not reference the LOR, PAR, and PIP at all.

The subject agreement instead addressed flexibility for Complainant to begin his shift between 4:30 p.m. and 6:30 p.m., the usage of one FMLA day each week, and the ability to extend his lunch break and make up the time. In his April 2020 letter, Complainant asserts that he was forced to take 200 hours of personal and FMLA leave, when he could have been allowed a flexible or part-time work schedule. The settlement agreement does not discuss a flexible or part-time schedule. Complainant has not stated or demonstrated that any of the terms of the settlement agreement were breached. If Complainant believes that he is being subjected to acts of discrimination independent of the Agency obligations identified in the subject agreement, he is advised to pursue the EEO complaint process on such matters.

We AFFIRM the Agency's decision finding that the Agency did not breach the settlement agreement.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the 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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>.

Alternatively, complainant can submit his or her 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, 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 his or her 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(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

December 9, 2020
Date