



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

[REDACTED]  
Manuel R.,<sup>1</sup>  
Complainant,

v.

Dr. Mark T. Esper,  
Secretary,  
Department of Defense  
(Defense Contract Audit Agency),  
Agency.

Appeal No. 2020002558

Agency No. DCAA-CASE-NE14-005

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated January 31, 2020, finding that it was in compliance with the terms of a September 16, 2016 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 as a Program Manager with Operations, Workload & Analysis Division (OWD) in Greenville, Texas.

Believing that the Agency subjected him to unlawful employment discrimination, Complainant contacted an Agency EEO counselor to initiate the EEO complaint process.

On September 16, 2016, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that the Agency would take the following action:

- (c) Submit an SF-52 changing Complainant's duty station from Dallas, TX, to Greenville, TX.

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<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.

By letter to the Agency dated January 24, 2020, Complainant alleged breach of Section (c). Specifically, Complainant alleged that the Agency notified him of an offer to rotate him from his current position and duty station. Complainant was given an option of three duty stations, located in upstate New York, in Long Island, New York, or a two-year temporary position in Sparks, Nevada.

In its January 31, 2020 decision, the Agency found no breach. On October 2, 2016, the Agency processed Complainant's SF-50 Notification of Personnel Action which changed Complainant's duty station to Greenville, Texas, in compliance with Section (c).

On appeal, Complainant argues that there was nothing in the four corners of the subject agreement to indicate that his duty station would be rotated more than 900 miles away from his home. Complainant asserts that, while the agreement was silent regarding the possibility of future reassignment, the Commission considers whether the Agency acts in good faith. Complainant argues that he did not acknowledge that the change in duty station would not be permanent. Complainant states that he had a reasonable expectation, based on his reading of the agreement and twenty years of rotations, that his future duty stations would be in Greenville, Texas, or within a reasonable commuting distance.

### 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, the Agency complied with Section (c) of the September 16, 2016 agreement. That provision states that the Agency would, "[s]ubmit an SF-52 changing Complainant's duty station from Dallas, TX, to Greenville, TX." On October 2, 2016, the Agency processed the SF-50 changing Complainant's duty station, satisfying Section (c). It was not until over three years later, in January 2020, that the Agency attempted to again change Complainant's duty station.

On appeal, Complainant states that he "did not necessarily expect that [his] duty station would remain in Greenville, Texas for the rest of [his] career.

However, [he] believed then and still believes that it was a reasonable expectation for my duty station to remain reasonably close to Greenville, Texas.” The settlement agreement, however is silent as to if, when, or where a future reassignment of duty station might occur. Complainant also states that his duty station had been rotated repeatedly over a 20-year period. The Agency did not attempt to change Complainant’s duty station for almost three and one-half years after the execution of the agreement. The Agency left Complainant at the Greenville duty station for a reasonable amount of time. Complainant acknowledges that he did not think that his Greenville, Texas duty station would be permanent. Complainant has not established that the Agency acted in bad faith in its decision to change his duty station, more than three years after the execution of the agreement.

### CONCLUSION

We AFFIRM the Agency’s finding that there was no breach of the settlement agreement.<sup>2</sup>

### 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>.

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<sup>2</sup> If Complainant believes current moves to change his duty station are discriminatory or retaliatory, he should seek EEO counseling to begin the process of filing a new complaint.

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)

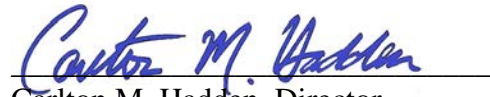
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

January 13, 2021

Date