



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

[REDACTED]  
Maximo S.,<sup>1</sup>  
Complainant,

v.

Steven T. Mnuchin,  
Secretary,  
Department of the Treasury  
(Internal Revenue Service),  
Agency.

Appeal No. 2020002797

Hearing No. 530-2018-00382X

Agency Nos. IRS-17-0175-F; IRS-19-1461-F

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated January 17, 2020, finding that it was in compliance with the terms of a December 5, 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 relevant period, Complainant was an applicant for Agency employment and was not selected for two positions for which he applied. Complainant subsequently filed two EEO complaints (identified as Agency Nos. IRS-17-0175-F and IRS-19-1461-F), one complaint for each non-selection.

In his first complaint, filed on May 27, 2017, Complainant claimed that he was discriminated against based on age, race, color, sex, and disability when, on or about November 10, 2016, he was not selected for the position of Internal Revenue Agent under Vacancy Announcement No.

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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.

16CS5-SBX0112-0512-5/7-GL. An investigation was conducted into his claims,<sup>2</sup> and Complainant requested a hearing with an EEOC Administrative Judge (AJ). During the hearing process, Complainant and the Agency entered into protracted settlement discussions spanning over a seven-month period, with multiple drafts of a potential agreement being exchanged between the parties. Eventually, these efforts resulted in the signed December 5, 2019 settlement agreement.

While the settlement discussions were occurring, Complainant filed his second EEO complaint on November 26, 2019, claiming that the Agency discriminated against him based on age, race, disability, parental status, and in reprisal for prior protected EEO activity when, on September 9, 2019, he was not selected for the position of Internal Revenue Agent advertised under Vacancy Announcement No. 19CS5-SBX0012-512-7/11-GO.

The December 5, 2019 settlement agreement contained, in pertinent part, the following provisions:

In full and complete settlement of the formal EEO complaint [Complainant] filed on May 27, 2017 (Agency No. IRS-17-0175-F, EEOC Docket No. 530-2018-00382X), and of all other matters related to or arising out of Complainant's application(s) for employment with the Internal Revenue Service (Agency) that arose on or before the date Complainant signs this Settlement Agreement, whether or not yet filed, the Agency and Complainant agree as follows:

1. The Agency agrees to provide the Complainant with a letter confirming the Complainant's application status and placement on the Best Qualified List (BQL) for Vacancy Announcement 16CS5-SBX0112-0512-57-GL in 2016 (see Attachment A).
2. The Complainant agrees:
  - a. that he waives his right to challenge or appeal the Agency's proper implementation of the provisions of paragraph 1 above.

It is noted that while the settlement agreement specifically addressed the resolution of Complainant's May 2017 first EEO complaint, it included language that it was also settling "all other matters related to or arising out of Complainant's applications(s) for employment with the Agency that arose on or before the date Complainant sign[ed] the settlement agreement." Consequently, Complainant's second complaint, filed in November 2019, was within the scope of the settlement agreement because it was filed before Complainant signed the settlement agreement on December 5, 2019. As such, this second complaint was also considered as settled.

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<sup>2</sup> The record indicates that Complainant did not complete or submit an affidavit.

However, on January 7, 2020, Complainant emailed the Agency requesting that his first complaint be reinstated from the point processing ceased and indicating he sought to withdraw from the December 5, 2019 settlement agreement. Complainant alleged that the Agency deceived him by providing misinformation which caused him to sign the agreement under duress. Complainant further explained in a January 14, 2020 email that he had major dental work in 2019 and he suffered “symptoms of mental confusion, numbness, muscle weakness, and some trouble speaking.” Complainant indicated that his doctor believed that he had a stroke. Complainant also stated that he had informed the Agency that he “did not want to pursue [his] EEO case any further because of complications from major dental problems [he] was having.” Complainant indicated that he was “confused” and felt “pressured” by the Agency to sign the settlement agreement because if he did not sign the agreement, he could not afford legal representation if he proceeded with the hearing. Finally, Complainant indicated that he did not read the final settlement agreement before he signed it.

In its January 17, 2020 final decision,<sup>3</sup> the Agency found no grounds to void the settlement agreement signed on December 5, 2019, which became effective, per the terms of the agreement, on December 12, 2019.<sup>4</sup> Specifically, the Agency determined that there was no evidence of misrepresentation, coercion, or duress to void the settlement agreement.

The instant appeal followed.

### ANALYSIS

#### ***Older Workers Benefit Protection Act***

The complaints resolved involved, in part, allegations of age discrimination. As a result, the Older Workers Benefit Protection Act (“OWBPA”) applied to the settlement agreement at issue here. The OWBPA amended the ADEA, effective October 16, 1990, and provides the minimum requirements for waiver of ADEA claims. Juhola v. Department of the Army, EEOC Appeal No. 01934032 (June 30, 1994). To meet the standards of the OWBPA, a waiver is not considered knowing and voluntary unless, at a minimum: (1) the waiver is clearly written from the viewpoint of the complainant; (2) the waiver specifically refers to rights or claims under the ADEA; (3) the complainant does not waive rights or claims arising following execution of the waiver; (4) valuable consideration is given in exchange for the waiver; (5) the Complainant is advised in writing to consult with an attorney prior to executing the agreement; and (6) the complainant is given a “reasonable” period of time in which to consider the agreement. Id. (citing 29 U.S.C. §626(0(2))).

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<sup>3</sup> The Agency covered both formal complaints in the final decision.

<sup>4</sup> Provision 10 in the settlement agreement provided that Complainant had up to seven days to revoke the agreement after signing.

Here, because Complainant raised age as one of his bases of discrimination, we must review the OWBPA provisions in the settlement agreement which are identified in Provision 6 of the settlement agreement. Our review of Provision 6 of the settlement agreement indicates that the agreement specifically and clearly provided that Complainant was waiving his rights or claims under the ADEA. Furthermore, Provision 6 notifies Complainant of his right to consult with an attorney prior to executing the settlement agreement, and Complainant did not waive his rights or claims arising subsequent to the execution of the agreement. Additionally, the Agency provided valuable consideration in exchange for the waiver. In this case, Complainant waived his right to further prosecute his formal complaint, and in exchange, the Agency included a letter attached to the settlement agreement confirming Complainant's application status and placement on the Best Qualified List. We also find that Complainant was provided a reasonable period (several months) to consider the settlement agreement and he actively participated in the negotiations that were overseen by an EEOC AJ. Therefore, we find that the waiver requirements of the OWBPA were met by the settlement agreement.

### ***Coercion or Duress***

If coercion, misrepresentation, misinterpretation, or mistake, occur during the formation of the contract, assent to the agreement is impossible, and the Commission will find the contract void. See Shuman v. Dep't of the Navy, EEOC Request No. 05900744 (July 20, 1990). The Commission examines coercion claims with close scrutiny. The party raising the defense of coercion must show that there was an improper threat of sufficient gravity to induce assent to the agreement and that the assent was in fact induced by the threat. Such a threat may be expressed, implied or inferred from words or conduct, and must convey an intention to cause harm or loss. A Complainant's bare assertions will not justify a finding of coercion. Lenihan v. Dep't of the Navy, EEOC Request No. 05960605 (December 5, 1995).

In the instant case, Complainant asserts the Agency deceived him, provided misinformation, and coerced him into signing the settlement agreement. However, Complainant has not articulated any conduct that reflects that he was induced to sign the agreement because he was threatened with harm or loss. Complainant does not specify what misinformation he allegedly received by the Agency. The record indicates that the Agency informed Complainant of deadlines to file information requested by the Agency and the AJ. The record further reflects that the Agency responded to Complainant's concerns and revised the letter and settlement agreement to Complainant's satisfaction. Therefore, the Commission determines that Complainant has not met his burden of establishing coercion.

To the extent that Complainant claims that he was under duress because of medical reasons, Complainant provides no evidence, aside from his own statement, that he was incapacitated or mentally deficient at the time he signed the settlement agreement. Complainant does not state when he had the dental procedure. Instead, Complainant seems dissatisfied with the agreement. We note that the terms of the settlement agreement would prevent Complainant from pursuing his second complaint (another non-selection) through the EEO process.

A settlement agreement made in good faith and otherwise valid will not be set aside simply because it appears that one of the parties made a bad bargain. See Miller v. Dep't of the Treasury, EEOC Request No. 05960622 (December 5, 1997). Therefore, Complainant has not provided any evidence which would indicate that he was coerced into signing the final version of the agreement given that the Agency provided him a copy of the agreement in October 2019 and Complainant did not sign the agreement until December 2019. Additionally, the record supports that the Agency's correspondence with Complainant regarding the settlement agreement was overseen by two EEOC AJs. In sum, we find that there is no indication that Complainant signed the subject settlement agreement under duress.

### CONCLUSION

Accordingly, the Commission AFFIRMS the final Agency decision for the reasons set forth in this decision.

### 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)

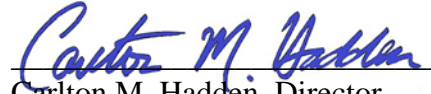
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

  
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Carlton M. Hadden, Director  
Office of Federal Operations

November 23, 2020

Date