



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

[REDACTED]
Season H.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs
(Veterans Health Administration),
Agency.

Appeal No. 2020000677

Agency No. 2003-0502-2019103049

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency decision, dated August 29, 2019, finding that it was in compliance with the terms of a July 3, 2019 settlement agreement. The Commission accepts the appeal. 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 as a Housekeeping Aid at the Veterans Affairs Medical Center (VAMC) in Alexandria, Louisiana. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process.

On July 3, 2019, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement contained, in pertinent part, the following provisions:

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. Agency Obligations

...

- (a) Convert 272 hours of Leave Without Pay taken from September 10, 2018 to October 26, 2018 to Advanced Sick Leave within 30 calendar days of execution of this agreement.
- (b) Payment of lump sum amount of three thousand two hundred forty-four dollars and ninety-six cents (\$3,244.96) to be initiated 30 calendar days upon execution of this agreement.

By letter to the Agency dated August 7, 2019, Complainant alleged breach, and requested that the Agency specifically implement the terms of the subject agreement. Specifically, Complainant contended that she entered the agreement “on the basis of not having to reimburse any of the time back and my time is now being taken.” According to Complainant, while she was paid for the time, the Agency is now “making me pay the time back from my sick leave.”

In its August 29, 2019 decision, the Agency found no breach. The Agency stated that attendance records and Leave and Earnings Statements show that 272 hours were converted as set forth in provision 2(a). Further, to the extent that Complainant believed she was to be paid leave for that time, the Agency noted that it was not included in the settlement agreement and Office of Personnel Management (OPM) regulations provide that Advanced Sick Leave may be liquidated by subsequently earning Sick Leave, by a charge against Annual Leave, or by refund upon separation. Regarding 2(b), the Agency stated that Complainant was paid \$3,244.96 on July 15, 2019.

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, although she does not submit arguments or a statement on appeal, Complainant has provided copies of an email exchange that occurred in the days before the execution of the agreement, as well as another exchange from the day before she alleged breach. The Agency offered to convert Complainant's LWOP to Advanced Sick Leave and reimburse her for the time used for childbirth and recovery. Complainant was amenable to the offer and replied "as long as I will not have to pay back" The negotiations continued regarding settlement terms until an agreement, as set forth above, was reached on July 3, 2019.

Following the execution of the agreement, in an August 5, 2019 email, Complainant told the EEO office that "for [the] past two pay periods my sick leave has been taken and I was told I would not have to pay back any of the time that I was given. . . ." In response, the EEO office explained that the monies Complainant received from the agreement was the "time" she would have gotten if her Advanced Sick Leave was initially approved. However, the usage of Sick Leave still needed to be reflected on leave usage records. The Agency explained to Complainant: "You aren't paying anything back, you're being made whole for not getting Advanced Sick Leave the first time"

In response to the appeal, the Agency maintains that it properly processed the conversion of 272 hours of LWOP to Advanced Sick Leave and Complainant's belief, that she was to be paid leave, is not reflected in the agreement.

A review of the record reflects the Agency's compliance. A screen-shot of a "Certified Payment Voucher Screen" shows a payment of \$3,244.96 was made to Complainant on July 15, 2019, in accordance with its obligations under provision 2(a). With respect to 2(b), a collection of time sheet summaries, for pay periods 18, 19, and 20 of 2018 reflect an "Adj. Forward" of 240 hours of Advanced Sick Leave, as well as the progressive use of such Advanced Sick Leave during each week. Each instance was accompanied by the notation "Settlement agreement – signed 7/3/19 per email dated 7/9/19 from payroll." Complainant appears to be under the impression that rather than simply converting the LWOP hours to Advanced Sick Leave, she was entitled to an *additional* amount of Advanced Sick Leave for future use. Such term, however, is not reflected in the agreement. What Complainant views as the "taking" of her leave or "pay back", is simply the execution of the agreed to "conver[sion] of LWOP . . . to Advanced Sick Leave." Therefore, we find the Agency's decision finding no breach was proper.

CONCLUSION

The Agency's decision finding no breach of the subject settlement agreement is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL

RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a 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).

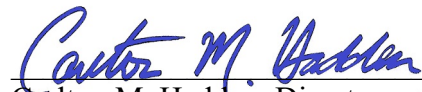
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

April 19, 2021
Date