



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

[REDACTED]  
Mike W.,<sup>1</sup>  
Complainant,

v.

Gloria D. Steele,  
Acting Administrator,  
Agency for International Development (USAID),  
Agency.

Appeal No. 2021000896

Agency No. OCRD-008-19-F

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated October 19, 2020, 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; 1614.405; and 1614.504(b).

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Foreign Service International Educational Development Officer (Backstop 60 Education Officer), FS-4, at an Agency facility overseas in Amman, Jordan.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Equal Employment Opportunity (EEO) Counselor to initiate the EEO complaint process. Subsequently, he filed a formal EEO complaint alleging that the Agency subjected him to hostile work environment harassment based on disability (Psoriatic Arthritis and Traumatic Brain Injury) and reprisal for prior EEO activity, which the Agency docketed as Agency No. OCRD-008-19-F.

On October 7, 2019, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part:

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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.

- (4)(c) **DISABILITY RETIREMENT.** The Agency agrees to support and process the Employee's September/October 2019 disability retirement application in a timely manner, including providing necessary documentation. Agreed language for the Superior Officer's Statement (DS 5023) is attached to this agreement as Exhibit A and will be signed within three days of the effective date of this agreement. The Agency agrees to complete any future disability retirement forms (including those related to the application's appeal or reconsideration) required by the State Department, the Office of Personnel Management, other agencies, or others, in a manner affirming that the Employee was removed based on medical inability to perform.

The Employee is eligible to apply for health insurance through temporary continuation of coverage (TCC) if he complies with the instructions provided by USAID/[Human Capital and Talent Management]. The Employee understands that the Agency is not responsible for the ultimate approval or denial of his disability retirement application.

If the USAID [Office of Civil Rights and Diversity] Director or the EEOC finds that the Agency violates this provision, the Employee retains the right (i) to apply for or accept any position at USAID under any hiring mechanism at any time and (ii) to resume any claims, demands, complaints, or causes of action, which Employee has or may have, arising from the Employee's employment with USAID, including, but not limited to, allegations raised in OCRD-008-19-F-008.

By letter to the Agency dated September 4, 2020, Complainant alleged that the Agency was in breach of the settlement agreement and requested that he be compensated for harm due to delay and initial denial of his disability retirement application. Specifically, Complainant alleged that the Agency failed to support his disability retirement application. Complainant alleged that the Agency (1) failed to notify him of the proper eligibility requirements for disability retirement for the Foreign Service Pension System and (2) failed to exhaust the reasonable accommodation process.

Complainant stated that the Agency did not inform him that his medical condition would be reviewed based on the standard of whether he was "totally disabled or incapacitated for useful and efficient service to the U.S. Government" so his treating physician and superior officer's statement opined on whether he could perform the essential functions of his position. Complainant stated that this lack of information led to his disqualification. Further, Complainant alleged that the Agency failed to offer him reassignment as an accommodation of last resort prior to separation for medical inability to perform his position. Complainant stated that the Agency should have known that failure to offer reassignment or affirmatively determine that it would not have been an effective accommodation could prevent approval of his disability retirement

application. Complainant stated that exhausting the reasonable accommodation process is a prerequisite to disability retirement because the standard is “totally disabled.” Complainant stated that the Agency’s noncompliance has caused a six-month delay on final adjudication of his disability retirement application. Complainant stated that he has not received a final decision, but he submitted his September 2020 allegation of noncompliance “out of an abundance of caution.” (Complainant stated that the Agency submitted his disability retirement application to the State Department on December 26, 2019, he received a denial letter dated March 21, 2020, and he requested reconsideration on June 8, 2020.)

In its October 19, 2020 final decision, the Agency concluded that it complied with the settlement agreement, including provision (4)(c) as written. The Agency stated Complainant is attempting to go beyond the four corners of the settlement agreement. The Agency stated that it was not responsible for reviewing and assessing Complainant’s medical documentation to determine acceptability by the State Department. In addition, the Agency stated that it provided the accommodations Complainant requested and reassignment was not a provision of the settlement agreement. The instant appeal from Complainant followed.

On appeal, Complainant stated that the Agency was responsible for “ensuring the forms include the information necessary to be eligible for disability retirement and are free from automatically disqualifying errors or omissions.” Complainant alleged that the Agency submitted an incomplete physician’s statement, as well as his original (incorrect) and revised removal action to the Department of State. Complainant acknowledged, on January 27, 2021, he received written approval of disability retirement for at least one year, through January 2022. Complainant stated that the Agency’s actions were probably not malicious, but they caused him harm.

In opposition, the Agency stated that Complainant’s disability retirement application was ultimately approved. Further, it stated, in the agreement it disclaims responsibility for the reviewing organization’s final decision and that the agreement had a contingency provision for if Complainant’s application was denied after reconsideration and/or appeal. The Agency stated that it can not substitute its judgment for that of Complainant’s legal counsel and physician. The Agency stated that it does not advise on the substance of disability retirement applications.

In relevant part, the record contains the documents that follow.

-Letter dated March 21, 2020 denying Complainant’s application for disability retirement, stating “the medical records you submitted fail to show that you are totally disabled or incapacitated for useful and efficient service to the U.S. Government.”

-Notification of Personnel Action effective June 7, 2019 for removal, citing “medical inability to perform.”

-Completed Application for Retirement Foreign Service Retirement System (Form DS-5004), dated June 20, 2019. On Form DS-5004, the “Nature of Retirement – Disability” section, which Complainant selected, provides the information that follows.

An immediate annuity is payable to a participant if (a) the participant completed at least 5 years of creditable civilian service and (b) the participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct. Please describe briefly your disability; state when it occurred; and if you are an active employee, how the disability interferes with the performance of your duties.

-Completed Physician’s Statement in Connection with Disability Retirement (Form DS-5024), dated June 21, 2019. A Note on Form DS-5024 states, “Under the Foreign Service Retirement Systems the term disability means disabled for useful and efficient service by reason of disease or injury, not due to vicious habits, intemperance, or willful misconduct.”

-An email dated February 21, 2019, from a Department of State Health and Wellness Program Manager to an Agency Reasonable Accommodation Program Manager, stating that Complainant was approved for “nonpermanent disability retirement.” As a result, Complainant will have to submit additional medical documentation in a year for assessment for further disability retirement entitlement.

### ANALYSIS & FINDINGS

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 Defense, 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).

Here, Complainant alleged that the Agency breached provision (4)(c) of the October 7, 2019 settlement agreement the parties entered when it (1) failed to notify him of the proper eligibility requirements for disability retirement for the Foreign Service Pension System and (2) failed to exhaust the reasonable accommodation process. Most pertinently here, in (4)(c), “The Agency agrees to support and process the Employee’s September/October 2019 disability retirement application in a timely manner, including providing necessary documentation . . . [and] agrees to complete any future disability retirement forms (including those related to the application’s appeal or reconsideration) required by the State Department, the Office of Personnel Management, other agencies, or others, in a manner affirming that the Employee was removed based on medical inability to perform.”

On appeal, Complainant stated that the Agency was responsible for “ensuring the forms include the information necessary to be eligible for disability retirement and are free from automatically disqualifying errors or omissions.”

The record shows, in June 2019, Complainant completed a retirement application and selected “disability” as the nature of his retirement. The application form contains a description of what is required to qualify for “disability” retirement. Form DS-5004 states, “An immediate annuity is payable to a participant if (a) the participant completed at least 5 years of creditable civilian service and (b) the participant becomes totally disabled or incapacitated for useful and efficient service by reason of disease, illness, or injury not due to vicious habits, intemperance, or willful misconduct.” Complainant submitted his application to the Agency for processing/submission to the appropriate reviewing agency. Complainant received a letter dated March 21, 2020 denying his application for disability retirement. The denial letter stated that Complainant’s submitted medical records failed to show that he is “totally disabled or incapacitated for useful and efficient service to the U.S. Government.” On June 8, 2020, Complainant requested reconsideration of his disability retirement application and, on January 27, 2021, he received written approval of nonpermanent disability retirement. Complainant stated that he alleged noncompliance before he received a decision on his reconsideration request, and that he does not believe the Agency acted maliciously but he was harmed by delay and initial denial. The Agency stated that it does not review disability retirement applications for substance and that Complainant is seeking to enforce beyond the four corners of the settlement agreement.

We agree with the Agency here. We find that it supported and processed Complainant’s disability retirement application as provided in (4)(c). Further, information regarding the reviewing authority’s “disability” standard was stated in the retirement application form and was selected by Complainant as the nature of his retirement. The October 2019 agreement does not provide that the Agency will review Complainant’s medical documentation and information for acceptability by the Department of State or that it will provide or assess for reassignment prior to removal for medical inability to perform. Further, provision (4)(c) states, “The Employee understands that the Agency is not responsible for the ultimate approval or denial of his disability retirement application.” Complainant stated that he received approval for nonpermanent disability retirement through January 2022. After careful review of the record, we

find that the Agency did not breach provision (4)(c) of the October 7, 2019 settlement agreement as alleged by Complainant.

### CONCLUSION

We AFFIRM the Agency's finding of no breach of the settlement agreement.

### 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).

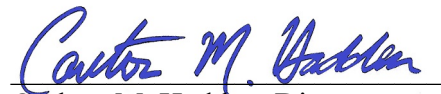
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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 28, 2021  
Date