



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

[REDACTED]
Shalon C,¹
Complainant,

v.

John E. Whitley,
Acting Secretary,
Department of the Army,
Agency.

Appeal No. 2021001986

Agency No. ARCARLI18JUL03095

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated February 19, 2021, finding that it was in compliance with the terms of a settlement agreement into which the parties purportedly entered. 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 as a Supervisory Clinical Psychologist at the Agency's Dunham Army Health Clinic in Carlisle, Pennsylvania.

The record reflects the following chronology of events. Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On September 11, 2018, Complainant filed a formal EEO complaint. By letter dated September 27, 2018, the Agency accepted the formal complaint for investigation. Upon completion of the investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ).

On September 29, 2020, Complainant and Complainant's attorney signed a document entitled "Negotiated Settlement Agreement" (NSA). On September 30, 2020, Agency counsel signed the

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.

NSA. On September 30, 2020, the AJ issued an Order of Dismissal. Therein, the AJ dismissed the instant matter pursuant to the September 30, 2020 settlement agreement which was found to have been executed on September 30, 2020. Also on September 30, 2020, the AJ issued an Order Awarding Attorney's Fees and Costs. Therein, the AJ set forth "pursuant to the settlement agreement in this matter, the Agency shall compensate Complainant for attorney fees and costs in prosecuting this case..." The AJ noted that Complainant submitted a petition for \$73,904.81 in fees and costs and the Agency submitted a Statement of No Objections to the Fee Petition. Thus, the AJ ordered the Agency to pay \$73,904.81.

By email dated December 30, 2020, Complainant's attorney alleged breach of the September 30, 2020 NSA and was seeking specific performance of the NSA.

In a final decision dated February 19, 2021, the Agency found the NSA was void and unenforceable. The Agency reasoned, "the document is not signed by [a named Agency official], or any other individual identified as the 'Settlement Official.' The document specifically states that it must be signed by 'all parties' and indicates that the Settlement Official is one of them." The Agency further found that the AJ's Order of Dismissal and the AJ's Order Awarding Attorney's Fees were issued pursuant to a settlement agreement, but because there was not a valid settlement agreement, the instant matter should not have been dismissed and the Order on Fees is without legal effect. The Agency's decision directed the Agency to resume processing the complaint from where processing ceased (a hearing before an EEOC AJ).

The instant appeal followed. On appeal, Complainant, through her attorney, asserts that the NSA was binding and final. Complainant asserts that the missing signature of the settlement official did not invalidate the agreement. Complainant asserts that the Agency's attorney acted with authority to bind the Agency. Complainant also argues that that it is not necessary to have the signature of the settlement official because the NSA was entered into the record before the AJ.

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).

We concur with the Agency's final decision that the parties did not enter into a binding valid settlement agreement. EEOC Regulation 29 C.F.R. § 1614.603 provides, in pertinent part, that "[a]ny settlement reached shall be in writing and signed by both parties..." The record reflects that Complainant, Complainant's attorney, and the Agency's attorney signed the agreement. However, the NSA also contains a signature block for a named agency official designated as the "Settlement Official." There is no signature for the Agency's Settlement Official. Provision 5 of the NSA provides, in pertinent part, that: "[t]his Agreement will become effective on the date it is signed by *all* parties. Necessary documentation will be prepared within 30 calendar days of signing by *all* parties and execution of other actions will be effected not later than 45 calendar days from the date this agreement is signed by *all* parties." (emphasis added). Thus, we find the NSA required all parties, including the settlement official, to sign the agreement in order to be effective.

We further find that email correspondence between the parties, and between the parties and the AJ, do not support Complainant's assertion that Agency Counsel alone had authority to bind the Agency. The record contains an email from Complainant's attorney to the AJ dated September 30, 2020. Therein, Complainant's attorney states, "please find the final signed settlement agreement between the parties...[Agency Counsel] has acknowledged and signed the agreement on behalf of the Agency, the settlement official has not placed her signature on the document, [Agency Counsel] has been unable to locate the settlement official...However, [Agency Counsel] has conveyed that the Agency accepted the terms. Accordingly, and in the interest of resolving the case, the parties are conveying the agreement, as is, with only [Agency Counsel's] signature on behalf of the Agency. Please advise if you would like for me to re-file any documents or if the partial signature interferes with the Commission's ability to close out the case."² The AJ responded via email on September 30, 2020, and stated, "I will close out the case based upon the agreement. *Upon receipt of the fully-executed agreement, I will substitute it in the file.*" (emphasis added). Based on the foregoing, we find that the AJ expected the parties to subsequently submit the NSA with all signatures, including the settlement official's signature for the agreement to be final and binding.

The record also reflects that subsequent to the AJ's Order of Dismissal on September 30, 2020, Complainant's attorney continued to request from Agency counsel a copy of the NSA with the settlement official's signature. The record contains an email from Complainant's attorney to the Agency's attorney dated October 15, 2020, after Agency counsel signed the NSA on September 30, 2020. Therein, Complainant's attorney stated, in pertinent part, that, "I have been assuming that you were waiting on the letters *to provide the final signed agreement with the settlement authority's signature...*" (emphasis added). The record reflects that Complainant's attorney also requested that settlement official's signature on the NSA via email to Agency Counsel dated November 17, 2020.

² The record also contains an email dated September 30, 2020 from Agency Counsel to Complainant's attorney. Therein, Agency Counsel states, "The [AJ] called me. If I do not get the settlement official's signature soon. I will send to you a copy with my signature and will substitute the 4-signature version at a later date."

Thus, we find that these emails corroborate our finding above, that the NSA was not valid and binding until all signatures were on the NSA, including the signature of the settlement official.

Finally, while Complainant asserts that no written agreement is needed because there was a valid oral agreement before the AJ, we disagree. The Commission has upheld an oral settlement only in narrow circumstances: where an agreement was formed during a hearing before an EEOC Administrative Judge and transcribed by a court reporter. Acree v. Dep't of the Navy, EEOC Request No. 05900784 (Oct. 4, 1990). "The requirement that the agreement be entered into a hearing transcript is central to finding that the agreement is binding." Maldonado v. U.S. Postal Serv., EEOC Appeal No. 0120082173 (Aug. 20, 2008) In the instant matter, the NSA was not part of a hearing transcript prepared by a court reporter. Based on the foregoing, we find there was not a valid oral settlement agreement between the parties.

Moreover, since we find that there is no valid settlement agreement, the AJ's Order of Dismissal and Order Awarding Attorney's Fees are not valid because they were issued pursuant to the purported settlement agreement.

Accordingly, we REMAND the instant matter to the Agency to reinstate Complainant's underlying complaint from the point processing ceased (which was before an EEOC AJ) in accordance with the ORDER below.

ORDER

To the extent it has not already done so, within 15 calendar days of the date this decision is issued, the Agency shall resume processing Complainant's underlying complaint by submitting a renewed request for a hearing before an EEOC AJ to the appropriate EEOC Hearings Unit on behalf of Complainant. At the same time, the Agency shall submit the complaint file, as well as a copy of this appellate decision, to the EEOC Hearings Unit.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g).

Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled “Right to File a Civil Action.” 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. 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. **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

June 9, 2021
Date