



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

[REDACTED]
Micki C.,¹
Complainant,

v.

Debra A. Haaland,
Secretary,
Department of the Interior,
Agency.

Appeal No. 2021001595

Agency Nos. DOI-OS-14-0373, DOI-OS-16-0568

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated November 25, 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; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Administrative Judge at the Agency's Office of Hearings and Appeals in Arlington, Virginia.

In order to resolve two EEO complaints (identified as Agency Nos. DOI-OS-14-0373, DOI-OS-16-0568), Complainant and the Agency entered into a settlement agreement ("SA"). The SA became effective on July 27, 2018. The agreement provided, in pertinent part, that:

12. Detail Position

- A. The Agency and [Complainant] agree that [Complainant] will be detailed from her current position as an Administrative Judge at OHA in Arlington, Virginia

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.

to a Senior Advisor position at the U.S. Department of the Interior, U.S. Bureau of Reclamation in Washington, DC, for a period not to exceed 2 years.

- B. The Agency and [Complainant] agree that the start date of the detail shall be June 25, 2018 and the end date shall be June 25, 2020...
- C. The Agency and [Complainant] agree that during the detail, [Complainant] will remain on the rolls of OHA in her permanent position of record....
- E. The Agency and [Complainant] agree that no later than 30 calendar days following the date of the completion of the first year of the detail, [Complainant] may elect to terminate the detail and return to her position as an Administrative Judge at OHA in Arlington, VA...She may also terminate the detail at any time if she accepts another position at the Agency.
- F. [Complainant] agrees that after the two-year detail expires, she will return to her position as an Administrative Judge at OHA in Arlington, VA.

Settlement Agreement, pp. 5-6.

By letter to the Agency dated July 24, 2020, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency failed to comply with provision 12F of the Settlement Agreement when the Agency reassigned Complainant from her position of Administrative Judge in the DOI Office of Hearing and Appeals (OHA) to the position of Senior Legal Water Advisor, in Office of the Assistant Secretary-Water and Science, DOI, Office of the Secretary (OS), effective July 19, 2020.

The record reflects that:

- During the period of June 25, 2018, through June 25, 2020, Complainant was detailed (as a term of the SA) from her position as an Administrative Judge (SL-0905) at OHA in Arlington, Virginia, to a Senior Advisor position at the DOI, Bureau of Reclamation (BOR), in Washington, D.C.
- On June 24, 2020, the Human Resources (HR) Officer for the Bureau of Safety and Environmental Enforcement (BSEE), the Servicing HR Office for the OS, notified Complainant that she would be subjected to a Directed Reassignment the position of Senior Legal Water Advisor, in Office of the Assistant Secretary-Water and Science, OS, effective July 19, 2020.

- On June 18, 2020, the Agency submitted a memorandum entitled “Request Approval to Establish a Senior Leader (SL) Position and Reassign [Complainant] into the Position” to the DOI Executive Resources Board (ERB).
- On June 22, 2020, a Notification of Personnel Action was approved terminating Complainant’s detail to BOR, and returning Complainant to her position of Administrative Judge, OHA, in Arlington, VA, effective June 25, 2020.
- On June 24, 2020, the ERB approved “Request Approval to Establish a Senior Leader (SL) Position and Reassign [Complainant] into the Position”.
- On June 24, 2020, Complainant received a telephone call from the HR Officer, informing Complainant that the ERB approved a Directed Reassignment for Complainant on the same date.
- On June 25, 2020, Complainant’s two-year detail to BOR expired.
- On June 25, 2020, Complainant received an email from the HR Officer congratulating Complainant on, “your selection to the Senior Legal Water Advisor [sic], Office of the Assistant Secretary-Water and Science.” The email also indicated that the Directed Reassignment would be effective on July 5, 2020, if Complainant chose to waive a 15-day notice. Otherwise, the Directed Reassignment would be effective on July 19, 2020.
- On June 25, 2020, Complainant received an email from a HR Specialist, transmitting congratulations and paperwork related to background/security clearance.
- On July 2, 2020, Complainant informed the HR Officer via email that she did not wish to waive the 15-day reassignment notice.
- On July 2, 2020, the HR Officer informed Complainant via email that her reassignment was effective July 19, 2020, with a reporting date of July 20, 2020.
- On July 17, 2020, Complainant received an email from a BSEE Senior HR Specialist, notifying and congratulating Complainant on her selection to the Senior Legal Water Advisor position, Office of the Assistant Secretary-Water and Science, DOI, OS, effective on July 19, 2020.
- On July 20, 2020, Complainant sent an email to the BSEE Senior HR Specialist, acknowledging receipt of the email dated July 17, 2020.
- On July 23, 2020, a Notification of Personnel Action was approved, reassigning Complainant from her position of Administrative Judge, OHA, Arlington, VA, to

Senior Legal Water Advisor, Assistant Secretary-Water and Science, effective July 19, 2020.

In its November 25, 2020 FAD, the Agency concluded Complainant's SA was not violated and no breach had occurred. Complainant filed the instant appeal.

On appeal, Complainant contends the Agency has breached paragraph 12F of the SA because the Agency has not permitted her to resume her position of Administrative Judge at the OHA in Arlington, VA, after completion of her detail. She contends the Agency has breached a material term of SA and this is clear from the face of the SA; the Agency is obligated to place her in her position as Administrative Judge for a reasonable period of time; the Agency has violated the spirit of the SA in not doing so; and the Agency's actions in this matter clearly constitute bad faith. She notes she was placed back into her position as Administrative Judge on paper only, with no actual Administrative Judge or OHA duties assigned to her during the time frame she was returned to that position, and that she was encouraged to use the time between her detail and her reassignment as Senior Legal Water Advisor as a transition period during which she could take leave and/or clean out her desks at both her detail and OHA. She further contends she was reassigned away from the Administrative Judge position not because the Agency needed her expertise elsewhere as claimed, but so that non-career political appointees could be placed into Administrative Judge positions instead.

The Agency contends on appeal that it has complied with the SA by placing Complainant back into her position as an Administrative Judge, as shown by the Notice of Personnel Action. The Agency contends that Complainant did not negotiate a specific period of time to serve as an Administrative Judge upon her return to OHA and therefore the Agency had authority to reassign her 24 days later because they have the authority to direct reassignment of employees as necessary for the bona fide legitimate management considerations in the interest of the service.

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 plain text of the SA required the Agency to place Complainant in a specific two-year detail, at the end of which she would return to her former Administrative Judge position. We find the Agency has complied with this.

As noted, the Commission has held that where an individual bargains for a position without any specific terms as to the length of service, it would be improper to interpret the reasonable intentions of the parties to include the provisions to apply ad infinitum. See Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (Nov. 13, 1997). That is, a settlement agreement that places personnel into specific duties, without defining the length of service or other elements of the employment relationship, will not be interpreted to require the agency to place the personnel in the identified job duties or positions in perpetuity. See Hamilton v. U.S. Postal Serv., EEOC Appeal No. 01A22268 (July 5, 2002). However, in this case, the bargained for position was that of the detail, which Complainant served in for the entirety of the agreed-upon two-year time period, and at the end of the bargained for detail, the Agency did return her, however briefly, to the Administrative Judge position as shown by the Notice of Personnel Action. Her subsequent reassignment is a post-SA matter.

Whether Complainant has a separate claim of discrimination or prohibited personnel practices based on her reassignment from Administrative Judge to Senior Legal Water Advisor is not before the Commission here. However, from the purview of the breach of settlement agreement question before us, we cannot find that the Agency breached the SA in this instance. If Complainant wishes to file a new EEO complaint concerning her reassignment from the Administrative Judge position, she may do so by initiating the EEO counseling process. If she chooses to do so, the Agency should consider July 24, 2020 (the date she filed her breach claim) as the date of her initial EEO counseling contact for the purposes of determining the timeliness of that contact.

CONCLUSION

After a thorough review of the record, and for the foregoing reasons, the Commission **AFFIRMS** the Agency's final determination finding 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

December 20, 2021

Date