



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

[REDACTED]
Michel H,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2021003602

Agency No. 200H-0650-2020104644

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated April 30, 2021, finding that it was in compliance with the terms of an August 31, 2020 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 serving a detail in the Geriatric Extended Care Service at the Agency's VA Providence Medical Center in Providence, Rhode Island.

On August 31, 2020, Complainant and the Agency entered into a settlement agreement to resolve a matter which had been pursued in the EEO complaint process. The August 31, 2020 settlement agreement contained, in pertinent part, the following provision:

2. Agency Obligations:

1. The Agency agrees that the Complainant will remain in his current detail in the Geriatric Extended Care Service until he can be management directed/reassigned to a GS-7 program support assistant, health service specialist or administrative officer when one becomes available in 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.

Geriatric Extended Care Service within the next twenty-four (24) months adhering to the basic rule 5 C.F.R. § 531.213. If a position does not become available during this time frame, the parties will meet again to extend the agreement no later than July 15th, 2022.

On March 31, 2021, Complainant alleged breach of the August 31, 2020 settlement agreement. Specifically, Complainant argued that the Agency breached provision 2 of the settlement agreement when it failed to place him in an administrative office position that opened on March 5, 2021. Complainant explained that the GS-9 administrative office position was located at VA Providence Medical Center, but a candidate outside of the Medical Center was selected for the position.

On April 30, 2021, the Agency issued a breach of settlement agreement determination, finding no breach of the August 31, 2020 settlement agreement. The Agency explained that it had confirmed that there were no GS-7 program support assistant, health service specialist, or administrative officer positions available in the Geriatric Extended Care Service. The Agency further explained that, by the terms of the settlement agreement, it had two years to reassign Complainant to an available GS-7 position, and the deadline to place Complainant in this position had not yet expired. Because the deadline had not expired, the Agency reasoned that it could not have breached to the terms of the settlement agreement.

The instant appeal followed. On appeal, Complainant, through counsel, argues that the Agency breached the settlement agreement when it failed to transfer him to an administrative position that was listed on USAJobs as a GS-9 administrative officer at the Providence VA Medical Center. Complainant argues that the GS-7 qualifier mentioned in the provision 2 did not apply to each position. Rather, Complainant argues that the GS-7 modifier only applied to the program support assistant position. Therefore, Complainant asserts that he could have been placed in the available GS-9 administrative officer position because provision 2 of the settlement agreement did not include a grade level modifier for this position.

ANALYSIS AND 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 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, we find that the language in provision 2 of the settlement agreement supports that the Agency only intended to place Complainant in a GS-7 position. The pertinent language states, “. . . directed/reassigned to a GS-7 program support assistant, health service specialist or administrative officer when one becomes available.” A fair reading of the provision’s language indicates that because the GS-7 modifier comes at the beginning of the named positions, the GS-7 modifier carries for each position. As the Agency confirmed, there have been no GS-7 program support assistant, GS-7 health service specialist or GS-7 administrative officer positions available at Geriatric Extended Care Service during the relevant period. Consequently, the Agency did not breach the terms of the settlement agreement because there was no available position for Complainant.

Additionally, we note that if the Agency had placed Complainant into the GS-9 position, Complainant would have received a promotion. However, there is no indication in the settlement agreement that the Agency was obligated to promote Complainant to a program support assistant, health service specialist or administrative officer position above a GS-7. We further note, that the Agency has a two-year period to place Complainant into an applicable GS-7 position and this period has not yet expired.

CONCLUSION

The Agency’s final decision finding no breach of the August 31, 2020 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)

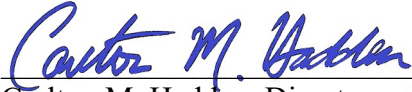
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department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

October 25, 2021

Date