



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

[REDACTED]
Mafalda H.,¹
Complainant,

v.

Merrick B. Garland,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Appeal No. 2021004628

Agency No. FBI-2020-00086

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated August 13, 2021, finding that it was in compliance with the terms of a June 2, 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 period at issue, Complainant worked for the Agency as an Intelligence Analyst in Washington, D.C.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On June 2, 2020, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- 5(b). Within 12 months of the effective date of this settlement agreement, the Responding Management Officials (RMOs) shall receive diversity training; and

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.

- 5(c). Within 12 months of the effective date of this agreement, WMD and DI management shall jointly identify a career enhancement opportunity for [Complainant] commensurate with her expertise and in the best interest of the Bureau.²

In various emails to the Agency, Complainant alleged that the Agency breached the settlement agreement and requested reinstatement of the underlying complaint. Regarding provision 5(b), Complainant alleged that she was not aware if the specified Agency managers received the diversity training. Regarding provision 5(c), Complainant stated that it had been over one year since the execution of the agreement and she had not been presented with a career enhancement opportunity. Complainant alleged that while the Agency asserted that the career enhancement opportunity was a training for which she had applied, Complainant stated that she was not selected for the training. Complainant stated that the career enhancement opportunity was supposed to be a temporary duty rotation or joint duty assignment. In addition, Complainant asserted that the Agency was supposed to submit this career opportunity to her for her agreement.

Finally, Complainant, in her emails alleging breach, asserted that Agency management placed a quarterly performance check-in to her electronic file on February 14, 2020. Complainant asserted that this check-in was added after she left the unit and that she requested for it to be removed from her file.

In its final determination dated August 13, 2021, the Agency found no breach of provision 5(b). Specifically, the Agency found that two named RMOs received diversity training on April 20, 2021.

Regarding provision 5(c), the Agency, in its final determination, also found no breach of this provision. The Agency found that management approved a request for Complainant to attend the Psychology and Criminology Technology in Analysis Training course which counted for credit in the Intelligence Community Advanced Analysis Program. The Agency stated that “[a]lthough [Complainant’s] application to the training was rejected by the Psychology and Criminology Technology....training group, [the settlement agreement] does not specify that [Complainant] or [her] application shall be accepted to the career-enhancing opportunity. The [agreement] only requires that WMDD and DI management identify the opportunity.” The Agency further found that the settlement agreement did not specify that the career enhancement opportunity would be a temporary duty rotation or joint duty assignment. In addition, the Agency found that the settlement agreement did not require management to submit the career enhancement opportunity to Complainant for her approval.

² There was other consideration exchanged through the settlement agreement which is not at issue here.

Finally, while Complainant requested a specified quarterly performance check-in be removed from her personnel file, the Agency, in its final determination, found that this was not a term of the settlement agreement.

The instant appeal followed. Complainant reiterates her assertion that the Agency is not in compliance with provision 5(c) of the settlement agreement.

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).

We find that the Agency did not breach provision 5(b), which required that the RMOs receive diversity training. The record contains adequate documentation that the identified officials completed an Office of Diversity and Inclusion (ODI) training on April 20, 2021.

We find, however, that the Agency is in breach of provision 5(c) of the settlement agreement. As an initial matter, we concur with the Agency that provision 5(c) did not obligate the Agency to provide Complainant with a temporary duty rotation or joint duty assignment as the "career enhancing opportunity." In addition, we concur with the Agency that management was not required to submit the opportunity to Complainant for her agreement. Provision 5(c) required WMD and DI management jointly identify a career enhancing opportunity for Complainant. The record contains an email from a WMD Agency official that WMD and DI management spoke and approved a request for Complainant to attend a Psychology and Criminology in Intelligence Analysis training course which counted for credit in the Intelligence Community Advanced Analysis Program. The WMD official stated that this action completed its obligation under provision 5(c) of the agreement. Complainant, however, submits documentation that she was subsequently not approved by the training organizers to participate in the training. Under these specific circumstances, we find that the Agency's actions do not comply with the overall intent and spirit of this provision of the settlement agreement. We find that the WMD and DI management should jointly identify for Complainant a career enhancing opportunity which she is actually able to attend or participate in.

Under the Commission's regulations, in the event of finding of non-compliance, the Commission may, in its discretion, remedy the breach by either ordering the agency to reinstate the underlying complaint for processing, or alternatively, to undertake specific performance of the breach provisions. See 29 C.F.R. 1614.504(c). In this case, because the Agency has complied with other provisions of the agreement, and the Commission favors the settlement of complaints, we conclude that specific performance is the appropriate remedy.

Finally, we concur with the Agency that there is no provision in the settlement agreement that obligated the Agency to remove a specified quarterly performance check-in for Complainant from her personnel files.³

Accordingly, we AFFIRM the Agency's finding of no breach regarding provision 5(b) of the settlement agreement. However, we REVERSE the Agency's finding that it is not in breach of provision 5(c) of the settlement agreement and we REMAND this matter to the Agency for further processing in accordance with the Order below.

ORDER

Within thirty (30) calendar days from the date this decision is issued, the Agency is ordered to take the following actions:

1. The Agency is ordered to implement provision 5(c) of the settlement agreement by WMD and DI management identifying a career enhancement opportunity for Complainant in a manner that is consistent with this decision (i.e. that Complainant is actually able to attend or participate in the opportunity identified by WMD and DI management).
2. The Agency is further directed to submit documentation to the Commission that it has completed the ordered actions as set forth below in the section entitled "Implementation of the Commission's Decision."

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g).

³ Provision (4) of the settlement agreement provided, in pertinent part, that "[t]he parties agree this settlement agreement constitutes the full and complete settlement of all matters referenced herein."

The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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](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 (T0610)

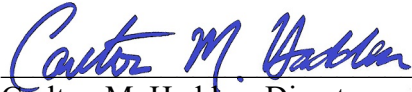
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

January 5, 2022

Date