



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

[REDACTED]  
Bart M.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Bureau of Alcohol, Tobacco, Firearms & Explosives),  
Agency.

Appeal No. 2022000306

EEOC Hearing No. 570-2010-01131X

Agency No. ATF-2009-00524

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated October 13, 2021, finding that it was in compliance with the terms of a June 15, 2012 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 as a Program Manager, GS-14, at the Agency's Field Operations in the Firearms Operation Division (FOD) in Washington, D.C.

On June 15, 2012, Complainant and the Agency entered into a settlement agreement to resolve a matter which had been pursued through the EEO complaint process. In pertinent part, the June 15, 2012 settlement agreement included the following provision:

**Provision 2:** On the effective date of this Agreement, the Agency agrees to allow Complainant to telework two to three days per week with an approved telework agreement.

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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.

By letter on September 10, 2021, Complainant alleged breach of provision 2 of the June 15, 2012 settlement agreement. Specifically, Complainant explained that on July 27, 2021, all FOD personnel were instructed to submit new telework agreements dated before September 7, 2021, in response to the Agency's potential return back to the office due to the COVID-19 pandemic. Complainant further explained that he submitted a telework agreement form on August 11, 2021, requesting to telework three days or more days a week (Category A) in accordance with the June 15, 2012 settlement agreement. However, on September 2, 2021, Complainant stated that he was only approved for situational telework (Category D). Because Complainant was denied teleworking three days a week, Complainant argued that the Agency breached the June 15, 2012 settlement agreement granting him the ability to telework at least two to three days per week.

In its October 13, 2021 decision, the Agency found no breach of the June 15, 2012 settlement agreement. The Agency explained that all FOD positions in GS-1801 job series were approved for Category D level telework requests. The Agency acknowledged that Complainant had a prior June 2012 telework agreement. The Agency explained, however, that it had complied with the terms of this agreement for nine years, and it was not required to provide Complainant Category A level telework indefinitely.

The instant appeal followed. On appeal, Complainant asserts that the Agency breached the June 15, 2012 settlement agreement when it denied his request for Category A telework.

In response, the Agency asserted that since the June 15, 2012 settlement agreement, Complainant has been permitted to telework two to three times a week. Moreover, the Agency explained that Complainant teleworked five days a week since March 2020, the beginning of the COVID-19 pandemic, and through the filing of the Agency's November 12, 2021 appellate brief. Consequently, the Agency reiterated that it has not breached the terms of the June 15, 2012 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.

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). 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).

The Agency properly determined that there was no breach of the June 15, 2012 settlement agreement. On appeal, the Agency indicates that since June 15, 2012, Complainant has not teleworked fewer than two days a week, and although the Agency subsequently denied Complainant's request for Category A level telework and only approved Category D level telework on September 2, 2021, the record reflects that Complainant has been teleworking five days a week since March 2020. At the time the Agency issued its October 13, 2021 decision finding no breach, Complainant was still teleworking five days a week, and as a result, the Agency has, thus far, complied with provision 2 of the June 2012 settlement agreement for approximately nine years.

We note that there is no indication in the settlement establishing that Complainant would be entitled to teleworking two to three times a week indefinitely. The Commission has held that where an individual bargains for a position without specific terms as to its length we will not interpret the reasonable intentions of the parties to include employment in that exact position ad infinitum. See Holley v. Dep't of Veterans Affairs, EEOC Request No. 05950842 (November 13, 1997); Papac v. Dep't of Veterans Affairs, EEOC Request No. 05910808 (December 12, 1991); see also Parker v. Dep't of Defense, EEOC Request No. 05910576 (August 30, 1991). Similarly, we conclude that it would be improper to interpret the terms of the instant settlement agreement that Complainant would be provided with two to three days of telework forever. Here, the record indicates that Complainant was provided with telework for two or more days a week from June 2012 to present. We find that this period of over nine years was sufficient time to establish good faith compliance by the Agency with the terms of the settlement agreement. The current proposed change to situational telework does not constitute a breach of the 2012 agreement. See Giorgianni v. Dep't of the Treasury, EEOC Appeal No. 0120121629 (July 19, 2012) (cancellation of telework after seven years of compliance with settlement agreement term concerning two-day per week of telework evidenced good faith and was not a breach of the agreement).

### CONCLUSION

The Agency's final decision finding no breach of the June 15, 2012 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

March 14, 2022

Date