



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

[REDACTED]  
Toshia F.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2022001183

Agency No. 4B-100-0076-21

**DECISION**

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from a November 17, 2021 Final Agency Decision (“FAD”) finding that it was in compliance with the terms of the settlement agreement into which the parties entered. The Commission accepts the appeal. 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 a Full Time City Carrier at the Agency’s College Post Office in New York, New York.

Believing that she was subjected to unlawful discrimination, including a hostile work environment and the denial of a reasonable accommodation, Complainant contacted an EEO Counselor. On May 27, 2021, the parties entered into a negotiated settlement agreement to resolve the matter. The agreement provided, in relevant part:

2) [Manager] agrees to give [Complainant] a formal light duty reassignment by the time she returns to work based upon proper medical documentation . . . .

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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.

3) Management agrees to exhaust all possibilities of available work within [Complainant's] limitations, before saying there is no work available.

On August 25, 2021, Complainant contacted the Agency in writing, alleging that it breached provision 3 of the agreement. Specifically, Complainant asserted that management has repeatedly denied her duty assignments when work within her limitations was available. She also stated: "I would like to move this case up to the next step because past attempts were evidently not effective," indicating that she is seeking reinstatement of the underlying EEO complaint rather than specific performance.

The record shows that on or around July 9, 2021, in accordance with the settlement agreement, Complainant provided Acting Manager, Customer Service ("M1") with sufficient medical documentation to support her light duty request. The documentation identified specific restrictions, such as lifting, carrying, pushing and pulling no more than 20 pounds. M1 accepted the documentation, and, at his instruction, the College Station Supervisors, Customer Service ("S1" and "S2") began assigning Complainant light duty work. Available duties within Complainant's restrictions were boxing mail, delivering Express Mail, assisting retail customers, and delivering mail to nearby businesses.

In early August 2021, S1 and S2 notified M1 of concerns with Complainant's performance and conduct, including her regularly late arrivals and failure to report on her scheduled days. M1, S1, and S2 all testified that Complainant took significantly longer than the other carriers to box mail. M1 sought advice from the Area Manager ("AM"), who responded that if Complainant could not perform her limited duty assignments, she should be sent home until she could provide updated medical documentation.

Beginning August 9, 2021, when Complainant arrived at work, S1 and S2 instructed her to go home, stated there was no work available within her restrictions, and noted that postal police would be called to escort her off of the premises if she did not leave. On these occasions, Complainant pointed to mail that needed to be unboxed, and other unassigned tasks within her work restrictions. According to Complainant, individuals with less seniority were working on tasks within her restrictions.

On or about August 14, 2021, Complainant recalls that only two carriers were on duty and S2 admitted he "could really use [her] help" boxing mail. According to Complainant, S2 explained that AM instructed him to send Complainant home and call the postal police to escort her out. Complaint called AM, who reiterated that Complainant could not report to work until she provided proper medical documentation identifying her work limitations. In response, Complainant explained to AM that M1 had accepted the documentation she provided. AM allegedly admitted that she was "going by what she heard from the Management Team," and had not looked at Complainant's documentation herself.

On August 17, 2021, Complainant provided new medical documentation to M1. M1 called AM, informing her that they had the necessary documentation to support Complainant's light duty request. However, after the phone call, M1 informed Complainant that AM instructed him to tell Complainant that there was no work available for her and to have postal police escort her from the premises. M1 handed Complainant a letter instructing her not to contact M1 for thirty (30) days, regarding her return to work, unless she could provide a medical note stating that she had no work restrictions.

In its FAD, the Agency concluded that it fully complied with provision 3 of the settlement agreement.

The instant appeal followed.

### 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 (Dec. 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 (Aug. 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. United States Postal Serv., EEOC Request No. 05910787 (Dec. 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); Complainant v. United States Postal Serv., EEOC Appeal No. 0120140143 (Feb. 20, 2014).

#### *Void for Lack of Consideration & Reformation of Settlement Agreement*

Generally, the adequacy or fairness of the consideration in a settlement agreement is not at issue, as long as some legal detriment is incurred as part of the bargain. However, when one of the contracting parties incurs no legal detriment, the settlement agreement will be set aside for lack of consideration. See MacNair v. United States Postal Serv., EEOC Appeal No. 01964653 (July 1, 1997) other citations omitted.

Under certain circumstances, the Commission will invalidate specific provisions that are void for lack of consideration, while upholding the remainder of the agreement, so long as elsewhere in the agreement, the parties exchange adequate consideration.<sup>2</sup>

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<sup>2</sup> EEOC Digest, "Settlement Agreements" Vol, XV, No. 2 (2004) available at <https://www.eeoc.gov/federal-sector/digest/digest-equal-employment-opportunity-law-21>

For example, in Steinmetz v. United States Post Office, the Commission reformed a settlement agreement by invalidating a provision that “the complainant’s EEO file would remain confidential.” EEOC Appeal No. 01A34038 (Nov. 21, 2003), (Nov. 6, 2003). The Commission reasoned that the provision was void, for lack of consideration, because it did not require the agency “to do anything more than it was already legally obligated to do”. Id.; see also, e.g. Merle S. v. Dep’t of the Air Force, EEOC Appeal No. 2019005892 (Jan. 23, 2020) (provisions void for lack of consideration where the agency promised to correct errors it made to complainant’s pay).

If the Commission voids a provision of a settlement agreement for lack of consideration, it will “reform” the agreement to exclude the invalid provision. Jacinta B. v. United States Postal Serv., EEOC Appeal No. 0120170921 (Mar. 16, 2017) (concluding that no breach occurred where the agency performed its obligations under two of the three provisions, reforming the agreement to exclude the remaining provision as it was void for lack of consideration), Hana D. v. Dep’t of Def., EEOC Appeal No. 2021003650 (Aug. 19, 2021) (affirming agency finding of no breach when it substantially complied with one provision at issue and the other provision was void for lack of consideration).

In the instant case, provision 3 of the agreement requires the Agency “exhaust all possibilities of available work within [Complainant’s] limitations, before saying there is no work available.” This provision, however, does not require the Agency to do any more than it is already obligated to do under the law. Consequently, we find provision 3 is void for lack of consideration. As the remaining provisions of the agreement reflect an exchange consideration, the settlement agreement is reformed with the removal of provision 3. Consequently, we find that no breach occurred as alleged.

#### *New Claim of Denial of Reasonable Accommodation*

However, we find that given the nature of Complainant’s breach allegation, that she was denied work within her restrictions, the matter is more appropriately characterized as a new claim alleging the denial of a reasonable accommodation. See e.g. Teresa D. v. Dep’t of Veterans Aff., EEOC Appeal No. 2019002187 (Aug. 13, 2019) (settlement provision promising to allow complainant to telework “as needed dictated by health” and as a “reasonable accommodation,” void for lack of consideration; issue remanded to for further processing as a new complaint).

The Commission's regulations require an agency to make reasonable accommodation for the known physical and mental limitations of a qualified individual with a disability unless it can show that accommodation would cause an undue hardship. 29 C.F.R. §§ 1630.2(o), 1630.2(p). A qualified individual with a disability is an "individual with a disability" who satisfies the requisite skill, experience, education and other job-related requirements of the employment position such individual holds or desires and, with or without reasonable accommodation, can perform the essential functions of such position. 29 C.F.R. § 1630.2(m).

On appeal, Complainant contends that her August 25, 2021 allegation of breach was her third effort to address discrimination and harassment by management.

She argues that management's repeated threats to have her removed from the facility by postal police and AM's request for additional medical documentation are examples of retaliatory harassment. According to Complainant, a similarly situated employee is permitted to "work every day with excessive accommodations." In support of her claims, Complainant submits a witness statement confirming that "[Complainant] would show up ready to work" and was assigned work outside of her limitations. According to the witness, when Complainant informed management that the work was outside her limitations, they began sending her home and telling her there was no work available.

The Agency indicates that it already correctly identified the August 25, 2021 allegation of breach as a new allegation concerning the denial of a reasonable accommodation and has opened a new complaint on the matter (Agency Case No. 4B-100-0188-21). However, the specific claim and scope of the complaint is not included in the record.

### CONCLUSION

Accordingly, the Agency's finding of no breach is **AFFIRMED**, and the settlement agreement is reformed as described in this decision. The matters comprising the breach allegation are **REMANDED** to the Agency for processing as a new complaint of discrimination in accordance with this decision and the following Order.

### ORDER

To the extent that it has not already done so, the Agency is ordered to process Complainant's August 25, 2021 notice of breach of settlement as a new EEO complaint alleging denial of reasonable accommodation and harassment, including impermissible medical inquiries, in accordance with 29 C.F.R. § 1614.108 et seq.

The Agency shall acknowledge to the Complainant that it has received the remanded claims within **thirty (30) calendar days** of the date this decision was issued. The Agency shall issue to Complainant a copy of the investigative file and also shall notify Complainant of the appropriate rights within **one hundred fifty (150) calendar days** of the date this decision was issued, unless the matter is otherwise resolved prior to that time. If the Complainant requests a final decision without a hearing, the Agency shall issue a final decision **within sixty (60) calendar days** of receipt of Complainant's request.

As provided in the statement entitled "Implementation of the Commission's Decision," the Agency must send to the Compliance Officer: 1) a copy of the Agency's letter of acknowledgment to Complainant, 2) a copy of the Agency's notice that transmits the investigative file and notice of rights, and 3) either a copy of the complainant's request for a hearing, a copy of complainant's request for a FAD, or a statement from the agency that it did not receive a response from complainant by the end of the election period.

### 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). 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

July 5, 2022

Date