



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

[REDACTED]
Jona R.,¹
Complainant,

v.

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

Appeal No. 2022001236

Hearing No. 540-2019-00378X

Agency No. 1E-853-0005-19

DECISION

Complainant timely appealed with the Equal Employment Opportunity Commission (“EEOC” or “Commission”) from a December 9, 2021 Final Agency Decision (“FAD”) 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 was employed by the Agency as a Mail Handler at its Processing & Distribution Center (“P&DC”) in West Valley, Arizona.

Believing that the Agency subjected her to unlawful discrimination, Complainant filed a formal EEO complaint with the Agency. Following an investigation, the Agency provided Complainant with a copy of the report of investigation (“ROI”) and notice of her right to request a FAD or a hearing before an EEOC Administrative Judge (“AJ”). Complainant requested a hearing.

On November 20, 2020, the AJ assigned to the case issued a Scheduling Order, which, among other things, directed the parties to discuss specific proposals for settlement agreements prior to

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.

the Initial Conference on December 14, 2020. On December 11, 2020, following the Agency's rejection of an offer from Complainant, the AJ rescheduled the Initial Conference to allow the parties additional time to try and reach an agreement. On January 11, 2021, in the absence of a settlement agreement, the AJ conducted the Initial Conference and entered a temporary stay in the hearing process, pending mediation. Upon the parties' joint requests, the AJ extended the stay twice. The second request explained that the parties needed more time to discuss a settlement offer Complainant submitted to the Agency on April 7, 2021. The AJ ordered the parties to file a joint report on the status of their settlement negotiations by May 14, 2021.

On May 17, 2021, the parties, through counsel, discussed the April 7, 2021 offer by phone. Afterward, Complainant's Attorney emailed Agency Counsel, "what is your client's *current offer* to my client?" Emphasis added. Agency Counsel responded, "\$180 [thousand dollars] inclusive of comp[ensatory damages] and att[orne]y fees." Complainant's Attorney replied: "[m]y client accepts this offer, I think we can go ahead with the [joint status report] you mentioned to the [AJ] letting him know that *it's only a matter of finalizing it*." Emphasis added. Complainant's Attorney presented Agency Counsel with a draft joint report. Prior to approving it, Agency Counsel specified that they should use the term "agreement in principle." The final joint status report apologized for missing the thrice extended filing deadline, then stated, "however, the parties are happy to inform the [AJ] that they have recently been able to enter an agreement in principal." The joint report did not provide a copy of the "agreement in principle" or describe its contents.

On September 24, 2021, the Agency notified the AJ and Complainant that after conducting an internal review, it was no longer willing to enter into the "previously discussed settlement agreement." The AJ lifted the stay and issued an Order to Reconvene the Initial Conference. In an October 8, 2021 Order, the AJ stated, among other things, that "[o]n May 17, 2021, the parties filed a 'Joint Report' stating they had entered an agreement in principle, however, *no fully-executed settlement agreement was forthcoming*" (emphasis added).

On October 22, 2021, Complainant notified the Agency, and the AJ², that she believed the Agency's September 24, 2021 email constituted a breach of the May 17, 2021 "agreement in principle". She requested that the Agency specifically implement the agreement terms. On December 9, 2021, the Agency issued a FAD regarding the breach claim. The Agency reasoned that negotiations failed to produce a written settlement, and therefore an enforceable agreement did not exist between the parties. 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

² The AJ proceeded with discovery, held a hearing on April 25-26, 2022, and issued a decision in favor of the Agency on May 6, 2022.

binding on both parties. Pursuant to 29 C.F.R. § 1614.603, settlement agreements must be reduced to writing, must identify the claims resolved, and be signed by the parties to the case.

In the instant case, it is undisputed that the May 17, 2021 “agreement in principle” was never reduced to a written document signed by the parties. Regardless, Complainant argues that the “agreement in principle” is binding because “the parties mutually agreed to all material terms of the settlement in writing”. Further, he points to the May 17, 2021 phone call, email correspondence, and joint report as satisfying the requirements under 29 C.F.R. § 1614.603. The Commission disagrees.

Commission precedent establishes that documentation of settlement negotiations such as drafts of proposed settlement agreements, emails discussing specific terms of a settlement agreement, or a settlement agreement that is not signed by all parties are unenforceable because they do not evince a meeting of the minds. See Reita M. v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120171138 (Apr. 21, 2017) (oral agreement reached during mediation and referenced in emails following mediation did not constitute an enforceable agreement), Complainant v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120150010 (Feb. 23, 2015) (draft settlement agreement considered alongside email conversations between the complainant and the agency modifying specific terms of the draft agreement, did not establish an enforceable agreement), Complainant v. Dep’t of Veterans Affairs, EEOC Appeal No. 0120150083 (May 1, 2015) (email discussions between the complainant and EEO mediator, where the mediator indicated that they were in communication with the agency and the agency would follow through with an offer it made during mediation, did not establish an enforceable agreement), Whelan v. United States Postal Serv., EEOC Appeal No. 01A24584 (Jun. 26, 2003), Rembert v. Dep’t of Veterans Affairs, EEOC Appeal No. 01A32881 (Sept. 9, 2003) (draft agreement lacking the complainant’s signature unenforceable, even though the complainant confirmed in writing that she entered the agreement), Shalon C. v. Dep’t of the Army, EEOC Appeal No. 2021001986 (Jun. 9, 2021), Kiel v. Dep’t of Agriculture, EEOC Appeal No. 01A21212 (Jul. 10, 2003).

Typically, oral agreements, such as those presumably reached during the May 17, 2021 phone call, are also unenforceable. The Commission will only consider an oral agreement between an agency and a complainant to be valid if it was formed during a hearing before an EEOC Administrative Judge and transcribed by a court reporter. Reita M. v. Dep’t of Veterans Affairs, EEOC Request No. 0520170378 (Sept. 14, 2017) (denying reconsideration of EEOC Appeal No. 0120171138, with extensive discussion of Commission precedent on oral settlement agreements), citations omitted. If an oral settlement agreement does not meet these criteria, the Commission may still enforce it pursuant to the doctrines of ratification and detrimental reliance. *Id.* citations omitted. In other words, an otherwise unenforceable agreement may be enforced if the terms of the agreement are not in dispute, the parties partially performed their respective obligations under the agreement, and in so performing, the complainant had justifiably relied upon the agreement to their detriment. *Id.* citations omitted. Neither scenario for upholding an oral settlement agreement applies to the case at hand.

In the absence of any evidence that the parties entered into an written settlement agreement, Complainant's breach claim fails.

CONCLUSION

Accordingly, the Agency's finding that no breach of settlement occurred 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

June 15, 2022

Date