



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

[REDACTED]
Erich B.,¹
Complainant,

v.

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

Appeal No. 2022001433

Agency No. 200H-0693-2000124679

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from an Agency final decision (FAD), dated December 16, 2021, 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 worked as an EEO Manager at the Agency's Wilkes-Barre Medical Center in Wilkes-Barre, Pennsylvania.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On October 9, 1998, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

5. The Agency will reassign the Complainant to the position of EEO Coordinator/Staff Assistant, GS-13, in either the Office of the Chief Operating Officer or the Office of the Chief Medical Officer, to be determined by the Complainant, with no loss in pay, grade, or benefits.

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.

By letter to the Agency dated November 1, 2021, Complainant alleged that the Agency was in breach of the settlement agreement and requested that the Agency implement its terms. Specifically, Complainant maintained that pursuant to the 1998 agreement, he was assigned to the position of facility EEO Manager, under the supervision of the Associate Medical Center Director. However, asserted Complainant, the Agency now wanted to reassign him to the Director's Office, which he believed was in violation of the agreement, EEOC regulations, and Agency policy. In support of his contention, Complainant submitted a memorandum dated October 1, 2021, reflecting that the facility's Equal Employment Opportunity (EEO) program "is being realigned under the supervision of the Medical Center Director effective immediately."

In its December 16, 2021 decision, the Agency found no breach and concluded that Complainant's breach claim was premature because the realignment had not yet occurred. Additionally, the Agency noted that absent specific terms and conditions delineating the duration of an agreement, settlements generally are not construed to last in perpetuity.

The instant appeal followed. Complainant, through his attorney, asserts that his breach claim is not premature and proffers a second memorandum in support of his contention. The February 1, 2022 memorandum, from the Director of the Wilkes-Barre VA Medical Center, states, in relevant part: "the Wilkes-Barre Department of Veterans Affairs Medical Center's Equal Employment Opportunity (EEO) Program Office is being realigned under the supervision of the Medical Center Director effective the beginning of Pay Period 2022-05 (Sunday, February 27, 2022)."

The Agency submits no contentions on appeal.

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. 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 decline to find that Complainant's reassignment, in accordance with an Agency realignment, constituted a breach of the 1998 agreement.

The EEOC has long held that it is not proper to interpret a negotiated settlement agreement as providing indefinite employment in an exact position. See, e.g. Johnson v. United States Postal Serv., EEOC Appeal No. 0120092081 (May 27, 2010) (finding no breach occurred where the Agency changed the complainant's work schedule which was agreed upon in a settlement agreement over three years later, when, it underwent a realignment that eliminated the complainant's position); see also Buck v. Dep't of Veterans Affairs, EEOC Appeal No. 01A12839 (July 6, 2001) (finding no breach where the Agency transferred a complainant to another position as a condition of a settlement agreement and then, over a year later, reclassified and ultimately downgraded that position). Moreover, absent language in the settlement agreement regarding the length of time Complainant would be in the position, a "reasonable length of time" will be imputed. See Complainant v. United States Postal Service, EEOC Appeal No. 0120133193 (January 29, 2014) (absent terms as to length of service which required agency to reassign employee to position, settlement agreement not violated when agency approximately one year after reassignment, abolished position and assigned employee to different, more difficult position). Here, at the time of the alleged breach, Complainant had served in the position for more than twenty years. Therefore, we find that the Agency was in compliance with the settlement terms.

CONCLUSION

Accordingly, the Agency's decision finding no breach 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 16, 2022

Date