



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

[REDACTED]  
Thad P.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022000404

Agency No. 200P-0605-2011102452

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision (FAD) by the Agency dated October 27, 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; 1614.405; and 1614.504(b).

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Staff Physician at the Agency's Section of General Internal Medicine, Jerry L. Pettis Medical Center in Loma Linda, California.

Complainant initiated equal employment opportunity (EEO) contact and then filed a formal EEO complaint alleging that the Agency discriminated against him based on religion and reprisal for prior EEO activity. The Agency identified that complaint as Agency No. 200P-0605-2008102412 (Complaint 1). The Agency issued a final decision for Complaint 1. On September 22, 2010, Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 0120110028. On December 16, 2010, for Appeal 0120110028, the Commission issued an administrative closure, citing withdrawal of the appeal.

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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.

On March 10, 2011, Complainant pursued a civil action, regarding failure to promote, in the United States District Court for the Central District of California/Western Division. The Court docketed Complainant's civil action as CV11-02070 ABC. On January 11, 2012, Complainant and the Agency entered into a settlement agreement to resolve the matter. The civil action was dismissed with prejudice on January 17, 2012.

In pertinent part, the January 11 settlement agreement provided the Agency will act as follows:

- 1.a. Adjust [Complainant's] schedule so that he has an equal split of non-teaching days (other than his current two teaching days) assigned to the clinic and to have the [Agency] use its best efforts so that within 45 days the [Complainant] can use the other half-time split to assist on tort claim reviews, with any necessary change to [Complainant's] tour of duty; further, the change in [Complainant's] schedule will not result in a reduction in [Complainant's] pay.
- 1.d. In consultation with [Complainant], create a committee charged with reviewing the individuals named to hiring and promotion panels so that the committee may provide its recommendation to the Medical Center Director as to whether the individuals named to those panels are appropriate, with discretion vested in the Medical Center Director as to whether to accept the recommendation of the committee.
- 1.e. Have panels instituted for evaluating applicants for hiring and promotion which weigh the applicant by a ratio of 35% on objective criteria, such as the applicant's CV, and 65% on subjective criteria, such as the applicant's interview with the panel.

On April 14, 2011, Complainant filed a formal EEO complaint alleging that the Agency unlawfully retaliated against him for his prior protected activity when it delayed his performance appraisal, gave him a negative rating in one category, and lowered his overall appraisal rating. The Agency docketed the matter as Agency No. 200P-0605-2011102452 (Complaint 2).

On October 12, 2017, Complainant notified the Agency that it was in breach of the 2012 settlement agreement and requested that the Agency implement its terms. Specifically, Complainant alleged, on August 24, 2017, he learned from the Section Chief of the Hospital Division that she was unaware of a committee that provides recommendations to the Medical Center Director regarding the appropriateness of those named to interview panels.

On November 16, 2017, the Agency issued a final decision concluding there was no breach of the 2012 agreement. Specifically, the Agency found that provisions 1.d. and 1.e. were void for lack of consideration.

The Agency found further, assuming they were not void, the Agency complied with the provisions from 2012 through 2015, but because of difficulty in hiring Primary Care Providers, the Agency began appointing Primary Care Physicians using direct hire authority. The Agency concluded that it had therefore substantially complied with the agreement. Complainant filed an appeal with this Commission, which we docketed as EEOC Appeal No. 0120180999. On May 22, 2018, the Commission issued a decision for Appeal 0120180999 affirming the Agency's finding of no breach.

Most recently, on August 13, 2021, Complainant alleged that the Agency was in breach of the 2012 settlement agreement and requested that the Agency implement its terms. Specifically, Complainant alleged that the Agency failed to comply with provision 1.a. of the agreement when, on August 6, 2021, a memorandum of reassignment was issued to him. Management reassigned Complainant to the Quality Safety and Value Department under the supervision of a nurse and with only one day of clinic.

In its October 27, 2021 FAD, the Agency dismissed Complainant's complaint pursuant to 29 C.F.R. § 1614.107(a)(3), stating the matter is subject of a civil action in a United States District Court. Further, the Agency stated that Complainant's allegation of reassignment falls under subsequent acts of discrimination rather than breach.

Complainant filed the instant appeal. Complainant argues the settlement agreement has been in effect from 2012 until the Agency arbitrarily took it out of effect in August 2021, although there was no expiration date on the agreement.

### ANALYSIS & FINDINGS

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).

Here, Complainant alleged the Agency breached provision 1.a. of the January 2012 settlement agreement when, in August 2021, it reassigned him from the General Internal Medicine Section, placed him under different supervision, and reduced his clinic days to once a week. Relevantly, provision 1.a. of the 2012 agreement states the Agency will:

Adjust [Complainant's] schedule so that he has an equal split of non-teaching days (other than his current two teaching days) assigned to the clinic and to have the [Agency] use its best efforts so that within 45 days the [Complainant] can use the other half-time split to assist on tort claim reviews, with any necessary change to [Complainant's] tour of duty; further, the change in [Complainant's] schedule will not result in a reduction in [Complainant's] pay.

We agree with the Agency's determination that it did not breach provision 1.a. of the settlement agreement when it reassigned Complainant in 2021. The record establishes that the Agency complied with the terms of this provision for over ten years. The Commission has held that where an individual bargains for a position without any specific terms as to the length of service, it would be improper to 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).

That is, a settlement agreement that places personnel into specific duties, without defining the length of service or other elements of the employment relationship, will not be interpreted to require the agency to place the personnel in the identified job duties or positions in perpetuity. See Hamilton v. U.S. Postal Service, EEOC Appeal No. 01A22268 (July 5, 2002). The Commission has also held that there is no breach of a settlement agreement "where an individual has been assigned to a position pursuant to a settlement agreement, has held the position for a period of time, and then is excised out of the position because of agency downsizing that was not anticipated at the time of the agreement." Gish v. Dep't of the Army, EEOC Appeal No. 01950923 (August 14, 1995).

We find that the record establishes that the Agency complied with the terms of provision 1.a. of the January 2012 agreement, until August 2021, when it reassigned Complainant, placed him under another supervisor, and reduced the number of his clinic days. Although provision 1.a. is silent as to the length of time that the Agency would adjust Complainant's schedule and duties, it has done so since 2012, made a change in 2021, and is not obligated to keep that schedule and duties forever. Further, we agree with the Agency that Complainant's assertions are more appropriately addressed as allegations of subsequent acts of discrimination rather than breach of the decade-old settlement agreement.

### CONCLUSION

We AFFIRM the Agency's determination that it is not in breach of the 2012 agreement.

## 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

November 10, 2022

Date