



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

[REDACTED]  
Reginald V.,<sup>1</sup>  
Complainant,

v.

Christine Wormuth,  
Secretary,  
Department of the Army,  
Agency.

Appeal No. 2022002580

Agency No. ARBELVOIR21JUN02098

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final Agency decision (FAD), dated March 30, 2022, 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 Deputy Product Manager, NH-04, at the Agency's Program Executive Office in Fort Belvoir, Virginia.

Believing that the Agency subjected him to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. Complainant alleged, amongst other things, that he received an "average" performance rating for the 2021 fiscal year (FY) instead of an "exceptional" performance rating, and that on July 2, 2021,<sup>2</sup> he was reassigned and issued a Letter of Reprimand.

---

<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.

<sup>2</sup> The Letter of Reprimand was initially issued on June 23, 2021. The Agency described that Complainant objected to the legal sufficiency of the letter on the ground that the signatory left his position shortly before he signed the letter, so the Agency re-issued the letter on July 2, 2021.

The Letter of Reprimand described that there were allegations that Complainant was fostering a hostile work environment, so an administrative investigation conducted. The investigation resulted in a finding that Complainant engaged in misconduct repeatedly. The Letter of Reprimand specifically alleged that on December 20, 2019, Complainant exhibited threatening behavior while interacting with others during a telephonic meeting. The letter also referenced that in November 2020, Complainant had an unprofessional demeanor in his written communication with an employee. In addition, the letter stated that the investigation revealed “multiple instances of an overall professional demeanor” in Complainant’s communication with individuals and that “such conduct is unacceptable for a senior leader in this organization as it is a violation of the CCAS Business Rules and does not comport with Army value.” The letter informed Complainant that while his direct supervisor did not address his unacceptable behavior in his FY2021 midpoint evaluation, “this Letter of Reprimand hereby serves as a supplemental documentation for the record.”

On September 2, 2021, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

- (3)(b) The Agency agrees to remove the Letter of Reprimand dated July 2, 2021 and issue a written counseling for the same conduct. The written counseling will remain in the possession of Deputy PEO.

\* \* \*

- (3)(d) The Agency agrees to issue the Complainant a performance evaluation for FY21 that is commensurate with his performance.

\* \* \*

- (8) The Parties agree that in the event it is determined that a provision(s) of this Settlement Agreement is contrary to law or regulation or is otherwise unenforceable, only that provision(s) shall be considered null and void and all other provisions shall remain in full force and effect.

\* \* \*

Complainant alleged that the Agency breached section (3)(d) of the settlement agreement by issuing a lower-than-expected performance evaluation for FY21 and requested that the Agency specifically implement its terms. Complainant reasoned that his previous supervisor gave him an exceptional performance rating for his midpoint evaluation, yet his previous supervisor’s assessment was not incorporated into the FY21 appraisal.

The record shows that on the appraisal, Complainant's overall contribution score was 99 (99 in Job Achievement and/or Innovation; 98 in Communication and/or Teamwork and 99 in Mission Support). Complainant's appraisal for FY21 resulted in a 2.09% salary increase (\$2, 914.00) and a Contribution Award (\$2,193.00).

Complainant, however, argued that the purpose of section (3)(d) "was to prevent the Agency from using any comments related to the incident that took place in 2019." Complainant described that the 2019 incident was "blown out of proportion" in order to justify his reassignment and reprimand/written counseling, yet the Chief of Staff still placed a negative statement related to the incident in his FY2021 appraisal. Although Complainant did not point to any specific language in the appraisal, we note that in the appraisal the Chief of Staff stated Complainant "displayed a need for improved written and oral communication skills and interpersonal skills to focus on presenting a more professional demeanor in his communications during this rating period."

In its March 30, 2022 final agency decision, the Agency admitted that the Chief of Staff included one sentence in Complainant's performance appraisal regarding Complainant's need to improve his communication skills. However, the Agency maintained that the Chief of Staff did not explicitly refer to the 2019 incident. The Agency found that the sentence was a "generous characterization," and Complainant's FY2021 appraisal was "more than fair." The Agency determined that it had complied with section (3)(d). Nevertheless, the Agency declared section (3)(d) "null and void" on the ground that there was not a "meeting of the minds." The Agency stated that Complainant believed that under (3)(d) he would only be evaluated for his work after his reassignment, while the Agency understood (3)(d) to mean that Complainant would be evaluated for his performance for the entire fiscal year.

The instant appeal followed. Complainant submitted a statement on appeal. Complainant stated that the Agency's interpretation of his complaint was inaccurate, and he never argued that the purpose of section (3)(d) was to ensure that he would be rated solely on his performance following his reassignment. The Agency submitted a brief in response.

### 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).

There are instances when an otherwise valid agreement may be void, voidable or reformable, depending on the circumstances, for example due to a misunderstanding, mistake, or coercion. See Nemirow v. Department of the Army, EEOC Appeal No. 01930062 (December 8, 1992). However, in the instant case, we disagree with the Agency's finding that the parties did not have a "meeting of the minds" regarding section (3)(d).

The Agency stated that Complainant believed that under (3)(d) he would only be evaluated for his work after his reassignment. However, Complainant stated that this was inaccurate. Complainant expected his appraisal to include his exceptional performance from the first half of the fiscal year. His expectation that the first half of the fiscal year be included in his appraisal is actually in line with the Agency's expectation that that under (3)(d), Complainant would be evaluated for his performance for the entire fiscal year.

In cases involving allegations of breach of settlement agreement, the burden is on the party alleging breach to establish that a breach has occurred. Porter v. U.S. Postal Serv., EEOC Request No. 01A54699 (December 20, 2005); Alyce R. v. Social Security Administration, EEOC Request No. 2020005470 (January 8, 2021). Here, Complainant has not established that the Agency breached section of (3)(d). Complainant argued that his appraisal included comments related to the 2019 incident, but did not point to specific language in the appraisal to support his argument. In the appraisal, the Chief of Staff described that Complainant "displayed a need for improved . . . communication skills and interpersonal skills" so that he could present "a more professional demeanor." This assessment was made during the same FY that Complainant was disciplined for "multiple instances" of a lack of professional demeanor, including an incident in November 2020. We note that Complainant did not dispute the November 2020 incident or that he engaged in other instances of concern about his professional demeanor.

Complainant has failed to establish that the Agency breached section (3)(d) of the settlement agreement by issuing a performance appraisal that was not commensurate with his performance. A fair reading of his appraisal shows the Chief of Staff commended him for his work and his appraisal scores resulted in a salary increase and contribution award. We note, for instance, the Chief of Staff stated that Complainant "successfully supported a program office composed of over 125" employees, deployed the PMRT/CCaR program 60 days ahead of schedule, and saved the government over 10 million dollars on the PMRT contract. In sum, the appraisal appears to reflect Complainant's successes over the entire rating period as well as the general concern about his need to improve his communication and interpersonal skills.

### CONCLUSION

Accordingly, the Agency's decision that it was not in breach of the settlement agreement was proper and 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

November 17, 2022

Date