



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

[REDACTED]
Ingeborg B,¹
Complainant,

v.

Gina M. Raimondo,
Secretary,
Department of Commerce,
Agency.

Appeal No. 2022005077

Agency No. 54-2019-00043

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from a final decision by the Agency dated September 26, 2022, finding that it was in compliance with the terms of a May 26, 2020 settlement agreement. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

During the period at issue, Complainant worked for the Agency as a Management and Program Analyst in Silver Spring, Maryland.

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On May 26, 2020, Complainant and the Agency entered into a settlement agreement to resolve the matter. The May 26, 2020 settlement agreement provided, in pertinent part, that:

2(c) RESIGNATION. Complainant will submit a Standard Form 52 (SF-52) to the Agency within 60 days of the execution of this Agreement requesting resignation effective October 29, 2018.²

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.

3(a) October 29, 2018 Termination. Based on the erroneous nature of Complainant's termination, [the Agency shall] remove all documentation of Complainant's October 29, 2018 termination from her Official Personnel Folder (OPF). Within sixty (60) days of receipt if the SF-52 submitted by Complainant per Section 2.c above, Agency will replace termination documentation reflecting Complainant's resignation effective October 29, 2018.

By email dated August 22, 2022, Complainant alleged breach. Specifically, Complainant asserted that on August 20, 2022, she received a copy of her SF-50 from the National Archives which set forth that she was terminated due to unsatisfactory performance. Complainant requested that the terms of the settlement agreement be specifically implemented.³

In its September 26, 2020 final decision, the Agency found no breach. The Agency provided the following reason:

While Complainant faults the Agency for the existence of documentation which has remained in her OPF referencing the October 28, 2018 termination, Complainant has failed to show that she submitted a Standard Form 52 (SF-52) to the Agency within 60 days of the execution of the settlement agreement requesting resignation effective October 29, 2018. Here, Complainant's submission of the SF-52 was a condition precedent to the Agency replacing the termination documentation reflecting Complainant's resignation. Without the submission of the SF-52 requesting change to the personnel action, the corresponding Notification of Personnel Action (SF-50) was not generated. While ordinarily we would expect a SF-52 to be prepared by an employee's office or Human Resources Specialist, we note that Complainant had the benefit of counsel when she signed the settlement agreement which contained this provision and presumably knew how to fill out this paperwork or could have sought assistance in completing the paperwork. Under these circumstances, we do not find that the Agency is in breach.

² Provision (7) of the settlement agreement provided, in pertinent part, that "Complainant has seven days from the date all parties have provided signatures to this Agreement to revoke the Agreement. The Agreement shall not become effective or enforceable until the revocation period has expired." Thus, the Agency's final decision found that the Agreement's effective date to be June 2, 2020, since the last signature for the Agreement was on May 26, 2020. Final Agency Decision at 1.

³ In her August 22, 2022 email, Complainant requested relief under section 8(a) of the settlement agreement. Provision 8(a) of the settlement agreement provides that "...in the event of failure by the Agency to carry out the terms of this Agreement for any reason other than for non-compliance or waiver of this Agreement by Complainant, Complainant may request [i]mplementation of the terms of the Agreement."

That being said, the Agency now aware of Complainant's concerns, has taken concrete steps to ensure that reference to the October 28, 2018 termination is removed from her OPF and that paperwork showing that she instead resigned effective October 28, 2018 is put in its place. Final Agency Decision at 7.

The instant appeal followed. On appeal, Complainant reiterates that the Agency breached the settlement agreement. Complainant asserts that the Agency acknowledges that an SF-50 reflecting her resignation (rather than a termination) was not generated. Complainant asserts that on May 26, 2020, her attorney, at the time, submitted to an Agency official via email a corrected SF-52 regarding Complainant's resignation. Complainant asserts that the documentation regarding her termination impeded her job search. In addition, Complainant states that the Agency's action also constitutes a subsequent act of discrimination. Complainant asserts that she is seeking compensatory damages.

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).

The Agency breached provision 3(a) of the subject settlement agreement. The Agency's final decision acknowledges that it did not replace Complainant's termination paperwork with paperwork reflecting a resignation. The Agency asserts that Complainant did not submit a SF-52 reflecting her resignation. However, we disagree. The record contains an email from the Agency's Acting Chief Office of General Counsel (one of the Agency officials who signed the settlement agreement) to Complainant's attorney dated May 22, 2020 (the documentation was submitted by Complainant on appeal).⁴ Therein, the Acting Chief states that "we cannot conclude the settlement agreement until [Complainant] submits a corrected SF-52.

⁴ The Acting Chief also copied on this email an Agency representative who signed the settlement agreement. The SF-52 was signed by Complainant and Box 4 was left blank with no date.

Specifically, Box 4 in Part E currently indicates that [Complainant] signed the SF-52 on October 29, 2018. This is not accurate and we cannot process the SF-52 if it is dated in that way. [Complainant] can either leave Box 4 blank or put the date that she actually signed the SF-52 in Box 4. If you submit the corrected SF-52 to me today, I can return to the settlement signed to you today. If not, [a named Agency representative] will return next week.”

In response, Complainant’s attorney, at that time, sent an email dated May 26, 2020 to the Agency representative. Therein, Complainant’s attorney states that she attached an undated SF-52. The record contains a copy of the attached SF-52 indicating a resignation for Complainant effective October 28, 2018.⁵ In reply, that same day, the Agency representative (who is also one of the Agency officials that signed the settlement agreement) sent to Complainant’s attorney a copy of the signed settlement agreement. We find, based on these circumstances, that Complainant completed an SF-52 requesting resignation per provision 2(c) of the settlement agreement. The record is devoid of evidence that the Agency subsequently informed Complainant that the SF-52 submitted via email on May 26, 2020 was defective or would not comply with provision 2(c).

The record reflects that the Agency is now attempting to cure the defect (remove the termination paperwork in Complainant’s official personal file and replace with resignation paperwork). The Agency’s final decision provides, in pertinent part, that “the Agency’s Acting EEO Officer forwarded the original separation package which includes the SF-52 termination and also included a revised SF-52 prepared on September 16, 2022, reflecting Complainant’s termination effective October 29, 2018. The Agency’s EEO Officer explained that based on information relayed to him, the revised SF-52 had been submitted to the Enterprise Services office for action and that it appeared it will take at least two weeks for special processing since Complainant is no longer in [the Agency’s] system.” Final Agency Decision at 5-6. However, the record is devoid of evidence that the Agency is now in full compliance with provision 3(a) (removal of termination documentation and replaced with resignation documentation effective October 29, 2018).⁶

To the extent Complainant asserts that the Agency’s actions constitute a subsequent act of discrimination, pursuant to 29 C.F.R. § 1614.504(c), allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints. If Complainant wishes to pursue this matter as a separate complaint, she should contact an EEO Counselor.

Accordingly, we REVERSE the Agency’s final decision finding no breach of the settlement agreement and we REMAND this matter to the Agency for further processing in accordance with the ORDER below.

⁵ The SF-52 was signed by Complainant and Box 4 was left blank with no date.

⁶ To the extent, Complainant is seeking compensatory damages, the settlement agreement did not expressly provide for such a remedy in the event of a breach.

ORDER

Within 60 (sixty) days from the date this decision is issued, the Agency shall comply with provision 3(a) of the settlement agreement (that documentation referencing Complainant's termination is removed from her official personnel file and that the termination documentation is replaced with documentation reflecting Complainant's resignation effective October 29, 2018).

The Agency shall submit documentation that it has complied with provision 3(a) of the settlement as set forth in the paragraph below entitled "Implementation of the Commission's Decision."

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>

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 (R0610)

This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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

December 6, 2022

Date