



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

[REDACTED]  
Stephany K.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2022002411

Agency Nos. 200P-0644-2017100706; 200P-0644-2018100995; 200P-0644-2019101698

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) alleging the Agency breached the terms of the settlement agreement into which the parties entered. We find that the Agency has breached the settlement agreement.

**BACKGROUND**

At the time of events giving rise to this compliance action, Complainant was a former Nurse Educator at the Agency's Phoenix VA Health Care System in Phoenix, Arizona. Her employment with the Agency ended in September 2019.

On July 19, 2021, Complainant and the Agency entered into a settlement agreement to resolve Complainant's equal employment opportunity (EEO) complaints. The settlement agreement provided, in pertinent part, that:

- (3) As due consideration for the Parties' mutual undertakings and obligation(s) provided for in this Settlement Agreement, . . . the [Agency] agrees to pay [Complainant] a total settlement sum of \$150,000 (One-Hundred Fifty-Thousand Dollars), which includes Complainant's reasonable attorneys' fees/costs, to be allocated and paid as follows:

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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.

- (a) For [Complainant's] alleged emotional distress and compensatory damages for her race, national origin, and disability discrimination claims and reprisal alleged from these claims, the Agency shall make a payment of \$89,500 (Eighty-Nine Thousand Five Hundred Dollars and No Cents) to [Complainant].
- (b) For [Complainant's] alleged damages incurred as a result of the Agency's purported age-discrimination and reprisal alleged from that claim, the Agency shall make a payment of \$500 (Five Hundred Dollars and No Cents) to [Complainant]. . .
- (c) To compensate [Complainant] for her attorneys' fees and costs with respect to her race, national origin, and disability discrimination claims, and her claims of unlawful reprisal, the Agency agrees to make a payment of \$60,000 (Sixty Thousand Dollars and No Cents) to [Complainant] . . .
- (e) For the amounts set forth in Paragraphs 3(a) through 3(c), above, the Agency will make a combined, one-time payment of \$150,000 (One Hundred and Fifty Thousand Dollars and No Cents) to [Complainant], via Electronic Funds Transfer (EFT) to the banking institution and bank account provided by [Complainant] on her completed FSC [Financial Services Center] Vendor File Request Form. The Agency agrees to make this payment within 60 calendar days of the Effective Date of this Agreement. The Agency shall issue an IRS [Internal Revenue Service] Form 1099-MISC, Box 3, to [Complainant] in connection with the \$150,000 payment, in a reasonable time and manner consistent with its ordinary business practices.

By letter to the Agency's EEO Director dated February 23, 2022, Complainant alleged that the Agency was in breach of the settlement agreement. Specifically, Complainant alleged that the Agency failed to provide her with the correct Form 1099-MISC, Box 3, in connection with her \$150,000 settlement payment and instead issued her an incorrect 1099 form meant for independent contractors, Form 1099-NEC (nonemployee compensation). Complainant requested that the Agency specifically implement provision 3(e) of the settlement agreement so that she could correctly file her taxes.<sup>2</sup>

When the Agency did not issue a decision on her breach claim after more than 35 days, Complainant filed the instant appeal directly with the EEOC. See 29 C.F.R. § 1614.504(b).

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<sup>2</sup> The Agency represents that it paid Complainant the full \$150,000 settlement amount, and Complainant does not dispute that she received her settlement payment.

In response to Complainant's appeal, the Agency concedes that it learned from Complainant's counsel that the 1099 form issued to Complainant was not what was specified in the settlement agreement. The Agency further explained that the FSC—located in Austin, Texas—is the entity within the Agency responsible for issuing 1099s and corrected 1099s. An Administrative Officer of Human Resources (AO) within the Agency's Phoenix service network attempted multiple times to have the FSC issue a corrected 1099-MISC to reflect the \$150,000 settlement payment to Complainant. On about April 21, 2022, the Agency learned that the FSC had instead issued a second 1099-NEC to Complainant. By April 25, 2022, AO believed he had solved the error that led to the issuance of the second 1099-NEC and that Complainant should receive the correct 1099-MISC within a week. However, by the time the Agency submitted its response to this appeal on May 13, 2022, Complainant had not yet received the correct form, and AO had not received further information from FSC about whether the form had been issued. The Agency provides numerous emails between AO and FSC staff indicating AO's efforts to provide Complainant with the required 1099-MISC form instead of the 1099-NEC form. The Agency indicates that it "will continue to work diligently to get the proper 1099-MISC issued. This matter has been further escalated to the FSC's executive leadership team for an expedited resolution."

### ANALYSIS AND 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 Affs., 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, the settlement agreement at provision 3(e) explicitly requires that the Agency provide Complainant with a 1099-MISC form to reflect her settlement payment. Complainant contends that instead of the 1099-MISC form, she received 1099-NEC forms intended for independent contractors. While the Agency has submitted documentation showing its efforts to get Complainant the correct tax form, there is no evidence in the record that the Agency has cured the breach.

Consequently, we find the Agency is in breach of the settlement agreement. Under the Commission's regulations, a breach may be remedied by either ordering the Agency to undertake specific performance of the breached provision or reinstate the underlying complaint for processing. See 29 C.F.R. § 1614.504(c). Here, because Complainant has requested specific performance, and the Agency has complied with its other obligations under the agreement, we find that specific performance is the appropriate remedy. We note that the Agency has made no argument that it is not possible for it to comply with provision 3(e) of the settlement agreement.

### CONCLUSION

The Agency's decision finding no breach of provision 3(e) of the settlement agreement is REVERSED. We REMAND the matter to the Agency for compliance with provision 3(e) in accordance with the Order herein.

### ORDER

Within 30 days from the date this decision is issued, to the extent it has not already done so, the Agency shall:

Provide Complainant with the correct IRS Form 1099-MISC, Box 3, for the \$150,000 settlement payment in accordance with provision 3(e) of the July 19, 2021, settlement agreement.

### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

### 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

June 20, 2023

Date