



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Retha W.,¹
Complainant,

v.

Tom J. Vilsack,
Secretary,
Department of Agriculture,
Agency.

Appeal No. 0120151000

Agency No. NRCS-2012-00922

DECISION

Complainant filed an appeal with this Commission from a final decision by the Agency dated November 8, 2013, finding that it was in compliance with the terms of the settlement agreement into which the parties entered. For the following reasons, the Commission **AFFIRMS** the Agency's final decision finding no breach of a settlement agreement.

BACKGROUND

On November 8, 2013, Complainant and the Agency entered into a settlement agreement to resolve Agency Complaint Nos. NRCS-2009-00261, NRCS-2012-00922; and NRCS-2011-00574. The settlement agreement provided, in pertinent part, that:

Section I. The Agency agrees to:

- (A) To pay the Complainant the lump sum of \$8,000 (Eight Thousand Dollars) and process this payment to the National Finance Center (NFC) within 45 days of the execution of this Agreement.

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.

Section II. The Complainant Agrees to:

- (A) Withdraw her EEO (Formal) Complaints identified as Agency Case NRCSL-2009-00261; NRCS-2012-00922; NRCS-2011-00574 and any other formal or informal grievances, appeals, civil actions or complaints with the EEOC, Office of Special Counsel, Federal Labor Relations Authority, Merit Systems Protection Board, General Accounting Office or any other federal agency, administrative tribunal or court concerning matters arising out of or relating to Complainant's employment with the Agency. Complainant shall submit a withdrawal letter to EEOC/OFO withdrawing her appeal in Agency Case NRCS-200-00261.

Section III. Both Parties Agree:

- (D) This Agreement constitutes the full, entire, and complete agreement between the settling parties with respect to the complaints, grievances, and related matter described above. The terms of this Agreement are contractual and are not a mere recital. No modification or waiver of any of the terms of this Agreement shall be valid unless made in writing, and signed by the settling parties.

By letters to the Agency dated July 9 and 16, 2014, Complainant alleged that the Agency was in breach of the settlement agreement. Specifically, Complainant alleged that the Agency failed to fulfill its obligations regarding a "Gentlemen's Agreement" that was communicated with the involved parties, including Complainant, her representative, the Agency's resolving official, and the state conservationist at the time the Settlement Agreement was signed. Complainant claimed that according to the "Gentlemen's Agreement," the Agency promised to announce a GS-12 level outreach position in Alabama, for which Complainant would be given consideration and listed on the hiring certificate. According to Complainant and her representative, the Agency failed to advertise such a vacancy.

In its November 8, 2013 decision, the Agency concluded neither the terms of the settlement agreement or the EEO regulations permit enforcement of terms that do not appear in the settlement agreement. The Agency stated that the agreement is plain and unambiguous on its face when it states that it is a full, entire, and complete agreement. The Agency noted in the settlement agreement, Complainant waived her claims arising out of her EEO complaints and other claims of employment discrimination against the Agency. The Agency acknowledged, in exchange, it agreed to pay Complainant a lump sum of \$8,000. The Agency confirmed it made the payment and noted Complainant did not contest receipt of the payment. Thus, the Agency stated it complied with all applicable terms in the agreement.

On appeal, Complainant argues the Agency's Representative engaged in an abuse of authority and alleges non-compliance with the "Gentlemen's Agreement." Complainant provides

electronic mail messages from her representative in support of her claim that a “Gentlemen’s Agreement” existed between the parties.

In response to Complainant’s appeal, the Agency reiterates that it never entered into any supplemental covenant for any term which was not incorporated into the settlement agreement. The Agency states while the Agency’s Resolving Official mentioned during settlement agreement negotiations that a particular position may be available at some point in the future, the Agency claims it made no promise to hire Complainant or made any offer of special consideration. Further, the Agency states it made no guarantee or gave any assurances that a specific position would be advertised.

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 Complainant 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. Complainant 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 Complainant 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).

Upon review, we find Complainant has not shown that the Agency failed to fulfill a “Gentlemen’s Agreement” that it would announce a GS-12 level outreach position in Alabama, for which Complainant would be given consideration and listed on the hiring certificate. Specifically, we note that such terms were never reduced to writing and were not made part of the settlement agreement. Under the terms of the settlement agreement itself, and in keeping with the established contract law, only those terms which have been reduced to writing as part of the settlement agreement are enforceable. See, e.g., Complainant v. Dep’t of Def., EEOC Request No. 05960032 (December 9, 1996). Despite Complainant’s vague assertion, we find no evidence that the Agency’s representative acted in bad faith or abused his authority during settlement negotiations.

With regard to the electronic mail messages supplied by Complainant on appeal, we note those messages are from Complainant’s representative to the Agency inquiring on the status of the “Gentlemen’s Agreement.” Complainant also provided text messages from her representative to Complainant stating that he is “confident things are going to go as planned” and that he

“still feel[s] the agreement will be upheld.” However, these submissions do not constitute evidence demonstrating that the alleged verbal terms were agreed to by the parties. If Complainant had intended for those terms to be part of the agreement, she should have requested that language to that effect be included in the agreement. Thus, we find that the Agency is not in breach of the settlement agreement. We note that on appeal Complainant does not contest that she received the lump sum payment specified in the agreement.

CONCLUSION

Accordingly, the Agency’s final decision that it did not breach the settlement agreement is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0416)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision or **within twenty (20) calendar days** of receipt of another party’s timely request for reconsideration. 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. The requests may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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

March 24, 2017

Date