



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

[REDACTED]
Elease S.,¹
Complainant,

v.

Robert Wilkie,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 0120181732

Agency No. 200P06632017103064

DECISION

Complainant filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) from the Agency's final order dismissing her complaint of unlawful employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq. For the reasons that follow, we AFFIRM the Agency's final order.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Podiatrist, GS-15, at the Agency's Puget Sound Medical Center in the Podiatry Surgery department in Puget Sound, Washington. On June 23, 2017, Complainant filed the instant complaint alleging that the Agency subjected her to discriminatory harassment on the bases of race (African-American), sex (female), age (45), and reprisal for prior protected EEO activity (Agency Case No. 200P-0663-2017103064).

Almost two months later, on August 2, 2017, Complainant entered into a settlement agreement that resolved Agency Case No. Agency No. 200P-0575-2015103167, a complaint that had already been pending before June 23, 2017. The settlement agreement stated, in relevant part, that:

1. Withdrawal and Waiver:

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.

- a. The Complainant agrees that the consideration by the Agency expressed in paragraph 2 of this settlement agreement shall be accepted in full satisfaction of any and all potential and/or existing claims for damages Complainant has asserted and/or potentially could have asserted against the Agency to date of signing this settlement...
- b. Based on this agreement and consideration the Complainant voluntarily withdraws any and all pending claims relevant to paragraph 1.a. For this present matter, the Complainant agrees to withdraw and dismiss with prejudice all the issues raised by her in her current EEOC Case No. 541-2016-00106X; Agency No. 200P-0575-2015103167. Complainant agrees and represent that she has no other active, current EEO complaints at the time this settlement agreement is executed by Complainant other than the above-referenced complaint...

On March 27, 2018, the Agency filed a motion with an EEOC Administrative Judge (AJ) to dismiss the instant complaint, Agency Case No. 200P-0663-2017103064, on the grounds that Complainant entered into the above-referenced settlement agreement, which effectively resolved all claims with the Agency up until the date of the agreement. On April 6, 2018, the AJ issued a decision dismissing the complaint on the grounds that the settlement agreement which Complainant signed clearly indicated that she was voluntarily settling all active claims she had against the Agency up to the day of the signing. The AJ reasoned that as a result of her signing the settlement agreement, Complainant did not have standing to bring the instant matter. Although the AJ order the Agency to issue a final decision, there is no evidence that the Agency did so.²

The instant appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant, through her attorneys, contends that the purported settlement agreement should be set aside because it is vague and ambiguous. In order to resolve the ambiguity, Complainant argues that the agreement must be construed against the drafting party, i.e., the Agency. Additionally, Complainant states that there was no meeting of the minds with respect to the ambiguous language. According to Complainant, she was not aware that she was giving up her right to pursue Agency Case No. 200P-0663-2017103064, when she signed the settlement agreement regarding Agency Case No. 200P-0575-2015103167.

Alternatively, the Agency contends that the AJ's decision thoroughly and accurately detailed the relevant facts and applied the appropriate legal standards. Further, the Agency contends that Complainant failed to present any evidence that the language in the settlement agreement was ambiguous, or misleading. The Agency requests that the Commission uphold the AJ's decision dismissing the underlying complaint.

² Nevertheless, the Agency is deemed to have ratified and adopted the AJ's decision by failing to issue a final order within 40 days.

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 Affairs, EEOC Request No. 05900795 (Aug. 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 (Dec. 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 record before us contains a copy of the settlement agreement signed on August 2, 2017. The agreement sets forth the language alluded to by the AJ and the Agency. A clear reading of the language indicates that Complainant agreed that the consideration she received for resolving Agency Case No. 200P-0575-2015103167, satisfied any and all potential and/or existing claims against the Agency that existed on the date the agreement was signed, and that based on the agreement and consideration Complainant would voluntarily withdraw any and all pending claims and not file any new claims on those matters.

Complainant argues that the agreement did not contain any information identifying the instant complaint. We note that while this is true, the plain meaning of the language in the agreement clearly applies to any complaints related to events or actions that occurred *before* the signing of the agreement. This is not a prospective waiver because it does not apply, nor can it be construed as applying, to claims arising after the agreement was signed. As such, the AJ accurately interpreted the settlement agreement as resolving the instant complaint. See Julius C. v. Dep't of the Air Force, EEOC Appeal No. 0120181081 (Apr. 24, 2018) (Commission affirmed Agency's dismissal of complaint where the agreement stated that complainant agreed not to file "any new claims, complaints, grievances, proceedings, appeals, or lawsuits in any judicial or administrative forum whatsoever regarding any matter which could have been raised prior to his signature on this Settlement Agreement.")

Accordingly, the Agency's final order, which by regulation adopted the AJ's decision dismissing Complainant's complaint, is **AFFIRMED**.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

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. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request 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 agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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).

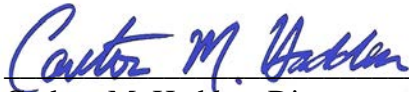
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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

August 30, 2019

Date