



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

Cynthia Bower,
Complainant,

v.

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

This material is part of a collection that documents the harassment, discrimination, and retaliation perpetrated against Alaska's women research scientists by their supervisor, with full knowledge (and arguably, "tacit approval") of their federal employer, the USDA Agricultural Research Service (ARS)

Appeal No. 0120120069

Agency No. ARS200800696

DECISION

Complainant filed a timely appeal with this Commission from a final decision (FAD) by the Agency dated September 16, 2011, finding that it was in compliance with the terms of the settlement agreement into which the parties entered. See 29 C.F.R. § 1614.402; 29 C.F.R. § 1614.504(b); and 29 C.F.R. § 1614.405.

BACKGROUND

Believing that the Agency subjected her to unlawful discrimination, Complainant contacted an Agency EEO Counselor to initiate the EEO complaint process. On August 19, 2010, Complainant and the Agency entered into a settlement agreement to resolve the matter. The settlement agreement provided, in pertinent part, that:

(2)

Paragraph removed to comply with confidentiality requirements associated with USDA Settlement Agreements

By letter to the Agency dated August 2, 2011, Complainant alleged that the Agency was in breach of the settlement agreement, and requested that the Agency specifically implement its terms. Specifically, Complainant alleged that the Agency failed to report Complainant's settlement income to the IRS in accordance with the settlement agreement.

In its September 16, 2011 FAD, the Agency acknowledged that inadvertently, it had failed to comply with that portion of the agreement obligating it to notify the IRS of Complainant's settlement. In its determination, the Agency indicated that the error was an oversight and was not taken with any malice or negative intention. Moreover, the Agency determined that Complainant had not incurred any loss or damage as a result of the Agency's inadvertent failure to report Complainant's settlement income. The Agency further indicated that it was currently taking action to remedy the oversight. Complainant further alleges that the Agency's obligation to report her settlement income to the IRS required also the issuance of an IRS Form W-2 as her claim was a wage based complaint.

In its opposition to Complainant's appeal in this matter, the Agency indicates that it has fulfilled its obligation under the August 19, 2010 settlement agreement to report Complainant's settlement income. The Agency provided the Commission with documentation indicating that on December 9, 2011 the Agency's National Finance Center corrected Form 1099 to reflect the payment to Complainant of \$ _____ dollars as other income.

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).

In the instant case, we find that the Agency has met its obligation pursuant to the August 19, 2010 settlement agreement between the parties. Specifically, we find that the Agency's failure to previously report Complainant's settlement income was not based on bad faith. There is no evidence in the record to suggest that it was anything other than an oversight on the part of the Agency. The Commission also notes that the agreement did not provide a time-frame in which the Agency was obligated to report the \$ _____ settlement to the IRS on Complainant's behalf,

nor did it obligate the Agency to report the income to the IRS on any particular type of IRS document.

CONCLUSION

Upon review, the Commission finds that Complainant has failed to demonstrate that the Agency breached the Agreement as alleged. In that regard, the Commission finds that the determination of the Agency that it complied with the August 19, 2010 settlement agreement between the parties was proper and is affirmed for the reasons set forth herein.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0610)

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 9-18 (November 9, 1999). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. 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 (Z0610)

If you decide to file a civil action, and if you do not have or cannot afford the services of an attorney, you may request from the Court that the Court appoint an attorney to represent you and that the Court also permit you to file the action without payment of fees, costs, or other security. See Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq.; the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 791, 794(c). **The grant or denial of the request is within the sole discretion of the Court.** Filing a request for an attorney with the Court does not extend your time in which to file a civil action. Both the request and the civil action must be filed within the time limits as stated in the paragraph above ("Right to File a Civil Action").

FOR THE COMMISSION:

Carlton M. Hadden

Carlton M. Hadden, Director
Office of Federal Operations

MAR 21 2012

Date

CERTIFICATE OF MAILING

For timeliness purposes, the Commission will presume that this decision was received within five (5) calendar days after it was mailed. I certify that this decision was mailed to the following recipients on the date below:

Cynthia Bower
POB 1383
Kodiak, AK 99615

Michael Watts, Acting Director
Office of Adjudication and Compliance, MS 9410
Department of Agriculture
14th & Independence Ave., SW
Washington, DC 20250-9406

MAR 21 2012

Date

PM

Equal Opportunity Assistant

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
OFFICE OF FEDERAL OPERATIONS

P.O. BOX 77960
WASHINGTON, D.C. 20013

OFFICIAL BUSINESS

Reference #: 0120120069
Cynthia Bower
POB 1383
Kodiak, AK 99615



02 1A
0004601824 MAR 22 2012
\$ 00.65⁰
MAILED FROM ZIP CODE 20507

