



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

████████████████████  
Stacie D.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service,  
Agency.

Appeal No. 0120140918

Agency No. 4C-400-0051-09

DECISION

On December 26, 2013, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 25, 2013, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision awarding Complainant compensatory damages.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Full Time City Carrier at the Post Office in Paducah, Kentucky. On June 17, 2009, Complainant filed an EEO complaint in which she alleged that her first-line Supervisor and other individuals had discriminated against her on the basis of disability (work-related foot injury) in connection with various work-related incidents. In EEOC Appeal No. 0120103590 (September 18, 2012), request for reconsideration denied, EEOC Request No. 0520130094 (April 16, 2013), the Commission affirmed the Agency's final decision finding no discrimination on all of Complainant's allegations, except her allegation of unlawful disclosure of confidential medical information in violation of the Rehabilitation Act.

---

<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.

Specifically, the Commission found that the Supervisor named in the complaint, the Selectee for a job for which Complainant had applied, and three other individuals were provided copies of the entire investigative report in this case while preparing to give their testimony at a hearing, and that the report contained extensive medical information about Complainant, including her diagnosis, surgery, and treatment history. The Commission emphasized that there had been no showing that these witnesses had any legitimate need for Complainant's medical information in order to participate in the proceedings. The Agency was ordered, in pertinent part, to conduct a supplemental investigation on the question of Complainant's entitlement to compensatory damages.

In accordance with the Commission's order, the Agency issued a final decision in which it agreed to award Complainant \$5,000 in non-pecuniary compensatory damages. On appeal, Complainant contends that she is entitled to \$30,000 to compensate her for her non-pecuniary loss, and that the Agency failed to cover her out-of-pocket medical expenses in the amount of \$333.38.

### ANALYSIS AND FINDINGS

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to discriminatory acts or conduct. Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002, at 5 (July 14, 1992). Compensatory damages include damages for past pecuniary loss (out-of-pocket expenses) and non-pecuniary loss (emotional harm). See id.

Initially, we will address Complainant's claim for out-of-pocket medical expenses. Complainant averred that between December 2009 and July 2013, she had incurred copays for psychiatric and stress-relieving medications in the amount of \$113.38. Her prescriptions included such medications as Lorazepam, Lexapro, and Ativan. She also averred that she had made eleven visits to her treating physicians, and had incurred a \$20 copay for each of those visits, which left her with \$220 in uncompensated copays for visits to her doctors. Supplemental Investigative Report – Compensatory Damages (SIR-CD) 18-19. She provided receipts documenting her copays for her medications, but not for her doctor visits. SIR-CD 33-40, 77. Nevertheless, she did provide a sworn affidavit that she had made those visits, and had presented records documenting her visits to physicians between January 2010 and July 2013. We find that Complainant has presented more than enough evidence of her past pecuniary losses to justify an award of \$333.38.

We turn now to the question of Complainant's non-pecuniary loss, for which the Agency awarded Complainant the amount of \$5,000. The Commission has handed down a number of decisions over the years in which we have authorized compensatory damages for unlawful disclosures of confidential medical information, which we have characterized as per se violations of the Rehabilitation Act. See e.g. Wilda M. v. Department of Homeland Security, EEOC Appeal No. 0120142660 (December 2, 2016) (\$4,000); Mayo v. Department of Justice, EEOC Appeal No. 0720120004 (October 24, 2012), request for reconsideration denied, EEOC

Request No. 0520130125 (April 25, 2014) (\$2,500); and Daley v. Dept. of Veterans Affairs, EEOC Appeal No. 0120091580 (Jan. 27, 2012) (\$2,500).

In Mayo, the Commission found that the Agency had violated the Rehabilitation Act by placing the employee's confidential medical information in an adverse action file that was being assembled on the employee. The \$2,500 award was based on the fact that although Complainant stated that he had suffered emotional distress as a result of the confidentiality violation, he did not provide further evidence of how that violation had affected him. In Daley, the Commission found that the Agency had violated the Rehabilitation Act by including the employee's confidential medical information in a progress report as part of her application for six job vacancies. The employee's evidence in support of her \$2,500 award for non-pecuniary compensatory damages included affidavits from herself, her daughter, and a friend detailing the emotional distress and financial strain she was experiencing.

More recently, in Wilda M. v. Department of Homeland Security, *supra*, an Administrative Judge found the Agency liable for a single incident of disclosure of the employee's medical information in violation of the Rehabilitation Act. The decision did not specify the details of the disclosure other than the fact that it had occurred on March 17, 2010. The employee sought \$300,000 in non-pecuniary compensatory damages. Evidence the employee presented in support of her claim for damages included her own statement that she was, "emotionally panicked and had never felt this type of shock or pain so deep in her heart." The employee also stated that she began losing sleep and felt anger, fear, and humiliation, that her skin broke out in hives, and that her blood pressure "went through the roof." The employee's husband provided a statement indicating that the employee had become depressed all the time, caused her to lack motivation, and negatively impacted her workout routine. The husband further noted that the employee consumed more alcohol and sweets and that she became nervous after her medical records were shared. The employee's doctor also provided a letter indicating that the employee came into his office on one occasion, indicating that she was under extreme stress at work as a result of her medical records being shared in the workplace. The Commission affirmed the Agency's award of \$4,000.

In the case now before us, Complainant averred that her medical records were released to five people, including the Supervisor she had accused of discrimination, the Selectee for the job for which Complainant had applied, and three others. SIR-CD 21-23. In particular, she stated that the release of her confidential medical information to the Supervisor "added to and multiplied" her stress because she was sure that the Supervisor had shared that information with other people. She averred that she was, "hurt, mad, embarrassed, and damaged" by the Agency's decision to release her medical records. SIR-CD 25. In a separate affidavit concerning her entitlement to compensatory damages, Complainant averred that the violation had exacerbated her medical problems, including loss of sleep, upset stomach, weight gain, and high blood pressure. She also averred that she had to obtain psychiatric counseling and had been prescribed the medications referenced above. SIR-CD 27-28. Complainant's husband provided an affidavit in which he stated that Complainant would come home and go to sleep, crying over the disclosure and other things going on at work. SIR-CD 31. The records of her

doctor's visits between January 2010 and July 2013 document that Complainant's weight and blood pressure had been fluctuating and that she was suffering from anxiety and depression arising from the situational stress she had been experiencing at work. Documented symptoms that Complainant had been presenting include headaches and nausea. Diagnoses included abnormal weight gain, situational stress, and depressive disorder. SIR-CD 41-69.

After reviewing the record, we find that the duration of Complainant's symptoms was longer than that of the employee in Wilda M. v. Department of Homeland Security and that Complainant's medical conditions were much more extensively documented. The documentation pertaining to Complainant's medical visits includes a diagnosis of hypertension, situational stress, headaches, anxiety reactions, and nausea. SIR-CD 51, 53, 56. Her chief complaint was identified as situational stress and anxiety. A history of her illness assessed at a follow-up appointment on July 27, 2011, indicated that Complainant had presented moderate complaints of situational stress and anxiety disorder for the previous several months which had been occurring constantly, and that she could not get out of bed that morning to go to work due to her stress. SIR-CD 57. Because Complainant established that she had been experiencing multiple symptoms and conditions over three and a half years, an award of \$5,000 is not commensurate with the harm she suffered.

In Complainant v. Department of the Treasury, EEOC Appeal No. 0120123017 (April 24, 2015), the Commission awarded \$10,000 to an employee who claimed that she suffered years of embarrassment and deep hurt as a result of her manager revealing that she had been filing EEO complaints. Evidence presented by the employee included her own sworn statements that she had been taking Tylenol with Codeine for headaches and that she suffered from insomnia and nightmares, testimony from friends, coworkers and relatives that they had observed the employee suffering from stress, anxiety, mood swings, personality changes, and occasional memory loss and paranoia, along with nausea and other physical symptoms. As to duration, the employee averred that she had suffered emotional distress for a number of years since December 2006 while a friend of hers had stated that she was still suffering from depression and anxiety in 2012. The Commission did not award a larger amount because not all of the employee's harm was caused by her manager's retaliatory statement. For similar awards, see Ferebee v. Dept. of Homeland Security, EEOC Appeal No. 0720100039 (April 24, 2012) (awarding \$10,000 in non-pecuniary compensatory damages where the complainant suffered humiliation, stress and loss of sleep and appetite in being discriminated against on the basis of race), and Rowan v. Dep't of Veterans Affairs, EEOC Appeal No. 0120070384 (June 19, 2009)(awarding complainant \$10,000 for non-pecuniary damages where complainant established that at least some of the exacerbation of his stress, humiliation, anxiety, sleeplessness, fears of termination, and depression were attributable to the Agency's discriminatory conduct).

Similar circumstances exist in the case now before us. We find, just as we did in EEOC Appeal No. 0120123017 that the evidentiary record is strong enough to support an award of \$10,000. We therefore conclude that an award for non-pecuniary compensatory damages in the amount of \$10,000 is appropriate.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we MODIFY the Agency's final decision in accordance with our order below.

### ORDER

Within sixty (60) days of the date this decision becomes final, to the extent that it has not already done so, the Agency shall issue a check to Complainant in the amount of \$10,333.38 or, alternatively, a check to cover the difference between this amount and any amount already awarded.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

### ATTORNEY'S FEES (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she 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 this decision becoming final. 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 (K0610)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be submitted to the Compliance Officer, Office of Federal Operations, Equal Employment Opportunity Commission, P.O. Box 77960, Washington, DC 20013. The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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.

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 (T0610)

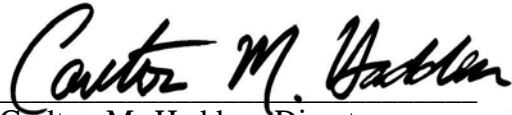
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

January 11, 2017

Date