



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

[REDACTED]
Wilda M.,¹
Complainant,

v.

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

Appeal No. 0120141087

Agency No. 4G-330-0144-11

DECISION

On January 15, 2014, Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 16, 2013, final decision concerning her equal employment opportunity (EEO) complaint alleging 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. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

Complainant worked as a Carrier at the Agency's Branch Office facility in Pembroke Pines, Florida. In O'Keefe v. United States Postal Service, EEOC Appeal No. 01201308548 (June 11, 2013), the Commission found that Complainant had been subjected to discriminatory harassment at the hands of her immediate Supervisor (S1) because of her race (Caucasian). As part of its order for relief, the Commission directed the Agency to conduct a supplemental investigation on the issue of compensatory damages. Pursuant to the Commission's order, the Agency conducted the supplemental investigation and issued a final decision in which it concluded that an award of \$10,000 in compensatory damages was appropriate given the evidence presented by Complainant. Final Agency Decision, p. 8.

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.

In our previous decision, we found, in pertinent part, that Complainant had been subjected to discriminatory harassment between May 27th and July 21, 2011, a period of less than two months. Liability Investigative Report, p. 96 n. 1. We found that, during that time frame. Complainant's Supervisor (African-American) badgered and berated her, nitpicked about the details of her performance, criticized her in front of her coworkers and excessively monitored her work. We also found that the Supervisor made her perform overtime work and had goaded her into filing an EEO complaint. In addition, we found that the Supervisor had subjected Complainant to ten pre-disciplinary interviews between July 8th and 21, 2011. Finally, we determined that the Supervisor had treated two other White employees in a similar fashion, but had treated a third employee who was African-American more favorably. Damages Investigative Report (DIR) 16.

Complainant initially demanded that the Agency award her \$150,000 in non-pecuniary damages, but on appeal, lowered her demand to \$120,000. DIR 7, 28-30. The evidence she presented to support her claim included her own unsworn declaration, letters from her sister, son, daughter-in-law, her granddaughter, and two neighbors. In her declaration, Complainant stated that before being harassed by her supervisor, she was friendly, outgoing, and trusting of other people, and that afterward, she became depressed and isolated, no longer desiring to socialize. She also stated that she lost her self-esteem, that she was subject to intense crying spells, that she found life stressful and difficult to cope with, that she suffered from anxiety, that her reputation suffered because of the comments that the Supervisor had made about her, and that she experienced physical symptoms such as aggravation of arthritis in her knees and an upset stomach. DIR 23-27. She admitted, however, that she was never formally diagnosed with depression by a psychiatrist. DIR 25.

Complainant's sister wrote that as a result of being subject to harassment, her personality changed from friendly and outgoing to stressed out and uneasy with people. DIR 48. The same observations were made by Complainant's son, daughter-in-law, and her granddaughter. DIR 49-50. One of Complainant's neighbors wrote that Complainant appeared to have gone from vivacious to angry, agitated, and emotionally drained to the point where she no longer wanted to go out. She also stated that she observed a "rapid reversal" of Complainant's mood after she had transferred to another post office. DIR 51-53. The other neighbor wrote that Complainant commented on how happy she was at being out of the hostile work environment that she was in. DIR 54.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the

parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

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) (hereinafter Enforcement Guidance). Compensatory damages include damages for past pecuniary loss (out-of-pocket expenses), future pecuniary loss (likely future out-of-pocket expenses), and non-pecuniary loss (emotional harm). See id. Damages are available for pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, character, or reputation, and other intangible injuries that result from discriminatory conduct. Id. at 7. Awards for emotional harm are warranted only if Complainant establishes a sufficient causal connection between the Agency's illegal actions and his injury. Id. Such awards are limited to the amount necessary to compensate Complainant for actual harm and should take into account the severity of the harm and the length of time Complainant has suffered from the harm. Coopwood v. Department of Transportation, EEOC Appeal No. 0120083127 (May 2, 2012) citing Carpenter v. Dept. of Agriculture, EEOC Appeal No. 01945672 (Jul. 17, 1995).

We agree with the Agency that the six-figure award requested by Complainant is excessive. In Lopez-Rosende v. U.S. Postal Service, EEOC Appeal No. 0120102789 (Nov. 30, 2010), a case in which we awarded \$150,000, we found that the employee had been subjected to discriminatory harassment for seven years, and that during that time and thereafter, she, like Complainant, had become depressed, withdrawn, and frightened. In the instant case, the harassment occurred over less than two months, Complainant successfully applied for a transfer, and her mood had improved markedly once she had removed herself from the Supervisor's presence.

We also agree with Complainant that an award in the amount of \$10,000 is not sufficient. In Thompson v. U.S. Postal Service, EEOC Appeal No. 0120100682 (October 21, 2011) and Complainant v. Dept. of Veterans Affairs, EEOC Appeal No. 0120112818 (May 14, 2014), we awarded non-pecuniary damages in the amount of \$15,000. In Appeal No. 0120100682, the Commission found that the employee had been subjected to discriminatory harassment over a five-month period. Complainant's doctor had observed physical symptoms of severe stress, including a rapid heartbeat, elevated blood pressure, and dizziness. The physician had referred Complainant to a psychiatrist who diagnosed him as having an adjustment disorder with anxiety and depression. In Appeal No. 0120112818, the Commission found that Complainant had been subjected to a discriminatory hostile work environment that arose out of a single altercation with her second-level Supervisor in which the Supervisor had insinuated that Complainant's mother was a prostitute. Complainant had experienced anxiety, depression, and insomnia as a result of the incident.

Similar circumstances exist in the case now before us. We find, just as we did in EEOC Appeal Nos. 0120100682 and 0120112818, that the evidentiary record is strong enough to

support an award of \$15,000. We therefore conclude that an award for non-pecuniary compensatory damages in the amount of \$15,000 is appropriate.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we MODIFY the Agency's final decision.

ORDER (D1016)

To the extent that the Agency has not already done so, it is ordered to issue Complainant a check in the amount of \$15,000. If the Agency has already awarded Complainant \$10,000, it shall issue Complainant a check for the remaining \$5,000.

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 of the Agency's calculation of backpay and other benefits due Complainant, including evidence that the corrective action has been implemented.

ATTORNEY'S FEES (H1016)

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 the date this decision was issued. 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)

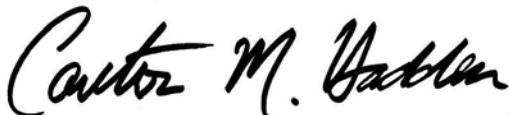
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to

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 12, 2017
Date