



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

████████████████████  
Starr R.,<sup>1</sup>  
Complainant,

v.

Denise Turner Roth,  
Administrator,  
General Services Administration,  
Agency.

Appeal No. 0120143031

Agency No. 12-R04-FAS-CLB-11

**DECISION**

On September 4, 2014, Complainant filed an appeal pursuant to 29 C.F.R. § 1614.403(a), from the Agency's August 7, 2014, 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. and 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 **AFFIRMS** the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Financial Management Analyst, GS-0501-11, in the Atlanta Financial Service Center, Federal Acquisition Service (FAS) located in Atlanta, Georgia. Complainant began working for the Agency in August 2010. On February 14, 2012, Complainant experienced a grand mal seizure at work. Complainant was subsequently diagnosed with epilepsy. Complainant requested and received 12 weeks of leave under the Family Medical Leave Act.

On May 21, 2012, Complainant's physician faxed documentation to the Office of Human Resources (HR) which provided information about her condition and authorized her to telework from home full time. On June 20, 2012, Complainant submitted a formal request for reasonable accommodation, along with a completed medical questionnaire, to the Office of

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<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.

Human Resources. On August 22, 2012, Complainant submitted an additional request for reasonable accommodation, along with medical documentation from Complainant's new physician to the Office of Human Resources.

On August 28, 2012, Complainant's first level supervisor denied Complainant's request for reasonable accommodation in a letter titled Final Decision on Request for Reasonable Accommodation. Complainant subsequently sent a new request for reasonable accommodation to her first level supervisor. On September 7, 2012, Complainant agreed to an arrangement that would allow her to work from home two days per week and work in the office two days per week. This arrangement was finalized on September 14, 2012. Complainant returned to the office on September 19, 2012.

On August 22, 2012, Complainant filed an EEO complaint, which was subsequently amended. Complainant's complaint contained the following allegations:

- (1) The Agency discriminated against Complainant on the bases of disability (epilepsy) and in reprisal for a union grievance when her request for reasonable accommodation submitted on June 20, 2012, was not approved by her supervisor by August 22, 2012.
- (2) Complainant was subjected to discrimination based on race (African-American) when her supervisor denied her request to work from home as a reasonable accommodation, which Complainant was made aware of on August 30, 2012.
- (3) Complainant alleged she was subjected to retaliation for prior protected activity when her supervisor changed her duties to add an overwhelming amount of new tasks and additional duties after she requested a reasonable accommodation.
- (4) Complainant alleged she was subjected to discriminatory harassment based on disability (epilepsy) and in reprisal for prior EEO activity (filed a formal complaint of discrimination on August 22, 2012) when Complainant's supervisor deliberately "combs through every piece of work" that Complainant does to try and find something wrong with her work, calls her on the telephone, constantly checks on her, sends her chats, and checks on her several times when she is teleworking, which her supervisor did not do for other employees.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency's decision dated April 25, 2014, concluded that Complainant proved that the Agency subjected her to discrimination based on race and disability when the Agency denied her request for reasonable accommodation. The Agency found Complainant did not show that she was subjected to reprisal discrimination or a hostile work environment.

As relief for the finding of discrimination, the Agency found Complainant was due back pay (less interim earnings), interest, and any and all benefits or training that she would have otherwise earned or received but for the prohibited discrimination. The Agency determined Complainant may be entitled to damages and informed her of the type of evidence that must be submitted to support a claim for damages. Complainant was afforded 30 days to submit evidence in support of her claim for damages. The Agency was also ordered to: post a notice of violation; consider taking disciplinary action against the responsible management officials; and conduct training for all management officials involved in the complaint regarding their obligations under Title VII of the Civil Rights Act and the Rehabilitation Act of 1973. The decision noted that within 30 days of receipt of all necessary information, the Agency will implement the relief and advise Complainant in writing of the amount of relief and other benefits due to her and inform Complainant how management reached its determinations.

Complainant submitted a Request for Relief and Damages dated May 22, 2014. Complainant requested \$172,448.08 in back pay and benefits with interest. Complainant requested \$70,000 in past pecuniary and future pecuniary losses (\$35,000 for race discrimination and \$35,000 for disability discrimination) for medical treatment, medical expenses, prescription medication, treatment for depression and anxiety, treatment for medical weight loss, and medical mileage.

Complainant requested \$700,000 in nonpecuniary damages (\$350,000 for race discrimination and \$350,000 for disability discrimination) for emotional harm including pain and suffering, mental anguish, loss of sleep, damaged reputation, loss of enjoyment of life, depression, anxiety, weight gain, low self-esteem, and loss of permanent career status with the federal government. Specifically, Complainant stated she suffered mental anguish, depression, shame, and a damaged reputation as a result of being discriminated against and going through a tedious EEO investigation process. Complainant stated she became completely overwhelmed and reached her breaking point, became ill, and was unable to complete the affidavits required to pursue her retaliation and harassment complaints. Complainant averred that as a result of the discrimination she started having severe migraine headaches and more seizures than normal. Complainant reported that the work environment became increasingly stressful and unpleasant for her and she was on the verge of having a nervous breakdown. Complainant reported that after she filed her EEO complaint her supervisor started harassing her and retaliating against her and made her life and job miserable and unbearable. Complainant stated her health was declining and she was severely depressed and having difficulty sleeping. Complainant reported that her doctor told her that he believed the stress at work was making her epilepsy worse. Complainant stated she ultimately left her job due to the harassment. Complainant stated that she no longer enjoys things that used to give her pleasure, such as a family night out or game night with the kids. Complainant stated she lost interest in helping her kids with their homework and attending sports events and school activities. Complainant stated that prior to battling depression, she used to like to socialize with friends and family and after the discrimination she no longer has “the strength, energy, or desire to socialize and congregate with others.” Complainant explained that being the victim of discrimination has hurt her pride and diminished her value and self-worth. Complainant stated that because of the depression

she has a hard time sleeping at night, has disturbing thoughts, difficulty concentrating, irritability, and jumpiness. Complainant stated that she is afraid to let others know she has a disability because she is afraid they will treat her differently and discriminate against her.

In addition, Complainant requested to be reinstated and promoted to a GS-13 position with the Agency in Atlanta, Georgia. Complainant also sought to have the Agency expunge all references to any adverse action from her official personnel file. Finally, Complainant requested written letters of apology from the Agency and that disciplinary action be implemented against the responsible management officials.

Complainant's husband provided a statement dated May 22, 2014. Complainant's husband stated that the discrimination his wife experienced has taken a toll on her mentally, physically, and emotionally. He stated that Complainant became depressed because her supervisors would not approve her reasonable accommodation request. He noted that Complainant's doctor prescribed medication for the depression, but he stated she still struggles with it now. Complainant's husband stated that since the discrimination started it has been a constant struggle for his wife and their family. He explained that the constant paperwork, affidavits, and rebuttals were becoming increasingly stressful for her. He relayed that each time she would get documents in the mail and read her supervisors' statements, she would get upset. He stated this would run her blood pressure up and she would get sick. Complainant's husband noted that Complainant eventually went back to work but her supervisor treated her poorly after she filed the EEO claim. He stated that the supervisor would call her and harass her while she was working from home. He noted this would cause unnecessary stress on Complainant and stated the neurologist believed all the pressure they were putting on her at work was causing her to have more seizures. Complainant's husband stated that the work environment became intolerable for Complainant and stated that the many days when he picked her up she would get in the car crying and talked about how her supervisor was harassing her and retaliating against her for filing the EEO complaint. Complainant's husband noted that Complainant resigned from the Agency and accepted a job elsewhere and is much happier and seems to be getting a little better now. However, he stated that things were really bad while Complainant was working at the Agency and dealing with discrimination and an EEO investigation. He noted she gained weight, had difficulty sleeping, had frequent migraines, suffered from depression and anxiety, lost interest in a lot of things she once loved doing. Complainant's husband also noted as a result of the discrimination, Complainant is more easily frustrated and overwhelmed with everyday tasks, duties, and chores.

On June 30, 2014, the Agency's Office of the Chief Financial Officer (OCFO) submitted a response to Complainant's request. The Agency argued that Complainant was not entitled to back pay, restoration of leave, or other lost benefits because she failed to present any evidence of a nexus between the discriminatory actions and the relief she sought. The Agency additionally argued that Complainant was not entitled to pecuniary damages because she did not present evidence of entitlement as stated in the April 25, 2014 final decision. The Agency also stated that nonpecuniary damages were not warranted as Complainant failed to support her request with objective evidence or documentation.

On August 7, 2014, the Agency issued a final decision regarding Complainant's Request for Relief and Damages. The Agency determined Complainant's claim for pecuniary damages was unsupported by documentation in the record. The Agency recognized the April 25, 2014 final decision outlined the essential factors that must be present to document evidence of past pecuniary and future pecuniary losses. The Agency noted that Complainant failed to provide any documentary evidence to support her claim and did not address the nexus between the alleged harm and the unlawful Agency action. Thus, the Agency denied Complainant's claim for past and future pecuniary damages.

The Agency noted Complainant was charged Leave Without Pay (LWOP) for leave she took as a result of the Agency's failure to accommodate her. Thus, the Agency determined that to make Complainant whole, she was entitled to back pay and benefits from the date the Agency ignored and denied her requests for accommodation and for hours that Complainant was in LWOP status as a result of the Agency's failure to accommodate her. The Agency recognized Complainant first notified the Agency of her need for accommodation on May 21, 2012, and was not able to return to work under a suitable provisional reasonable accommodation until September 19, 2012. Thus, the Agency determined Complainant was entitled to an award of back pay, including all pay and benefits she would have received had she been accommodated for approximately three months and 29 calendar days.

The Agency stated that between May 21, 2012, and September 19, 2012, Complainant took 604 hours of leave without pay. The Agency noted that when calculated at Complainant's earning status at the time of the discrimination, Complainant was entitled to a total of \$23,384.80 in back pay, which included her salary and restoration of government deductions for Thrift Savings Plan (TSP) contributions, Medicare, Old Age Survivor and Disability Insurance (OASDI), and retirement benefits plus interest. Additionally, the Agency stated it would restore 46 hours of annual leave and 30 hours of sick leave for the period in question.

Next, the Agency addressed Complainant's claim for nonpecuniary damages. The Agency determined that based on the evidence provided, not all of the pain, suffering, and mental anguish that Complainant asserted can be attributed to the Agency's discriminatory actions. The Agency determined there was not sufficient evidence to show that the discriminatory actions of the Agency, rather than the stress of work and the EEO process, led to a worsening of Complainant's condition.

In addition, the Agency noted that although Complainant asserted emotional harm due to the alleged retaliation and harassment she experienced after filing her EEO complaint, she did not prevail on this aspect of her complaint and thus, was not entitled to damages on those associated claims. The Agency also stated it appeared Complainant was raising issues of constructive discharge regarding loss of permanent career status. The Agency stated this was not part of the claim under consideration in the final decision and would not be considered in calculating compensatory damages. Moreover, the Agency noted that evidence showed that

Complainant's career status was not impacted and that Complainant holds a GS-12 permanent career appointment position in the Department of Labor.

The Agency also noted that some portion of the emotional harm Complainant claimed was attributable to the stress of the EEO process. The Agency claimed that harm for the stress of engaging in the EEO process is not compensable in damages.

The Agency determined Complainant met her burden of showing she was entitled to an award of nonpecuniary damages. The Agency determined an award of \$12,000.00 for nonpecuniary, compensatory damages was appropriate.

The Agency noted Complainant also requested reinstatement and promotion to a GS-12 position, the removal of adverse action from Complainant's personnel file, an apology, and disciplinary action against the responsible management officials. Regarding Complainant's request for file expungement, the Agency noted the record did not reflect that any adverse action was documented in Complainant's personnel files as a result of the Agency's discriminatory denial of her request for reasonable accommodation. Thus, the Agency found expunging Complainant's official personnel file was not an appropriate form of make whole relief.

Further, the Agency found Complainant's request of an apology and discipline of her supervisors was beyond the Agency's scope of authority. However, the Agency noted as an element of corrective action, the final decision suggested that the Agency consider appropriate disciplinary action against the named management officials.

On appeal, Complainant states she disagrees with the total award amount of back pay awarded and the restoration of only 46 hours of annual leave and 30 hours of sick leave. Complainant requests \$47,797.93 for back pay, benefits, annual, and sick leave for the period of February 27, 2012, to September 19, 2012. Complainant claims that she spoke to her first level supervisor on the telephone on February 27, 2012, and informed her supervisor that she had been diagnosed with epilepsy and asked to telework from home until she was able to return to the office. Complainant claims she was told she needed to get specific medical documentation from her doctor and give the information to the HR Office and request a reasonable accommodation through them. Complainant states she then contacted HR and proceeded to provide information to HR regarding her medical condition and requested reasonable accommodation. Complainant claims that she is entitled to back pay and benefits retroactive to February 27, 2012, because if her supervisor had approved her request to telework fulltime over the telephone within two hours, like she approved the comparative's request, she would have been working as of February 27, 2012, and would not have lost wages and benefits. Complainant claims that on February 27, 2012, her supervisor gave her an overview of a detailed process for submitting a request for a reasonable accommodation through the HR Office, which she stated delayed her in submitting her request for reasonable accommodation.

Complainant also stated that she was requesting nonpecuniary damages in the amount of \$288,000.00 for undo stress, depression, anxiety, severe migraines, nausea, upset stomach, vomiting, emotional well-being, humiliation, intimidation, difficulty sleeping, loss of sleep, damaged reputation, strained family relations, marital strain, loss of enjoyment of life, weight gain, and low self-esteem. Complainant provides a medical statement from Eagle's Landing Family Practice dated August 14, 2014, a statement from her husband dated May 22, 2014, and a statement from her mother dated August 22, 2014. Complainant also provides further detail in her brief regarding the harm she suffered as a result of the Agency's actions.

Additionally, Complainant requests past and future pecuniary damages in the amount of \$12,000.00 for past, present, and ongoing future medical treatment to include FEDVIP insurance premiums paid out of pocket and non-sufficient fund charges due to being out of work, medical bills, prescriptions, medical miles driven, and lost hours from her current job. Complainant provides medical bill receipts, pharmacy receipts, and bank statements. In addition, Complainant provides electronic mail messages to the supervisor on her new job and leave slips submitted to her new supervisor, and a doctor's note regarding her absence from work in July 2014.

In response to Complainant's appeal, the Agency argues that Complainant should not be granted her requested amount of back pay and lost benefits. First, the Agency states Complainant did not present sufficient evidence that she was forced to take leave because of the Agency's actions. Second, the Agency also argues that Complainant's proffered date range from February 27, 2012, to September 19, 2012, is inconsistent with the record. Third, the Agency states the time and attendance records do not support her requested back pay or leave. Fourth, the Agency argues Complainant has not shown a nexus between her annual, sick, or other leave usage and the Agency's actions.

Alternatively, the Agency states that if Complainant is entitled to back pay or reimbursement of leave or other benefits, it should be for the period of May 21, 2012, the date Complainant informed management of her need for an accommodation, to September 19, 2012, the date she returned to the office with an approved arrangement. The Agency notes that documentation indicates Complainant used 604 hours of LWOP, and no sick or annual leave between May 21, 2012, and September 19, 2012.

The Agency acknowledges Complainant provided some medical bill receipts, pharmacy receipts, and bank statements on appeal. However, the Agency states the documentation provided does not demonstrate a connection between the expenses incurred and the Agency's actions. The Agency also argues Complainant failed to present sufficient evidence regarding the severity and duration of the harm. The Agency claims that some of the medical conditions Complainant has sought pecuniary damages for were pre-existing conditions that affected her health before she submitted her request for reasonable accommodation.

The Agency argues against any increase in nonpecuniary damages.

### 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”).

At the outset, we note that Complainant does not challenge the definition of the issues addressed by the Agency. Complainant does not challenge the Agency’s finding of race and disability discrimination with regard to the Agency’s failure to accommodate Complainant’s disability and those findings are AFFIRMED herein. In addition, Complainant does not challenge the finding of no discrimination with regard to her reprisal and hostile work environment claims. The Commission has the discretion to review only those issues specifically raised in an appeal. Accordingly, we will not address the finding of discrimination with regard to the failure to accommodate or the finding of no discrimination with regard to the reprisal and hostile work environment claims in this decision. This decision will address Complainant’s challenge to the remedies awarded by the Agency.

#### *Nonpecuniary damages*

When discrimination is found, the agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Complainant v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. §2000e et seq., or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of this “make whole” relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

Nonpecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002, at II.A.2 (July 14, 1992)



(Compensatory Damages Guidance). There is no precise formula for determining the amount of damages for nonpecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Complainant v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that nonpecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the agency for the discriminatory action. Further, compensatory damages should not be “monstrously excessive” standing alone, should not be the product of passion or prejudice, and should be consistent with the amounts awarded in similar cases. See Complainant v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999) (citing Cyngar v. City of Chicago, 865 F.2d 827, 848 (7th Cir. 1989)). Where a complainant's emotional harm is due in part to personal difficulties, which were not caused or exacerbated by the discriminatory conduct, the agency is liable only for the harm resulting from the discriminatory conduct. See Compensatory Damages Guidance, at II, A.2.

At the outset, we note that on appeal Complainant provides an August 22, 2014 statement from her mother which was dated after the Agency's August 7, 2014 final decision on damages. In addition, we note that Complainant also provided a letter dated August 14, 2014, from a medical provider at the Eagles Landing Family Practice, which was also written after the Agency's decision on damages. We note that neither the statement from Complainant's mother nor the letter from the medical provider were provided to the Agency during the relevant timeframe for submitting evidence in support of her damages request. Moreover, we note that in her appeal brief, Complainant gives further detail regarding dates she suffered harm which she previously did not provide and also alleges additional harm not previously described in her March 22, 2014 Request for Relief and Damages. We note that Complainant's appeal brief is not an opportunity to submit additional evidence in support of her claim for damages. Further, we note that as a general rule, no new evidence will be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available previously. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Ch. 9, § VI.A.3 (Aug. 5, 2015). Because Complainant did not make such a showing, we decline to consider the new evidence submitted on appeal that was not part of the record when the Agency made its decision on relief.

In the present case, Complainant established that she suffered physical and mental anguish as a result of the Agency's discriminatory actions. However, we find that not all of the pain, suffering, and mental anguish that Complainant asserted can be attributed to the Agency's discriminatory actions. Specifically, we note that both Complainant and her husband provided evidence that Complainant experienced more seizures after she filed her EEO complaint. However, Complainant's husband attributed this primarily to the stress of processing the EEO complaint and the workplace environment, not the denial of her request for reasonable accommodation. Complainant also linked the worsening of her condition to actions outside the claims upon which she prevailed. Thus, we determine there was not sufficient evidence to show that the discriminatory actions of the Agency, rather than the stress of work and the EEO process, led to a worsening of Complainant's condition. In addition, we note that Complainant is not entitled to damages for the stress of the EEO process. Finally, we note that since

Complainant did not prevail on her harassment claim, she is not entitled to damages on that claim.

In order to establish an entitlement to compensatory damages, the burden is on a complainant to submit evidence to show that the agency's discriminatory conduct directly or proximately caused the losses for which damages are sought. See Complainant v. U.S. Postal Serv., EEOC Request No. 05980311 (February 26, 1999). After a thorough review of the record, and given the severity, nature, and duration of distress experienced by Complainant as a direct result of the discrimination, we find that the Agency's award of \$12,000.00 for her emotional distress in nonpecuniary, compensatory damages is supported by the record. We find this award is not motivated by passion or prejudice, not "monstrously excessive" standing alone, and consistent with the amounts awarded in similar cases. Complainant v. Social Security Administration, EEOC Appeal No. 0720080002 (August 12, 2011)(finding denial of accommodation and awarding \$12,000.00 in nonpecuniary damages based on testimony of Complainant and her sisters showing Complainant felt depressed and helpless, withdrew from normal activities, spent less time with family due to obsessing over Agency's actions, temporarily gave guardianship of her son to her sister-in-law, felt stressed, had high blood pressure, suffered dizziness and headaches and noting pre-existing conditions); Mike G. v. Department of Agriculture, EEOC Appeal No. 0120152027 (September 8, 2016)(finding denial of reasonable accommodation which resulted in Complainant being unable to return to work and awarding \$12,000.00 in nonpecuniary damages where evidence established that Complainant experienced exacerbation of his depression, anxiety, and post-traumatic stress disorder, weight gain, diminished quality of life, a strain on his relationships, financial difficulties, and sleeplessness).

### *Pecuniary Damages*

Upon review we find that the Agency properly determined Complainant failed to provide any documentary evidence to support her claim for past or future pecuniary damages. While Complainant provided some evidence to support her claim for pecuniary damages on appeal, we note this evidence was not submitted to the Agency prior to the issuance of its final decision and we decline to consider this new evidence submitted on appeal. Thus, we find Complainant is not entitled to any pecuniary damages.

### *Back Pay and Leave*

Upon review, we find Complainant is entitled to back pay for the time period between May 21, 2012, and September 19, 2012. Despite Complainant's claim that the back pay period should begin February 27, 2012, we find Complainant did not persuasively show that the back pay period should be prior to May 21, 2012. Additionally, we note Complainant did not challenge the Agency's back pay calculations using the dates of May 21, 2012 – September 19, 2012. For the same reasons, we also reject Complainant's request for leave prior to May 21, 2012. Complainant has not otherwise challenged the Agency's calculation of leave that should be restored.

We find that Complainant did not request any other remedies on appeal and we find that the remedies ordered by the Agency will provide whole relief.

### CONCLUSION

The Agency's finding that Complainant was unlawfully subjected to race and disability discrimination when the Agency failed to accommodate her disability and sent Complainant home without pay is **AFFIRMED**. The Agency's finding of no discrimination with regard to her reprisal and hostile work environment claims is **AFFIRMED**. The decision on remedies is **AFFIRMED**. The matter is **REMANDED** to the Agency for compliance with the Order herein.

### ORDER

To the extent it has not already done so, the Agency shall take the following actions:

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$12,000.00 in nonpecuniary, compensatory damages.
2. Within 60 days of the date this decision is issued, the Agency shall pay Complainant \$23,384.80 in back pay, benefit contributions, and interest from May 21, 2012, through September 19, 2012.
3. Within 60 days of the date this decision is issued, the Agency shall restore 46 hours of annual leave and 30 hours of sick leave.
4. Within 180 days of the date this decision is issued, the Agency shall provide training to the responsible management officials regarding their responsibilities under Title VII of the Civil Rights Act and the Rehabilitation Act of 1973.
5. Within 60 days of the date this decision is issued, the Agency shall consider taking disciplinary action against the responsible management officials. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.

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

POSTING ORDER (G1016)

The Agency is ordered to post at its Atlanta, Georgia facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer at the address cited in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period.

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 (R0610)

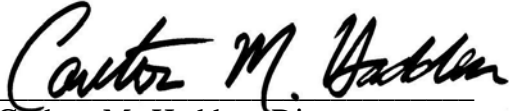
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. 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 filed your appeal with the Commission. 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. **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:

A handwritten signature in black ink, reading "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

January 12, 2017

Date