



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

████████████████████
Levi P.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Southern Area),
Agency.

Appeal No. 0120151113

Agency No. 4G-752-0398-08

DECISION

On February 3, 2015, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 26, 2014, final decision concerning his entitlement to compensatory damages incurred as a result of the Agency's discriminatory action in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e *et seq.* For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

In EEOC Appeal No. 0120121587 (August 12, 2014), the Commission found that Complainant was discriminated against on the basis of reprisal. Specifically, we found that the Agency had retaliated against Complainant when his supervisors and managers failed to present a legitimate, nondiscriminatory reason for not allowing him to return to work unless he submitted a request for light duty. As a result of our finding of reprisal, we ordered the Agency to conduct a supplemental investigation concerning Complainant's entitlement to compensatory damages incurred due to the Agency's action.

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.

Pursuant to our order, the Agency issued its final decision on December 26, 2014, wherein it determined that Complainant's non-pecuniary compensatory damages amounted to \$5,000.00 and awarded pecuniary compensatory damages in the amount of \$36.43.

In support of Complainant's claim for compensatory damages, Complainant submitted an affidavit to the Agency dated October 16, 2014. Complainant asserted that the Agency's discriminatory action between July 28, 2008, and September 22, 2008, caused his divorce in May 2010. According to Complainant, his wife at the time became angry with him about family finances during the period that he was out of work. In terms of pecuniary compensatory damages, Complainant requested that he be reimbursed for the loss of a \$5,300.00 down payment he had placed on a house that he was required to deed over to his now ex-wife, a \$328.00 charge to change the name on the deed, and the \$2,690.03 he paid an attorney to handle the divorce. The Agency determined that Complainant did not present objective evidence that his divorce was caused by its refusal to return Complainant to work for less than two months in 2008. The Agency noted that in Complainant's November 28, 2008 affidavit, Complainant did not state more than that his then-current wife was upset with him about family finances and his first ex-wife had threatened to take him to court to obtain \$1,344.00 in overdue child support. The Agency further pointed out that in Complainant's August 23, 2011 affidavit, Complainant did not mention marital problems or the divorce, and that his sole reference to family was when he stated that he and his family had endured stress, suffering, humiliation, and pain. The Agency stated that Complainant's September 22, 2008 return to duty pursuant to a grievance decision included full back pay. The Agency determined that the time period between Complainant's return to duty and his divorce was too attenuated to establish a connection between the discrimination and the divorce.

Complainant also claimed that his migraine condition was exacerbated as the frequency and severity of his headaches increased. The Agency stated that Complainant claimed that he needed to seek medical treatment for his migraines on fourteen occasions, with a \$20.00 co-payment for each visit. The Agency noted that this was a pre-existing condition for Complainant as he was diagnosed with migraines in 1978 and had been taking Imetrix for at least nine years. The Agency determined that Complainant did not present medical documentation to substantiate the medical appointments or the dates on which they occurred. Although Complainant claimed in his December 2014 affidavit that his prescription costs were approximately \$1,000.00, the Agency pointed out that in Complainant's August 23, 2011, affidavit, Complainant indicated that he had only spent \$52.00 for Imetrix and \$36.00 for Advil at that point, three years after the discriminatory event. The Agency denied Complainant's request for reimbursement of prescription medication costs. According to the Agency, in his December 2014 affidavit, Complainant failed to submit records of purchases, identify the dates of purchases, identify the prescription drugs purchased, or establish a causal connection between any prescription drug purchase and the discrimination that occurred.

The Agency determined that it would pay \$36.43 in pecuniary damages for certain shipping and mailing costs associated with processing the instant complaint. The Agency rejected requests for

reimbursement for two Express Mail items that it deemed unconnected to any step in the processing of the complaint. The Agency also rejected Complainant's claim for the alleged \$6,000.00 that Complainant withdrew from his savings account to meet expenses during his time off from work. The Agency noted that Complainant did not submit documentary evidence to show this occurred or to establish the time period in which it occurred. Further, the Agency stated that this expenditure would have been remedied by the back pay Complainant received in September 2008.

With respect to Complainant's claim for non-pecuniary compensatory damages, the Agency stated that Complainant's August 23, 2011, affidavit indicated that he sought \$100,000.00 for the stress, suffering, humiliation, and pain that he and his family endured. The Agency noted that in Complainant's November 2008 affidavit, Complainant alluded to suffering more frequent and severe migraines, that he experienced stress and humiliation because he could not buy back-to-school clothing for his teenage sons from his prior marriage, and that he and his then-current wife were arguing about finances. Complainant claimed that the Agency's failure to return him to work for 55 days began an economic nightmare and caused him emotional distress based on the loss of his home, sleep, and marriage. The Agency determined that Complainant's loss of his marriage and home were not shown to be attributable to the discrimination. The Agency observed that Complainant's affidavits and attachments did not include any medical documentation describing a health problem associated with the time period of July – September 2008. The Agency noted that Complainant's migraines were a preexisting condition and that Complainant did not present evidence that he suffered from any long-term mental or physical condition as a result of being kept out of work during the relevant period.

The Agency observed that despite Complainant's claims of humiliation and emotional distress due to a temporary inability to satisfy his financial obligations, he nevertheless was able to meet his financial obligations by drawing upon his savings, and that such amount was presumably restored when he received back pay. The Agency stated that the evidence of emotional harm due to Complainant's financial situation is contradictory. The Agency acknowledged that the evidence indicates that Complainant and his wife during the relevant period argued about their financial circumstances but stated that it is unclear whether the disagreements were based on Complainant not being allowed to return to work or prior financial problems and/or obligations to his ex-wife and sons. With regard to the child support allegedly owed to his ex-wife, the Agency stated that Complainant did not identify a time frame when this occurred.

The Agency determined that in light of the lack of supporting documentation for the compensatory damages claim, an award of non-pecuniary damages in the amount of \$5,000.00 was appropriate. Thereafter, Complainant filed the instant appeal.

ANALYSIS AND FINDINGS

Compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief authorized by Title VII. To receive an award of compensatory damages, a

complainant must demonstrate that he has been harmed as a result of the agency's discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. See Rivera v. Department of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), request for reconsideration denied, EEOC Request No. 05940927 (December 11, 1995); EEOC's Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 11-12, 14 (July 14, 1992). A complainant is required to provide objective evidence that will allow an agency to assess the merits of his request for damages. See Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993).

Pecuniary losses are out-of pocket losses that occurred prior to the date of resolution of the damage claim and those out-of pocket losses that are likely to occur after conciliation of the claim. Non-pecuniary 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 Notice No. 915.002 at 10 (July 14, 1992).

The Commission applies the principle that "a tortfeasor takes its victims as it finds them." See Wallis v. United States Postal Service, EEOC Appeal No. 01950510 (November 13, 1995) (quoting Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987)). However, the Commission also applies two exceptions to this general rule. First, when a complainant has a pre-existing condition, the agency is liable only for the additional harm or aggravation caused by the discrimination. Second, if the complainant's pre-existing condition inevitably would have worsened, the agency is entitled to a reduction in damages reflecting the extent to which the condition would have worsened even absent the discrimination; the burden of proof is on the agency to establish the extent of this entitlement. Wallis, EEOC Appeal No. 01950510 (citing Maurer v. United States, 668 F.2d 98 (2d Cir. 1981)); Finlay v. United States Postal Service, EEOC Appeal No. 01942985 (April 29, 1997). The Commission notes, therefore, that complainant is entitled to recover damages only for injury, or additional injury, caused by the discrimination. See Terrell v. Department of Housing and Urban Development, EEOC Appeal No. 01961030 (October 25, 1996); EEOC Notice No. N 915.002 at 12.

After establishing entitlement to an award of compensatory damages, there is no precise formula for determining the amount of damages for non-pecuniary losses, except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Department of the Treasury, EEOC Appeal No. 01955789 (August 29, 1997). It should likewise be consistent with amounts awarded in similar cases. See Hogeland v. Department of Agriculture, EEOC Appeal No. 01976440 (June 14, 1999). Moreover, we point out that non-pecuniary compensatory damages are designed to remedy a harm and not to punish the agency for its discriminatory actions. Furthermore, compensatory damages should not be motivated by passion or prejudice or "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Department of the Interior, EEOC Appeal No. 01961483 (March 4, 1999).

The Commission has held that evidence from a health care provider is not a mandatory prerequisite for recovery of compensatory damages. See Carpenter v. Department of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995). Courts also have held that “expert testimony ordinarily is not required to ground money damages for mental anguish or emotional distress.” See Wulf v. City of Wichita, 883 F.2d 842, 875 (10th Cir. 1989). A complainant’s own testimony, along with the circumstances of a particular case, can suffice to sustain his/her burden in this regard. Nonetheless, the absence of supporting evidence may affect the amount of damages deemed appropriate in specific cases. See Lawrence v. USPS, EEOC Appeal No. 01952288 (April 18, 1996).

Upon review of Complainant’s claim for non-pecuniary compensatory damages, we find that for the most part Complainant has failed to establish a link between the discrimination that occurred and the various forms of suffering that he experienced. We discern no persuasive evidence that the emotional stress of Complainant’s divorce in May 2010 is significantly connected to the period in 2008 that Complainant was out of work. However, we do draw some correlation to Complainant’s emotional strain and the arguments that occurred between Complainant and his wife in 2008 and the situation he encountered due to the Agency’s discriminatory action. We also recognize that Complainant likely experienced some stress from having to utilize part of his savings to meet financial obligations during the period he was out of work. However, Complainant has not submitted medical documentation to support his claim that his preexisting migraine condition was exacerbated during the period he was not working. Upon consideration of the relative lack of documentary evidence presented by Complainant and Commission case precedent, we discern no basis to increase or otherwise modify the amount of non-pecuniary compensatory damages awarded by the Agency. See Bridges v. Department of Veterans Affairs, EEOC Appeal No. 01997164 (October 6, 2000), request for reconsideration denied, EEOC Request No. 05A10080 (February 9, 2001) (providing complainant \$5,000 for finding of disability based discrimination when forced to resign citing complainant’s depression, sleeplessness, anxiety, mental anguish and anger); DeVaughn v. United States Postal Service, EEOC Appeal No. 01A34719 (January 7, 2004) (awarding \$5,000 when complainant was found medically unsuitable and removed from list of eligibles based on disability and showed that the Agency’s action caused emotional distress, lack of sleep, loss of appetite and family and financial problems). Therefore, we affirm the Agency’s award of \$5,000.00 in non-pecuniary compensatory damages.

With respect to Complainant’s claim for pecuniary compensatory damages, as we have indicated above, we consider any link between the Agency’s discriminatory action and Complainant’s divorce more than a year and a half later to be attenuated. We therefore reject Complainant’s request for reimbursement of expenditures related to his divorce. As for Complainant’s request for reimbursement of his prescription medicine costs, we agree with the Agency that Complainant failed to submit records of purchases, identify the dates of purchases, identify the prescription drugs purchased, or establish a causal connection between any prescription drug purchase and the discrimination that occurred. Therefore, this claim for reimbursement is

denied. As for the alleged \$6,000.00 that Complainant withdrew from his savings account to address financial obligations, we observe that assuming Complainant made such a withdrawal during the relevant period, this expenditure would have been remedied by the back pay Complainant received in September 2008. With regard to the shipping and mailing costs incurred by Complainant, we agree with the Agency's award of \$36.43 in pecuniary damages for those expenses associated with processing the instant complaint. We also agree with the Agency's denial of requests for reimbursement for two Express Mail items that were not related to any step in the processing of the instant complaint.

CONCLUSION

The Agency's determination that Complainant is entitled to \$5,000.00 in non-pecuniary compensatory damages and \$36.43 in pecuniary compensatory damages is AFFIRMED. This matter is REMANDED for further action in accordance with the Order below.

ORDER

Within sixty (60) days of the date this decision is issued, to the extent the Agency has not paid Complainant these amounts, the Agency is ordered to take the following remedial action:

1. The Agency shall pay Complainant \$5,000.00 in non-pecuniary damages.
2. The Agency shall pay Complainant \$36.43 in pecuniary damages.

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.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0617)

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 in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). 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 (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 (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

November 9, 2017

Date