



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

[REDACTED]  
Humberto P.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 0120161742

Hearing No. 510-2012-00151X

Agency No. 1G-336-0021-11

**DECISION**

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal from Agency's final decision dated April 8, 2016,<sup>2</sup> concerning an award of compensatory damages. For the following reasons, we AFFIRM the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Electronic Technician at the Agency's Tampa Processing and Distribution Center (PDC) in Tampa, Florida. On September 16, 2011, Complainant filed his complaint alleging discrimination based on race (Caucasian), religion (Church of Christ), color (white), disability (hearing loss/Meniere's Disease), and in reprisal for prior EEO activity when:

- (1) On or about June 16, 2011, his medical documentation was left unsecured;

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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.

<sup>2</sup> The Agency made a typographical error by dating its final decision as April 8, 2015, instead of April 8, 2016.

- (2) He received a letter dated August 30, 2011, placing him in Absent Without Official Leave (AWOL) status; and
- (3) On or about September 2, 2011, and on other unspecified occasions, his request for reasonable accommodation was refused, and subsequently he was considered AWOL.

At the conclusion of the investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). As a sanction, the AJ remanded the case back to the Agency for a final decision. On July 16, 2012, the Agency issued its final decision finding no discrimination. Upon Complainant's appeal, the Commission, in EEOC Appeal No. 0120123216 (January 8, 2016), affirmed the Agency's final decision regarding claim (2) but reversed its decision regarding claims (1) and (3). The Commission found that the Agency did not discriminate against Complainant when it placed him on AWOL. The Commission, however, found that the Agency violated the Rehabilitation Act when it failed to provide Complainant with a reasonable accommodation of his disability (hearing loss/Meniere's disease) and failed to maintain his confidential medical information within a separate medical file. As relief, the Commission ordered:

1. To the extent that it has not already done so, the Agency is directed to immediately provide Complainant with a reasonable accommodation for his disability. The Agency shall engage in the interactive process with Complainant and provide him with a reasonable accommodation so that he can perform the essential functions of his job.
2. The Agency shall immediately take steps to ensure that the confidential medical documentation of all employees is kept in separate, secure medical files.
3. Within 120 days from the date this decision becomes final, the Agency shall give Complainant a notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of his claim for compensatory damages within 45 calendar days of the date Complainant receives the Agency's notice. The Agency shall complete the investigation on the claim for compensatory damages within 45 calendar days of the date the Agency receives Complainant's claim for compensatory damages. Thereafter, the Agency shall process the claim in accordance with 29 C.F.R. § 1614.108(f).
4. Within 120 days from the date on which this decision becomes final, the Agency shall provide EEO training for the officials in Complainant's chain of command. Such training shall focus on rights and obligations under the Rehabilitation Act, including reasonable accommodation and confidentiality of medical records. The Commission notes that such training is not considered disciplinary in nature.
5. The Agency shall consider taking disciplinary action against the Agency officials found to have discriminated against Complainant. The Agency shall report its decision. If the Agency decides to take disciplinary action, it shall identify the action taken.

6. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If any of the officials have left the Agency, the Agency shall provide the date(s) of separation.
7. The Agency shall post a notice of "Posting Order."

On April 10, 2017, Complainant filed a petition for enforcement alleging that the Agency failed to fully comply the Commission's Order to issue disciplinary action and provide training to the responsible management officials. The Commission, in EEOC Petition No. 0420170015 (August 25, 2017), found that Complainant complied with the Commission's Order in 0120123216 concerning the issues of training and discipline. Accordingly, we need not address those issues in this decision.

After its completion of the investigation on the claims of Complainant's compensatory damages, the Agency issued its April 8, 2016 final decision awarding him \$213.16 in pecuniary, compensatory damages and \$10,000.00 in nonpecuniary, compensatory damages. Complainant appeals from this decision contesting the awards of compensatory damages.<sup>3</sup> Specifically, he requests \$12,144.85 in pecuniary, compensatory damages, \$4,500.00 for a medical record violation, and \$225,000.00 in nonpecuniary compensatory damages.

#### ANALYSIS AND FINDINGS

The Commission notes that damage awards for emotional harm are difficult to determine and that there are no definitive rules governing the amount to be awarded in given cases. A proper award must meet two goals: that it not be "monstrously excessive" standing alone, and that it be consistent with awards made in similar cases. See Cygnar v. City of Chicago, 865 F.2d 827, 848 (7<sup>th</sup> Cir. 1989). Section 102(a) of the 1991 Civil Rights Act authorizes an award of compensatory damages for all post-act pecuniary losses, and for non-pecuniary losses, such as, but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to character and reputation, and loss of health. To receive an award of compensatory damages, 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. Rivera v. Department of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), request for reconsideration denied, EEOC Request No. 05940927 (December 8, 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) ("Guidance").

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<sup>3</sup> Although Complainant indicates that the Agency originally posted four EEOC Posting Orders even though there were 20 bulletin boards and one Posting Order taped in his work area was up for less than an hour, he acknowledges that more Posting Orders were posted soon after throughout the facility in a proper manner. Thus, we need not address this matter further herein.

Complainant is required to provide objective evidence that will allow an agency to assess the merits of her request for damages. See Carle v. Department of the Navy, EEOC Appeal No. 01922369 (January 5, 1993).

The award should take into account the severity and duration of the harm. Carpenter v. Department of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995). Complainant requests \$12,144.85 in pecuniary, compensatory damages. Upon review, we find that the Agency properly found that Complainant was not entitled to reimbursement for the expenses he incurred for his pursuit of remedies/information under the Freedom of Information Act, Family and Medical Leave Act, Office of Workers' Compensation Program, and the Social Security Act, which were unrelated to the findings at issue. We also find that the Agency properly found Complainant was not entitled to reimbursement for the expenses he incurred: obtaining discovery and deposition materials and materials unrelated to the hearing which resulted in the AJ's sanctions against him denying his hearing request; obtaining Federal Employees Compensation Act benefits; obtaining a loan from Thrift Savings Account in December 2011; and going to the U.S. District Courthouse or to the neighborhood pharmacy. Complainant did not demonstrate that the foregoing expenses were related to the findings at issue.

Based on the evidence submitted by Complainant, we find that the Agency properly awarded \$213.16 in pecuniary, compensatory damages to Complainant related to its unlawful discrimination (\$75.58 in postage costs identified as directly related to stages in the processing of this complaint; \$90.60 for the copayments of his medical visits; and \$46.98 for a toner cartridge for his printer printing documents related to this complaint).

Complainant also requests \$225,000.00 in nonpecuniary, compensatory damages. We note that in determining nonpecuniary, compensatory damages, the Commission strives to make damage awards for emotional harm consistent with awards in similar cases. To support his damages, Complainant submitted a statement dated February 4, 2016, from his psychiatrist. Therein, the psychiatrist indicated that Complainant came to see him on September 8, 2011; he had been suffering from a mild-to-moderate degree of depression and anxiety due to attacks of vertigo and hearing loss which began in 2006, and he had been taking anti-anxiety medication and sleep aids since then; his attacks due to vertigo and depression increased and he developed severe insomnia in early 2011; and since the Agency's denial of his March 2011 request for an accommodation, his vertigo episodes, depression, and anxiety increased. Complainant also submitted statements from his daughter and his coworkers indicating his disrupted relationship with his daughter, fiancé, and his ex-wife and his being emotionally over the edge and financially insecure.

The record indicates that Complainant requested to work four hours per day in a low-noise environment so as to preserve his hearing and negate any vestibular effects of his Meniere's disease. Complainant requested an accommodation to the Agency as early as March 2011, but nothing was done. The record indicated that he stopped coming to work since June 29, 2011, not due to his hearing issue but due to his back/neck/wrist pains. He subsequently took a disability retirement due to his back/neck/wrist conditions. We note that Complainant's back/neck/wrist conditions and his disability retirement are not at issue.

Thus, while Complainant's vertigo episodes, depression, and anxiety, were exacerbated by the Agency's failure to accommodate his hearing conditions, the harm was limited to the time period of March to June 2011.

After considering the awards in similar cases and all of the relevant factors discussed above, we find that \$10,000.00, which included \$500 for the Agency's failure to safeguard medical documentation for four days (June 14 - 17, 2011), was a reasonable award of nonpecuniary, compensatory damages to Complainant for the proven depression and anxiety and exacerbation of his hearing conditions for the duration of four months he suffered as a direct result of the Agency's discriminatory conduct. This amount is also consistent with prior Commission precedent. See Complainant v National Aeronautics and Space Administration, EEOC Appeal No. 0120113282 (March 26, 2013) (\$10,000 for nonpecuniary, compensatory damages to an engineer with epilepsy who suffered from stress, sleeplessness, fear of losing his position, and loss of self-esteem and the enjoyment of life when denied the accommodation of telework); Complainant v. Social Security Administration, EEOC Appeal No. 0720120001 (January 18, 2013) (\$10,000 in nonpecuniary, compensatory damages for the agency's failure to reasonably accommodate her disability for approximately 15 months causing her stress, deteriorated medical conditions, affected her ability to have a social life, and became suicidal); Complainant v. Department of Labor, EEOC Appeal No. 0120080937 (October 22, 2010) (\$10,000 in nonpecuniary, compensatory damages for harm of five months which caused insomnia, nightmares, and began grinding teeth).

Based on the foregoing, we find that an award of \$213.16 in pecuniary, compensatory damages and \$10,000.00 in nonpecuniary, compensatory damages adequately compensates Complainant for the harm he suffered as a result of the Agency's failure to reasonably accommodate his disability at issue, including its failure to safeguard medical documentation.

### CONCLUSION

Accordingly, the Agency's final order is **AFFIRMED**. The Agency is directed to implement the following corrective action in accordance with the **ORDER** herein.

### ORDER

The Agency, within 60 days of the date this decision is issued, to the extent that it has not already done so, shall pay Complainant \$213.16 for pecuniary, compensatory damages and \$10,000.00 for his nonpecuniary, compensatory damages.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include evidence that the corrective action has been implemented.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and § 1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

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 (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:



Carlton M. Hadden, Director  
Office of Federal Operations

September 7, 2018

Date