



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

[REDACTED]

Keri C.,<sup>1</sup>  
Complainant,

v.

Kirstjen M. Nielsen,  
Secretary,  
Department of Homeland Security  
(U.S. Coast Guard),  
Agency.

Appeal No. 0120171541

Agency No. HS-USCG-00364-2013

**DECISION**

Complainant timely 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 final decision concerning her claim for compensatory damages awarded pursuant to her equal employment opportunity (EEO) complaint, alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

**ISSUE PRESENTED**

The issue presented is whether the Agency correctly awarded Complainant the appropriate amount in compensatory damages.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Supervisory Information Technology Specialist, GS-14, at the Engineering Networks Division of the Telecommunication and Information Systems Command (TISCOM) in Alexandria, Virginia.

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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.

Complainant has been diagnosed with a mental impairment “Adjustment Disorder with Mixed Anxiety and Depressed Mood and Occupational Problem.”

On November 29, 2012, Complainant submitted a request for Reasonable Accommodation form to management. Therein, Complainant wrote that having to interact or be in the same room with certain management officials caused her to experience stress and anxiety leading to migraine headaches, body aches, trouble sleeping, and other health issues. Complainant therefore requested to be excused from meetings where the cited management officials were likely to be present. Complainant also provided a letter from her health care provider, a Licensed Clinical Social Worker (LCSW), who wrote that Complainant was experiencing migraine headaches, body aches, difficulty sleeping, and crying spells. The LCSW recommended that Complainant be excused from meetings where stressors were likely to be present. On January 29, 2013, and February 6, 2013, management denied Complainant’s request for accommodation, writing that attending meetings was an essential function of Complainant’s position as the Supervisor of the Local Area Network.

On January 3, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (female), disability (Adjustment Disorder with Mixed Anxiety, Depressed Mood, and Occupational Problem), and in reprisal for prior protected EEO activity arising under Title VII when:

1. On May 30, 2012 and January 24, 2013, management required her to provide a urine sample;
2. On several occasions between October 2012 and November 2012, management diminished her supervisory authority by directly assigning tasks to her staff members;
3. On November 14, 2012, management revoked prior approval excusing her from attending meetings and events where U.S. Coast Guard members involved in her prior EEO complaint would be in attendance, and management ordered her to attend such meetings;
4. On November 14, 2012, management asked her to consider a GS-13 position; and
5. On January 31 and February 6, 2013, management denied her reasonable accommodation request and declined to reconsider its denial of her reasonable accommodation request.

Following the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew her request. Consequently, the Agency issued a FAD pursuant to 29 C.F.R. § 1614.110(b).

The FAD found that the Agency denied Complainant reasonable accommodation, as Complainant alleged.

Specifically, the FAD concluded that the Agency was responsible for a breakdown in the interactive process due to the fact that management did not consider the possibility of Complainant dialing into meetings as a potential accommodation, an option Complainant suggested to management officials. The FAD concluded that the Agency did not demonstrate that allowing Complainant to participate in “tactical and strategic planning meetings,” which were “likely to be attended by individuals who triggered Complainant’s psychiatric symptoms” would cause an undue hardship. The FAD found, however, that Complainant did not establish that the Agency’s actions resulted in a hostile work environment. Complainant thereafter accepted the FAD’s finding that she had been denied a reasonable accommodation but appealed the FAD’s conclusion regarding her hostile work environment allegations.

On appeal, in Keri C. v. Department of Homeland Security, EEOC Appeal No. 0120142707 (Aug. 25, 2016), the Commission affirmed the Agency’s FAD, which found that Complainant was not subjected to a hostile work environment, but that she was denied a reasonable accommodation. The Commission ordered the Agency to provide Complainant reasonable accommodation in the form of being permitted to participate by teleconference in meetings where particular individuals would be present, to train and consider disciplining the responsible management officials, as well as to determine Complainant’s entitlement to compensatory damages and attorney’s fees.

Subsequently, on September 28, 2016, Complainant submitted to the Agency a request for compensatory damages and petition for attorney’s fees and costs, with supporting documentation. Therein, Complainant stated that after her accommodation was denied, she was put under immense stress and was soon prescribed with anxiety medications. Complainant also wrote that the anticipation of potential meetings gave her severe anxiety attacks, terrifying nightmares, frequent intense migraine headaches, and terrible insomnia every week as she was always facing the threat of a potential meeting. She also stated that the denial of her request for accommodation caused her to experience humiliation and embarrassment, resulting in support contractors and vendors losing professional respect for her.

Complainant further maintained that due to the lack of accommodation, her health further deteriorated as the stress weakened her immune system. Complainant stated that when she eventually ran out of sick leave, she had to use her annual leave. She additionally noted that she had to go into the office when she was sick and had to hold meetings with the lights off because she was suffering from migraine headaches. Complainant maintained that encounters with certain management officials resulted in her suffering from anxiety attacks, and she stated that the attacks caused her to have frequent nightmares and crying spells. Complainant stated that the anxiety led her to experience teeth grinding, headaches, jaw pain, muscle aches, and muscle spasms, among other conditions. She moreover maintained that her doctor recommended that she get surgery for her anxiety-induced urinary incontinence, and that her weakened immune system resulted in an ear infection that caused hearing loss. Complainant additionally indicated that the physical and mental stress caused the degeneration of her cervical spine and caused her severe pain in her arms, hands, neck, and back. Complainant stated that doctors have recommended that she undergo surgery and stem cell therapy for the degeneration of her spine. Complainant moreover maintained that she experienced worsening depression, causing social withdrawal and marital strife.

Complainant's husband, son, sister-in-law, and brother-in-law also submitted statements, attesting that Complainant experienced depression, anxiety, social withdrawal, nightmares, difficulties with sleeping, teeth grinding, among other mental harm symptoms. Complainant's family additionally wrote that the mental harm caused Complainant to experience physical ailments including allergies, gum problems, migraine headaches, among other physical conductions.

#### *Agency's Final Decision on Compensatory Damages*

On February 21, 2017, the Agency issued its final decision concerning Complainant's entitlement to compensatory damages. Therein, the Agency found that Complainant failed to submit adequate information to support her claim for pecuniary compensatory damages. The Agency found that Complainant failed to establish a nexus between the denial of accommodation and the expenses related to the treatment of her symptoms, including the costs of continued therapy, prescription medication, transportation to and from health care providers, among other costs. The Agency further found that Complainant did not show that the denial of accommodation caused her need for urinary surgery, spinal surgery, or training to regain her professional skills. The Agency moreover found no connection between the lack of accommodation and the sick and annual leave that Complainant alleged she had to take when work-related stress weakened her immune system.

In addressing Complainant's request for non-pecuniary compensatory damages, the Agency noted that the denial of accommodation request in January 2013 forced Complainant, on two occasions, to confront individuals whom she alleged caused her stress and anxiety. The Agency observed that family and friends corroborated Complainant's accounts of the physical manifestations of the emotional distress and her deteriorated relationships with friends and family. The Agency nevertheless observed that none of Complainant's symptoms arose on or after Complainant's request for accommodation was denied on January 3, 2013. The Agency noted that according to the statements from Complainant's husband, son, and sister-in-law, her emotional distress and decline resulted from circumstances occurring in 2011. The Agency additionally noted that the statements from Complainant's family referenced gender discrimination, harassment, and retaliation as sources of Complainant's stress. The Agency observed that Complainant's family did not mention that her emotional stress related to the denial of her accommodation. The Agency nevertheless found that Complainant did suffer some emotional stress as a result of the denial of accommodation. The Agency considered other Commission cases and awarded Complainant \$7,000 in non-pecuniary compensatory damages.

#### CONTENTIONS ON APPEAL

On appeal, Complainant maintains that her health care providers mentioned a link between her stress-related symptoms and her physical health problems. Complainant states that she continues to see her health care providers due to the Agency's denial of her accommodation.

She maintains that she has submitted extensive documentation and believes that the Agency's award of \$7,000 in compensatory damages is grossly inadequate. Complainant further states that she has used extensive sick and annual leave as a result of the Agency's denial of accommodation.<sup>2</sup>

Complainant further maintains that the Agency has not complied with the Commission's orders in EEOC Appeal No. 0120142707 and provided her with an accommodation. Complainant additionally asserts that the Agency did not comply with the Commission's Posting Order.<sup>3</sup>

### ANALYSIS AND FINDINGS

#### *Non-pecuniary Damages*

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 Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (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 Loving 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 to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC. Appeal No. 01922369

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<sup>2</sup> On appeal, Complainant seeks reimbursement for sick and annual leave for the days she was absent as a result of the denial of accommodation. The remedy of leave restoration was not ordered in EEOC Appeal No. 0120142707. Complainant's request for leave restoration is equitable in nature rather than part of compensatory damages and is beyond the scope of the order for relief in EEOC Appeal No. 0120142707. See Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120141973 (Nov. 14, 2014).

<sup>3</sup> To the extent Complainant still wishes to challenge the Agency's compliance with EEOC Appeal No. 0120142707, she is entitled to file a Petition for Enforcement with this Commission's Office of Federal Operations (c/o Compliance. Division, P.O. Box 77960, Washington, DC 20013) pursuant to the provisions of 29 C.F.R. § 1614.503(a).

(Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from complainant concerning her emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other nonpecuniary losses that are incurred as a result of the discriminatory conduct. Id.

Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

In determining the amount of the award, we are guided by the principle that a compensatory damages award is limited to the amount necessary to compensate a complainant for the actual harm caused by the Agency's discriminatory action, and attempt to affix a reasonable dollar value to compensate a complainant for that portion of the emotional distress and related symptoms that were caused by the Agency's discrimination. See Webb v. U.S. Postal Serv., EEOC Appeal No. 0120070230 (Dec. 17, 2009). Consequently, Complainant cannot recover compensatory damages for harm related to those claims where no discrimination was found.

After considering the awards in similar cases, we find that an award of \$10,000 is a more appropriate amount. See Humberto P. v. U.S. Postal Serv., EEOC Appeal No. 0120161742 (Sep. 7, 2018) (\$10,000 in non-pecuniary damages awarded when denial of accommodation caused complainant's depression and anxiety to increase, which disrupted his relationship with his family); see Zehe v Nat'l Aeronautics and Space Admin., EEOC Appeal No. 0120113282 (Mar. 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); Underwood v. Soc. Sec. Admin., EEOC Appeal No. 0720120001 (Jan. 18, 2013) (\$10,000 in nonpecuniary, compensatory damages for the agency's failure to reasonably accommodate complainant's disability for approximately 15 months which caused her stress, deteriorated medical conditions, affected her ability to have a social life, and she became suicidal); Sutter v. Dep't of Labor, EEOC Appeal No. 0120080937 (Oct. 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 \$10,000 in nonpecuniary, compensatory damages more adequately compensates Complainant for the harm she suffered as a result of the Agency's failure to reasonably accommodate her disability. While Complainant may feel she is entitled to more, we note, like the Agency, that much of the emotional distress Complainant suffered occurred before the Agency denied her the accommodation.

Additionally, we note that the Commission found that Complainant did not establish that she was subjected to a hostile work environment, as she alleged. Moreover, we simply can find no connection between the Agency's denial of accommodation and her physical ailments, including her allergies, spine condition, and ear infection, among other conditions. Notwithstanding, we do determine that Complainant's mental condition was exacerbated by the Agency's denial of accommodation, resulting in Complainant experiencing increased anxiety and stress, among other symptoms.

### *Pecuniary Damages*

Compensatory damages may be awarded for pecuniary losses that are directly or proximately caused by the agency's discriminatory conduct. See Compensatory Damages Guidance, at 8. Pecuniary losses are out-of-pocket expenses incurred as a result of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Id. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, the issuance of a full-relief offer, or a voluntary settlement. Id. at 8-9. Future pecuniary losses are losses that are likely to occur after resolution of a complaint. Id. at 9.

In in the instant case, the record shows that Complainant requested reimbursement related to medical visits due to a weakened immune system, which she attributed to work-related stress. Complainant additionally requested future pecuniary losses related to physical ailments, which she asserts were caused by the work-related stress. Notwithstanding, as noted above, we find that Complainant has not established a causal connection between the pecuniary damages requested and the Agency's denial of accommodation. As we noted above, there is simply no connection between the Agency's denial of accommodation and her medical visits for her physical ailments, including her allergies, spine condition, ear infection, and immune system, among other conditions. We also can find no nexus between the Agency's denial of accommodation and Complainant's need for \$50,000 in training for her to regain her professional skills. In sum, we find that Complainant has not established that she is entitled to pecuniary damages.<sup>4</sup>

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision on compensatory damages. The Agency is directed to implement the following corrective action in accordance with the ORDER below.

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<sup>4</sup> Complainant also requested reimbursement for attorney's fees, but she was not represented by an attorney.

### ORDER

Within 60 days of the date this decision is issued, to the extent that it has not already done so, the Agency shall pay Complainant \$10,000 in 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:

A handwritten signature in blue ink, reading "Carlton M. Hadden", is written over a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

April 12, 2019

Date