



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

[REDACTED]
Victor S.,¹
Complainant,

v.

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

Appeal No. 0120181004

Appeal No. 0120160739

Hearing No. 451-2015-00038X

Agency No. 4G-780-0085-14

DECISION

On January 16, 2018, 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 18, 2017, final decision concerning his entitlement to compensatory damages with respect to his 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

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a full-time Mail Processing Clerk at the Agency's Waco, Texas Processing and Distribution Facility (P&DF).

On February 4, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of disability and reprisal for prior protected EEO activity (requesting a reasonable accommodation) when:

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.

1. on November 30, 2013, he was placed into a Letter Carrier position outside of his medical restrictions; and
2. on December 11, 2013, he was told that there was no work available and sent home.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing but subsequently withdrew his request. Consequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

Complainant appealed the Agency's decision. In EEOC Appeal No. 0120160739 (Oct. 18, 2017), the Commission found that the Agency denied Complainant a reasonable accommodation when it involuntarily reassigned him to a position that he was unable to perform because of his medical restrictions in November 2013. Although the Waco P&DF was closing, the decision held that the Agency had not shown that it would have constituted undue hardship to reassign Complainant to a position that he could perform within his known medical restrictions. In addition, we found that Complainant had established that he was subjected to discrimination based on disability and reprisal when he was sent home and told that there was no work available on December 11, 2013.

Pursuant to the Commission's decision, the Agency conducted a supplemental investigation regarding Complainant's entitlement to compensatory damages. On October 25, 2017, the Agency sent Complainant an interrogatory asking him questions relevant to his support for his claim for compensatory damages. Complainant filled out the interrogatory indicating that he should be compensated for back pay and benefits, have his retirement adjusted, reimburse him for health insurance premiums, and legal fees. He stated that he had depression issues after being fired at the age of 55. He noted that he was terminated in December 2013 and the following month, he went to the doctor because he was lightheaded and dizzy. A month and a half after the termination, blood tests showed that his blood glucose was extremely high and was referred to a diabetes and endocrine center where he was diagnosed with type II diabetes. He averred that he has no family history of diabetes and is not overweight. He believed the stress and depression caused his diabetes. To this end, Complainant provided articles linking stress to diabetes. He added that he experienced high blood pressure and insomnia due to the stress. He noted that he began seeing a licensed professional counselor (Counselor) for his depression and stress since the termination.

Complainant also indicated that he had to sell his "forever home" following the termination. They placed the home on the market in May 2014 and sold it in November 2014. Complainant stated that his wife was diagnosed with cancer and has since passed away.

Complainant provided his prescription reports for two years from 2016 - 2017, noting that that is all that he could obtain. His prior physician and the Counselor have retired and were not available for statements. He noted that his current physician would not provide a statement on his prior treatment by another physician. He has also seen a podiatrist, a physician for his wrist, and another physician for his shoulder. Complainant included documentation stating that he has been approved for Ambien from September 2017 to October 31, 2018. He included his prescription cost report from January 1, 2016 through November 30, 2017, which totaled \$3,745.88. The report provided a list of medications and Complainant's portion of the cost of the medications.

The Agency issued a final decision regarding Complainant's entitlement to compensatory damages. The Agency found that Complainant had provided evidence that he incurred out-of-pocket expenses for antidepressants and insomnia in the amount of \$29.49. The Agency denied Complainant's request to reimburse his 2016 and 2017 copay for prescriptions because these expenses incurred over three to four years after the discriminatory actions occurred. Further, the Agency noted that Complainant failed to provide contemporaneous medical documentation identifying any medical conditions in connection with the Agency's discriminatory actions. As such, the Agency denied Complainant's request for \$ 3,745.88 in medical expenses.

The Agency turned to Complainant's claim for nonpecuniary damages. Complainant indicated that he was harmed by the Agency's discriminatory actions which caused ongoing stress, depression, and insomnia. The Agency, however, noted that Complainant experienced the loss of his wife due to cancer in 2015, which would have also contributed to his stress and depression. Based on the nature and severity of the case, the Agency concluded that Complainant was entitled to an award in the amount of \$10,000 in nonpecuniary damages. As such, in total, the Agency held that Complainant was entitled to \$10,029.49 in compensatory damages.

This appeal followed. On appeal, Complainant, through his attorney, argues that that the Agency failed to adequately compensate Complainant for the pain and suffering he experienced due to the Agency's discriminatory actions. Complainant claims he was required to sell his "forever" home and become a renter, a loss he took particularly hard because his wife had to spend the last period of her life in the rental home. As such, Complainant claims he is entitled to \$250,000 in nonpecuniary damages and \$3,745.88 in medical expenses.²

² Complainant also argued that the Commission's decision in EEOC Appeal No. 0120160739 failed to award him back pay. However, the instant appeal only deals with Complainant's entitlement to compensatory damages. Issues concerning a back pay award should have been raised by Complainant in a timely request for reconsideration of the Commission's decision in Appeal No. 0120160739.

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”).

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful discrimination or harassment 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. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3).

To receive an award of compensatory damages, a complainant must demonstrate that she 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. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recons. denied, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14. Although damage awards for emotional harm can greatly vary, and there are no definitive rules governing amounts to be awarded, compensatory damage awards must be limited to the amounts necessary to compensate the complainant for actual harm, even if that harm is intangible. Id. at 7. It should take into account the severity of the harm and the length of the time the injured party has suffered from the harm. See Carpenter v. Dep't of Agric., EEOC Appeal No. 01945652 (July 17, 1995). The absence of supporting evidence may affect the amount of damages deemed appropriate in specific cases. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996).

Pecuniary Damages

As to Complainant’s claim for pecuniary damages, the Agency denied Complainant’s request for reimbursement of costs associated with the purchase of medication. We note that Complainant provided a copy of a bill for \$ 3,745.88. However, the documentation only listed the names of the medication, the dosage, and the out-of-pocket expenses Complainant paid.

Complainant provided no evidence or explanation for each of the prescriptions. As such, we find no connection between the prescriptions and the Agency's discriminatory actions. Finding no nexus, we discern no reason to disturb the Agency's denial of these expenses. As such, we affirm the Agency's award of \$29.49 for antidepressants and Ambien related to the depression and insomnia experienced due to the Agency's discriminatory actions.

Non-Pecuniary Damages

Next, we turn to the Agency's award of nonpecuniary damages. In Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993), the Commission explained that "objective evidence" of non-pecuniary damages could include a statement by a complainant explaining how she was affected by the discrimination. A complainant could also submit documentation of medical or psychiatric treatment related to the effects of the discrimination. Id.

Upon review of the record, we find that there is no question that Complainant experienced harm as a result of the Agency's discriminatory actions in 2013. He indicated that he has suffered ongoing stress, depression, and insomnia. He also describes how he and his wife had to sell their home,³ and the hurt he felt that his wife was not able to spend her final days in their "forever" home. However, beyond conclusory statements, Complainant provides little detail concerning the psychological or physical harm he suffered due to the discrimination.

Complainant has asserted that the stress and depression caused him to develop type II diabetes. However, Complainant failed to provide any evidence that his diabetes was in fact caused by the stress resulting from discrimination. He provided articles and website information without producing evidence that demonstrated that, in his particular case, there was a nexus between the discriminatory actions and his diagnosis of diabetes.

Upon review, we find that the Agency's determination that Complainant was entitled to \$10,000 in compensatory damages is sufficient to address the harm suffered by Complainant and is consistent with the Commission's decisions in comparable cases. See, e.g., Desire M. v. U.S. Postal Serv., EEOC Appeal No. 0120150824 (Apr. 21, 2017) (awarding \$10,000 where the Agency denied Complainant a reasonable accommodation and Complainant showed she suffered anxiety, anger, & depression, withdrew from normal activities, & was unable to enjoy life); Complainant v. Dep't of the Treasury, EEOC Appeal No. 0120133266 (Feb. 11, 2015), request for recon. denied, EEOC Request No. 0520150280 (July 30, 2015) (awarding \$10,000 in nonpecuniary damages for Complainant who was denied a reasonable accommodation & subjected to reprisal and who suffered exacerbation of multiple sclerosis, causing pain, sleeplessness, crying spells, & muscle spasms. Complainant also experienced desperation, humiliation, depression, anguish, anxiety, & despair); Mike G. v. Dep't of Agric., EEOC Appeal No. 0120152027 (Sept. 8, 2016) (where Complainant demonstrated that he experienced exacerbation of his depression, anxiety, & post-traumatic stress disorder, as well as weight gain, diminished quality of life, a strain on his relationships & sleeplessness due to the Agency's

³ Complainant does not allege that he took a financial loss in the sale of the home.

failure to provide him with a reasonable accommodation he was awarded \$10,000). In reaching this conclusion, we have considered that the death of Complainant's wife in 2015 was an significant independent contributing factor to his mental state.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision. We shall REMAND the matter to the Agency to take the remedial action below.

ORDER (C0618)

The Agency is ordered, to the extent it has not done so already, to pay Complainant \$10,027.49 in compensatory damages within 30 days of the date this decision is issued.

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 supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including 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

May 8, 2019

Date