



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

████████████████████
Hayden R.,¹
Complainant,

v.

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

Appeal No. 2019003428

Hearing No. 450-2015-00216X

Agency No. 4G-752-0014-15

DECISION

Following its May 17, 2019, final order, the Agency filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of the amount an EEOC Administrative Judge (AJ) awarded in non-pecuniary, compensatory damages, after finding discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. Specifically, the Agency requests that the award of \$125,000.00 be lowered to an amount between \$10,000.00 and \$75,000.00. For the following reasons, the Commission **MODIFIES** the Agency's final order regarding non-pecuniary, compensatory damages.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier at the Agency's Waxachie Post Office in Waxachie, Texas. On December 9, 2014, Complainant filed an EEO complaint alleging that the Agency subjected him to retaliatory harassment when:

1. on August 19, 2014, he was instructed to drive back to the office, without working lights on his vehicle;

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.

2. on September 16, 2014, he was charged Annual Leave, instead of Sick Leave, as requested;
3. on a date to be specified, he was issued a 14-day suspension (paper), dated September 24, 2014;
4. on dates to be specified, he was not paid for time worked;
5. on dates to be specified, management badgered him, disclosed his personal information to others, and spread lies about him; and
6. on January 30, 2015, the Postmaster physically assaulted him and placed him on Emergency Placement.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an EEOC AJ. Complainant requested a hearing and the AJ held a hearing on December 11-12, 2018.

On April 8, 2019, the AJ issued a decision, finding that Complainant established, by a preponderance of the evidence, that he engaged in protected EEO activity, and that the Agency took materially adverse actions against him that were causally connected to his protected activity. The AJ then noted that Complainant testified that he suffered emotional and financial harm from the Agency's discrimination, as well as harm to his career and professional reputation. For example, Complainant testified that he was diagnosed with depression, had difficulty sleeping, experienced symptoms of post-traumatic stress disorder, had become angry, and had a more antagonistic relationship with his family.

The AJ also found that persuasive evidence showed that the Agency's actions either directly, or proximately, caused Complainant's alleged harm, including the fact that Complainant voluntarily left the Agency after the altercation with the Postmaster on January 30, 2015, and he took a leave of absence for approximately six months because he found his work situation so traumatizing. As part of the remedy, the AJ ordered the Agency to pay Complainant an award of \$125,000.00 in non-pecuniary, compensatory damages. In support of this award, the AJ cited to prior Commission decisions, in which complainants were awarded non-pecuniary, compensatory damages from \$175,000.00 to \$210,000.00.

On May 17, 2019, the Agency issued a final order and simultaneously filed the instant appeal. The Agency stated that it would implement the portion of the AJ's decision which adjudicated the merits of Complainant's claims, but it would not implement the remedies awarded. Specifically, the Agency requests that the Commission reduce the amount of non-pecuniary, compensatory damages to an amount between \$10,000.00 and \$75,000.00.

The Agency argues that the AJ did not use the proper legal standard for non-pecuniary, compensatory damages, which is to examine the actual harm, directly or proximately, caused by the Agency's actions. The Agency also argues that the award of non-pecuniary, compensatory damages of \$125,000.00 is monstrously excessive, and that there is insufficient evidence in the record to support it. The Agency asserts that the evidence was exclusively Complainant's own statements and testimony, which only described the nature, and not the severity or duration, of his alleged harm. The Agency noted that while a complainant is not required to provide evidence from a healthcare provider, the absence of supporting evidence may affect the amount of damages. In addition, the Agency argues that Complainant's own testimony gives rise to questions regarding the causation of his harm because he stated that his emotional harm preceded the events in this complaint by over two years.

The Agency also argues that the AJ relied upon past decisions which were dissimilar because they contained stronger evidence and more severe harm, as compared to Complainant's case. The Agency asserts that truly similar cases involved awards between \$10,000.00 and \$75,000.00, and requests that the Commission modify the award for non-pecuniary, compensatory damages to an amount in this range.

Through his attorney, Complainant argues that the AJ applied the proper legal principles in this case and requests that the decision be upheld. Regarding the evidence, Complainant asserts that he provided documents to support his compensatory damages in this case. Complainant also argues that the Agency's argument that the AJ cited to cases involving more severe harm is its own subjective opinion. Complainant requests that the Commission uphold the award of \$125,000.00 in non-pecuniary, compensatory damages.

ANALYSIS AND FINDINGS

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. See id., at Chap. 9, § IV.A.3.

Neither party challenges the AJ's finding of retaliatory harassment, or the other remedies except for the amount of the AJ's non-pecuniary, compensatory damages award. As such, this decision will only address the amount of non-pecuniary compensatory damages.

Non-Pecuniary, Compensatory Damages

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. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (July 14, 1992). 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. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary 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 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from Complainant concerning his 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 non-pecuniary 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 his 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.

An award of non-pecuniary, compensatory damages should reflect the extent to which the Agency's discriminatory action directly or proximately caused the harm, as well as the extent to which other factors also caused the harm. See Johnson v. Dep't of the Interior, EEOC Appeal No. 01961812 (June 18, 1998).

It is the complainant's burden to provide objective evidence in support of his claim and proof linking the damages to the alleged discrimination. Papas v. U.S. Postal Serv., EEOC Appeal No. 01930547 (Mar. 17, 1994); Mims v. Dep't of the Navy, EEOC Appeal No. 01933956 (Nov. 23, 1993).

On appeal, the Agency argues that the AJ's award of \$125,000.00 in non-pecuniary, compensatory damages should be lowered because the evidence in the record did not support it. We find that the AJ's determination that Complainant is entitled to some amount of non-pecuniary, compensatory damages is supported by substantial evidence. The record shows that Complainant's harm included anxiety, exhaustion, fear, insomnia, post-traumatic stress disorder, depression, elevated blood pressure, marital stress, and humiliation. ROI at 124-7; Hearing Transcript 1 at 46,65,146-7; Complainant's Discovery Responses at 3-5.

However, upon review of the record and similar Commission decisions, we find that a non-pecuniary, compensatory damages award of \$75,000.00 is more appropriate. The Agency asserts that the evidence was exclusively Complainant's own statements and testimony, which only described the nature, and not the severity or duration, of his alleged harm, and that the absence of other supporting evidence should affect the amount of damages. We agree that Complainant's statements and testimony only describe the nature of his harm, and not the severity or duration of his harm caused by the discriminatory acts in this complaint. We note that Complainant stated on January 27, 2015, that he had been dealing with "a lot of mental stress" for the past three years, which shows that part of his stated harm occurred prior to the discriminatory events from this case. ROI at 125. In addition, Complainant states that he provided documents in support of his claim for non-pecuniary compensatory damages. However, we note that Complainant did not specify any documents, and the only additional piece of evidence related to Complainant's harm was an email from a coworker who stated that Complainant came to him stating that he was afraid for his family. Complainant's Exhibit M at 1.

The Agency also argues that the cited cases were not similar to Complainant's case because those complainants offered more evidence and showed additional harm. We find that \$75,000.00 in non-pecuniary, compensatory damages is consistent with other Commission decisions. In Ricardo K. v. Dep't of Justice, EEOC Appeal No. 0720170030 (Oct. 12, 2017), the Commission awarded the complainant \$75,000.00 in non-pecuniary, compensatory damages based on his own self-assessment that the agency's harassment caused emotional distress, anxiety, post-traumatic stress disorder, depression, humiliation, embarrassment, and a break-up with his fiancé. In Complainant v. Dep't of the Interior, EEOC Appeal No. 0120131110 (Sept. 15, 2015) the Commission awarded the \$75,000.00 in non-pecuniary damages because complainant presented evidence that the agency's harassment caused her to go from a bubbly personality to being diagnosed with depression, high levels of anxiety, and insomnia, who snapped at people and cried often (the complainant also stated that she experienced headaches, weight gain, and pain in her back, neck and shoulders). As such, we find that an award of \$75,000.00 in non-pecuniary, compensatory damages is more appropriate in this case.

CONCLUSION

Accordingly, we MODIFY the Agency's final order to award Complainant \$75,000.00 in non-pecuniary, compensatory damages and we restate the relief granted by the AJ as slightly modified herein.

ORDER

The Agency shall take the following remedial action, to the extent that it has not already done so:

1. Within 60 days of the date this decision is issued, pay Complainant \$75,000.00 in non-pecuniary, compensatory damages.
2. Within 60 days of the date this decision is issued, reimburse Complainant, with interest, for all time spent in an unpaid Emergency Placement status as a result of the discrimination.
3. Within 60 days of the date this decision is issued, remove from Complainant's disciplinary file any indication of being placed in Emergency Placement status as a result of the discrimination. This action must have a retroactive effect of any discipline issued after the time of the Emergency Placement (i.e. if the Emergency Placement was used as an aggravating factor in subsequent discipline of Complainant.)
4. Within 60 days of the date this decision is issued, reimburse Complainant, with interest, for any loss of pay incurred as a result of the 14-day suspension issued in September 2014. The Agency is not obligated to reimburse Complainant if he did not actually miss work due to the suspension.
5. Within 60 days of the date this decision is issued, remove from Complainant's disciplinary file any indication of the 14-day suspension issued in September 2014. This action must have a retroactive effect of any discipline issued after the time of the Emergency Placement (i.e. if the suspension was used as an aggravating factor in subsequent discipline of Complainant.)
6. Within 60 days of the date this decision is issued, reimburse Complainant, with interest, for his time spent in leave without pay status, as a result of the discrimination.
7. Within 60 days of the date this decision is issued, restore Complainant's leave accruals of all sick and annual leave expended by Complainant, as a result of the discrimination. The Agency is not required to perform this action if doing so is impossible because Complainant is not currently employed by the Agency.
8. Within 90 days of the date this decision is issued, ensure that the Postmaster undergoes a minimum of eight hours of in person or interactive EEO training, to include review of prohibitions against retaliation and workplace violence.

9. Within 60 days of the date this decision is issued, the Agency shall consider taking appropriate disciplinary action against the Postmaster. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the responsible management official has left the Agency's employ, the Agency shall furnish documentation of her departure date.

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 that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Waxachie Post Office in Waxachie, Texas 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 as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. §1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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

December 10, 2019
Date