



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

[REDACTED]  
Jarrod W.,<sup>1</sup>  
Complainant,

v.

Lloyd J. Austin III,  
Secretary,  
Department of Defense  
(Defense Logistics Agency),  
Agency.

Appeal No. 2022001008

Hearing No. 480-2020-00105X

Agency No. DLAN-19-0065

DECISION

On December 13, 2021, 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 November 22, 2021 Final Agency Decision (FAD) concerning remedies after Complainant prevailed in 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 Supply Technician, GS-05, at the Agency's Warehouse facility in Yermo, California.

On April 10, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability (amputee) and in reprisal for prior protected EEO activity under Section 501 of the Rehabilitation Act of 1973 when, between December 19, 2018, and February 13, 2019, the Director subjected him to harassment.

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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.

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 EEOC Administrative Judge (AJ). Complainant timely requested a hearing. The AJ issued a decision without a hearing, finding no discrimination. The Agency subsequently issued a final order adopting the AJ's finding and Complainant appealed to this Commission.

In EEOC Appeal No. 2020003388 (August 9, 2021), we issued a decision finding that Complainant successfully established, with regard to five of seven alleged incidents, that he was subjected to discriminatory harassment as alleged. We further found that Agency management failed to take corrective action once notified of the discriminatory harassment and was thus liable for the Director's harassing conduct. We, therefore, among other things, remanded the matter to the Agency to address Complainant's entitlement to compensatory damages.

Pursuant to our order, on November 22, 2021, the Agency issued a final decision awarding Complainant reimbursement for 88 hours of sick leave and 106 hours of annual leave, \$798.45 for counseling and medical expenses, and \$859.64 for mileage. In addition, the FAD awarded entitlement to \$10,000 in nonpecuniary compensatory damages. It is from this FAD, that Complainant now appeals.

### ANALYSIS AND FINDINGS

On appeal, Complainant does not address the pecuniary damages award and hence we shall not address it in this decision. We further note that a separate decision addressing attorney's fees has been issued under EEOC Appeal No. 2022001647 (June 5, 2023).

Non-pecuniary compensatory damages cover 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 Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302 at 10 (July 14, 1992). There are no specific guidelines 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 punish the Agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. 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.

In our decision finding harassment, we specifically found the Agency liable for the following actions occurring between December 19, 2018 and February 13, 2019: the Director mimicked Complainant's physical disability during a safety re-enactment meeting and when Complainant approached him to talk about his conduct the Director responded in an intimidating manner and as Complainant walked away the Director followed him while talking aggressively about Complainant's disability; Complainant later received an email from the Safety Representative that was courtesy copied to the Director and Deputy Director reminding him that if Complainant was not attending meetings, he should send an alternate person, which Complainant perceived to be further reprisal creating a hostile work environment; and Complainant received an email from the Safety Representative stating that Complainant chose not to come to the regularly scheduled meeting because he did not want to participate in management meetings.

Complainant averred that due to the Adiscriminatory harassment he incurred debilitating stress, skin rashes, loss of sleep, back pain, PTSD, anxiety, stress, and a depressed mood. Complainant's partner averred that the discrimination caused a decline in their social life and sex life, that Complainant became more withdrawn and less affectionate, and that he would get more angry and emotional. In addition, she averred that he suffered from sleeplessness, he developed a rash, and he became less attentive about his own appearance. Complainant's daughter averred that Complainant communicated less frequently with her, his personality changed, and he would get angry over things that previously had not upset him. Complainant's sister averred that the harassment caused Complainant to stop socializing and that Complainant "would get emotional. And that's not my brother at all." She further averred that Complainant lacked enthusiasm for his work which "was a huge change," that he went from rarely taking leave to taking leave more often, that he communicated less with her and with their mother, he became self-conscious about his missing hand, and that he used to take pride in his personal appearance but that he "stopped matching his clothes and his shoes. He would wear hoodie shirts. It started getting weird."

Finally, Complainant's friend averred that prior to the discrimination Complainant was talkative and sociable, but that after the incidents Complainant stopped being sociable during lunch and breaks but would go to his car instead, and they no longer "talk[...] smack" about the football teams they supported.

On appeal, Complainant argues that he should have received an award of \$125,000 and that, adjusting for inflation, the amount is now \$159,445.98. Complainant cited a number of cases where the complainant received between \$100,000 and \$150,000 for discriminatory harm and maintains that he incurred the same level of harm and therefore should receive a similar award. Following a review of the record and the cases cited by Complainant, however, we find that the harm incurred by Complainant in the instant case to be not as severe as the harm incurred by the cited complainants receiving higher awards and/or the harassment in the instant case occurred over a shorter time-period of several months compared to the cited cases where the harassment occurred over longer time periods. However, we agree that the Agency's \$10,000 award is insufficient to compensate Complainant.

Instead, we find that an award of \$50,000 appropriately compensates Complainant for the harm caused by the Agency. This award takes into account the duration and severity of the harm suffered and is neither "monstrously excessive" nor the product of passion or prejudice. We also find this amount is consistent with the amount awarded in similar cases. See Ross R. v. Unites States Postal Service, EEOC Appeal No. 2023000596 (June 14, 2023) (AJ's award reduced on appeal to \$50,000 for harassment where, while none of the incidents were as severe as a manager mimicking a complainant's missing limb, the harassment continued for a year longer than the harassment in the instant case, leading to feelings of anxiousness, depression, loss of weight, trouble sleeping, decreased socialization, with diagnoses of adjustment disorder with anxiety and Major Depressive Order); Pamula W. v. Dep't of Veterans Affs., EEOC Appeal No. 0120171387 (May 2, 2019) (awarding \$50,000 in nonpecuniary damages where complainant was depressed, became socially withdrawn, had trouble sleeping, her weight fluctuated, and her relationship with her family suffered after experiencing months of harassment); and Carol P. v. Small Bus. Admin., EEOC Appeal No. 2021004687 (March 9, 2022) (affirming \$50,000 in nonpecuniary damages for complainant who experienced mood swings, loss of joy, migraines, emotional distress, exacerbation of high blood pressure, sleeplessness, marital discord, and loss of self-esteem.)

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the FAD and REMAND the matter to the Agency for further processing in accordance with this decision and the ORDER below.

### ORDER

Within ninety (90) calendar days of the date this decision is issued, the Agency is ORDERED to pay Complainant \$50,000 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 (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 (M0124.1)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration**. A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit their request for reconsideration, and any statement or brief in support of their request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit their request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files their request via the EEOC Public Portal, in which case no proof of service is required.

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0124)

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 their 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

January 31, 2024

Date