



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

[REDACTED]  
Terrell G.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Southern Area),  
Agency.

Appeal No. 2022004963

Hearing No. 460-2019-0237X

Agency No. 4G-770-0038-19

**DECISION**

On September 12, 2022, 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 August 23, 2022 final decision regarding his entitlement to compensatory damages and attorney's fees concerning his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission AFFIRMS the Agency's final order.

**ISSUES PRESENTED**

Whether the Agency correctly awarded \$250.00 in compensatory damages and whether the Agency correctly determined Complainant was not entitled to attorney's fees.

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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.

### BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Customer Service Supervisor, EAS-17, at the Agency's Windmill Station in Houston, Texas.

On February 23, 2019, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African American), sex (male), and in reprisal for prior protected EEO activity when:

1. From October 20, 2018, and ongoing. Complainant has been singled out in that he has been assigned walking routes;
2. From October 20, 2018, and ongoing. Complainant's schedule was changed;
3. From October 20, 2018, and ongoing, the Agency failed to conduct a proper investigation "involving" Complainant's harassment allegations;
4. On October 29, 2018, Complainant discovered that information in regard to a sexual harassment claim he allegedly made was disclosed to other employees;
5. On October 30, 2018, Complainant was assigned to the Albert Thomas Station;
6. On or about May 29, 2019, Complainant was not selected for a Supervisor, Customer Services position at the Albert Thomas Post Office; and
7. On July 17, 2019, Complainant was sent back from his detail assignment early.

In Terrell G. v. U.S Postal Serv., EEOC Appeal No. 2020004972 (May 25, 2022), the Commission affirmed the Agency's final order which adopted an Equal Employment Opportunity Commission Administrative Judge's (AJ) decision finding that Complainant was only subjected to reprisal as alleged in Claim 4. The Commission remanded the matter to the Agency for a supplemental investigation to determine whether Complainant was entitled to compensatory damages and attorney's fees. The Commission also ordered the Agency to take other remedial actions including posting a notice in its facility, administering training, and considering disciplinary action.

As to compensatory damages, the Commission ordered the Agency to complete the supplemental investigation within 90 calendar days of the date the Commission's decision issued.

As to attorney's fees, the Commission directed Complainant "to 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 the date of this decision." (Emphasis in original.)

On June 14, 2022, the Agency requested from Complainant and his attorney a statement and any documentation in support of Complainant's request for compensatory damages. On August 23, 2022, the Agency issued a final decision on Complainant's entitlement to compensatory damages. Therein, the Agency noted that shipping tracking information demonstrated that its June 14, 2022 request was delivered to Complainant on June 18, 2022, and to his attorney on June 21, 2022. As of the date of its decision, more than 60 days after it sent the affidavit, the Agency had not received a response from Complainant.

Nevertheless, the Agency reviewed the existing complaint file, including any affidavits Complainant submitted during the investigation, for the availability of any evidence tending to demonstrate Complainant's entitlement to compensatory damages. The Agency found that Complainant did not show that he incurred out-of-pocket expenses. The Agency noted that Complainant alleged in his formal complaint that he experienced emotional stress and felt stressed out. In the absence of additional information, the Agency awarded \$250.00 in compensatory damages.

While the appeal on compensatory damages was pending, the Agency issued a final decision on attorney's fees on November 18, 2022. In its decision on attorney's fees, the Agency noted that Complainant failed to submit any evidence tending to establish his entitlement to attorney's fees until he filed the instant appeal with the Commission on September 12, 2022, and provided no explanation for his delay or lack of compliance. Notwithstanding, the Agency denied Complainant's request for attorney's fees on the grounds that Complainant's fee petition contained inadequate documentation. The Agency found that the time entries were vague and block billed. According to the Agency, "[f]or many of the entries, there is no way to determine what was done, and thus, whether the claimed hours are justifiable, whether the work was necessary and appropriate, how long each task actually took, and whether the amount of time was reasonable." The Agency also found no evidence to support a conclusion that the attorney's hourly rate was reasonable, at the prevailing market rate, or supported by his qualifications, skill, or expertise.

### CONTENTIONS ON APPEAL

Complainant appealed both final decisions without argument. Instead, Complainant attached to his appeal an invoice from his attorney. The invoice indicated that the attorney's hourly rate was \$400.00, contained six line-items, each totaling anywhere from \$600.00 to \$3,000.00. The attorney invoiced Complainant \$9,200.00 for 23 hours of work.

A review of the invoice indicates that the attorney summarized the work he performed in support of Complainant's complaint. For instance (and representative of the level of detail throughout), one time entry, consisting of five hours of work, reads: "Discovery responses to [Agency] And filing of complaint 8/1/2019 thru 9/2/2019)." The attorney did not provide a verified fee petition, or otherwise provide support for the level of representation provided to Complainant.

In addition to the invoice, Complainant submitted the completed affidavit requested by the Agency and submitted a statement on his own behalf, along with two witness statements, and psychological records.

In response, the Agency argues that Complainant should not be allowed to submit new evidence on appeal because Complainant did not demonstrate the evidence was not previously available. The Agency maintains that it properly awarded \$250.00 in compensatory damages and no attorney's fees.

### STANDARD OF REVIEW

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 (EEO MD-110), 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").

## ANALYSIS

### *Compensatory Damages*

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position he would have occupied absent the discrimination. Doyle S. v. Dep't of the Interior, EEOC Appeal No. 2021003144 (Mar. 17, 2022); Arlette W. v. Dep't of Def., EEOC Appeal No. 2021001994 (Sept. 27, 2022). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e 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 make-whole relief. 42 U.S.C. § 1981a(b)(3).

Pecuniary losses are out-of-pocket expenses incurred because 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. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110, at Chap. 11, VII.B.2 (Aug. 5, 2015) (internal citations omitted). Future pecuniary damages are losses likely to occur after the resolution of the complaint.

In a claim for pecuniary compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the Agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. Id. (citations omitted).

In a claim for non-pecuniary compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, that: he suffered harm as a result of the Agency's discriminatory action; the extent, nature, and severity of the harm suffered; and the duration or expected duration of the harm. Alissa U. v. Dep't of the Interior, EEOC Appeal No. 2022000423 (Aug. 8, 2024); Miquel G. v. Dep't of Transp., EEOC Appeal No. 2019002129 (Sept. 23, 2021).

The size of a compensatory damages award will be governed by the severity and duration of the harm suffered and the documentation of both the harm and the causal connection to the Agency's acts of discrimination. In general, the more severe the harm, the longer its duration, the stronger its connection to the Agency's discriminatory acts, and the more thorough its documentation, the higher the award will be. Id.

Nonpecuniary damages 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. Id. Such awards should not be motivated by passion or prejudice or "monstrously excessive" standing alone but should be consistent with the amounts awarded in similar cases. Id.

Complainant failed to provide the requested documentation to the Agency in support of his claim for compensatory damages. Complainant presented the documentation for the first time on appeal. No new evidence will be considered on appeal absent an affirmative showing that the evidence was not reasonably available prior to or during the investigation or during the hearing process. See EEO MD-110, at Ch. 9, § VI.A.3 (Aug. 5, 2015). Complainant offered no explanation why such evidence was not previously available during the supplemental investigation or any persuasive arguments as to why it should be accepted now. Accordingly, the Commission can find no reason to disturb the Agency's award of \$250.00 in non-pecuniary compensatory damages. In a recent case, we awarded \$750.00 where the complainant and six coworkers submitted affidavits identifying several stress-related symptoms but failed to demonstrate that the symptoms were due to the Agency's discrimination. Alissa U. v. Dep't of the Interior, EEOC Appeal No. 2022000423 (Aug. 8, 2024) req. for reconsid. den'd, EEOC Request No. 2024004771 (Dec. 10, 2024); See also Harry E. v. U.S. Postal Serv., EEOC Appeal No. 0120123142 (Mar. 20, 2015) (awarding \$500.00 where the record indicated that Complainant experienced emotional harm that had been ongoing since 2001 but the finding of discrimination was limited to two incidents in 2010); Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 0120122266 (Oct. 18, 2012) (complainant awarded \$500.00 as a result of Agency's per se interference with EEO process). This award is supported by the evidence, consistent with Commission precedent, and is neither "monstrously excessive" nor the product of passion or prejudice.

### *Attorney's Fees*

By federal regulation, the Agency is required to award attorney's fees to a prevailing party for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(ii). To qualify as a "prevailing party" for purposes of an award of attorney's fees and costs, Complainant must have succeeded on any significant issue that achieved some of the benefit the complainant sought in filing the complaint. Ludie M. v. U.S. Postal Serv., EEOC Appeal No. 0120170459 (May 9, 2019), req. for recon. den. EEOC Request No. 2019005427 (Dec. 12, 2019). Complainant may make such a showing by satisfying the following two-part test: (1) did he substantially receive the relief sought, and (2) was the complainant a catalyst motivating the agency to provide the relief. Id. A purely technical or de minimis success is insufficient to confer prevailing party status. Id.

All hours reasonably spent in processing the complaint are compensable, but the number of hours should not include excessive, redundant or otherwise unnecessary hours. EEO MD-110, at 11-15. An application for attorney's fees must include a verified statement of attorney's fees accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Id. at 11-9.

While an attorney is not required to record in detail the way each minute of their time was expended, the attorney does have the burden of identifying the subject matters on which they spent their time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. See Matt A. v. U.S. Postal Serv., EEOC Appeal No. 2023004265 (Feb. 1, 2024); Spencer v. Dep't of the Treasury, EEOC Appeal No. 07A10035 (May 6, 2003).

Here, Complainant failed to timely submit his petition for attorney's fees to the Agency. In fact, Complainant never submitted evidence of attorney's fees to the Agency and only did so by submitting an invoice to the Commission in support of his appeal of the Agency's decision on compensatory damages. Thus, Complainant's fee petition is untimely.

Assuming the propriety of the invoice, Complainant still has not demonstrated his entitlement to attorney's fees. The submitted invoice does not identify whether the attorney's hourly rate matches the attorney's skill or experience or whether the attorney's rate is reflective of the prevailing market conditions.

The invoice is also unduly vague as to the work that the attorney expended in this matter, particularly as it pertains to the lone successful claim out of seven. The Commission has held that a fee petition must be sufficiently detailed to permit a factfinder to properly determine if hours were reasonably expended and to attribute work performed for successful work and discount work performed for unsuccessful claims. See Jane H. v. Dep't of the Air Force, EEOC Appeal No. 2022000355 (Dec. 19, 2022); Rigoberto A. v. Env't Prot. Agency, EEOC Appeal No. 2021002128 (July 27, 2022).

### 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 decisions.

### ORDER

To the extent that it has not already done so, the Agency shall pay Complainant \$250.00 in non-pecuniary compensatory damages within 60 calendar days of the date that this decision is issued.

### 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.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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(f).

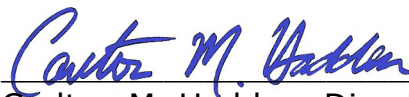
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0124)

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 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. **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

February 4, 2025  
Date