



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

[REDACTED]
Judson G.,¹
Complainant,

v.

Pete Hegseth,
Secretary,
Department of Defense
(Defense Logistics Agency),
Agency.

Appeal No. 2023002881

Agency No. DLAN-22-0015

DECISION

On April 16, 2023, 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 March 22, 2023 final decision concerning 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. For the following reasons, the Commission AFFIRMS the Agency's final decision.

ISSUE PRESENTED

Whether the preponderance of the evidence supports the Agency's award of \$2,000.00 in nonpecuniary damages for its *per se* violation of the Rehabilitation Act.

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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Materials Handler, WG-05-6907, at the Defense Logistics Agency, Distribution Center, located in New Cumberland, Pennsylvania. On January 25, 2022, Complainant filed an EEO complaint alleging that he was subjected to a *per se* violation of the Rehabilitation Act by failing to follow the Agency's reasonable accommodation policy when Complainant's medical information was shared with unauthorized management officials.

On October 7, 2022, the Agency issued a final agency decision (FAD) finding that Complainant prevailed on his claim. To remedy the violation, the Agency determined that Complainant was entitled to compensatory damages, and other make whole relief he could establish. Complainant was instructed to provide documentation to support his claims 30 days after receiving the decision on his case. Complainant received the FAD on October 13, 2022. Complainant did not respond to the decision or provide any documentary or testimonial evidence to substantiate any award.

CONTENTIONS ON APPEAL

While raising numerous arguments pertaining to the merits of his underlying case, Complainant does not raise any arguments pertaining to his entitlement to compensatory damages on appeal.

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, 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 Overview

When discrimination is found, an agency must provide a remedy that constitutes full, make-whole relief to restore complainant as nearly as possible to the position he or she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See EEO MD-110 at Chap. 11, § VII (citing Carey v. Phipps 435 U.S. 247, 254 (1978) (purpose of damages is to “compensate persons for injuries caused by the deprivation of constitutional rights”). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and nonpecuniary loss (emotional harm). See EEO MD-110 at Chap. 11, § VII.B; and Goetze v. Dep't. of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

Nonpecuniary compensatory damages are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. Id. 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 Treas., 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).

Complainants have the burden of proving the existence, nature and severity of the alleged emotional harm and must also establish a causal relationship between the alleged harm and the discrimination. Absent such proof of harm and causation, a complainant is not entitled to compensatory damages, even if there was a finding of unlawful discrimination.

The Commission has held that evidence of emotional distress should include detailed information on physical or behavioral manifestations of the distress, if any, and any other information on the intensity of the distress, information on the duration of the distress, and examples of how the distress affected the complainant both on and off the job. Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). In addition to a detailed statement by the individual claiming emotional distress damages, other evidence of such damages may include statements by health care professionals, such as physicians, psychologists, psychiatrists, therapists or counselors, as well as friends, family or coworkers who could attest to the existence, nature and severity of the complainant's distress, its duration and causation.

Evidence from a health care provider or other expert, however, 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 a complainant concerning his or 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) can also be provided to 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. Additionally, a complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his or 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.

Evidence of Nonpecuniary Damages²

Complainant provided no information as to the effect the disclosure of his medical information had upon him. However, the Agency considered the circumstances surrounding the *per se* violation and the evidence found in the Report of Investigation in determining whether and to what extent Complainant has established being harmed by the *per se* violation.

From the Report of Investigation, the Agency concludes that Complainant's medical information was disclosed to someone who had no need to know during the reasonable accommodation process. In addition, the Agency finds that the undisputed record establishes that the action was singular and there is no evidence of a wider discriminatory environment. The Agency further find that the undisputed record establishes that the improper disclosure was not a deliberate attempt to target Complainant because of his disability, but an incident which grew out of management's failure to follow the Agency's established reasonable accommodation procedures. Although the record is devoid of evidence that such disclosure was intentional, the Agency concludes that the Agency's behavior was reckless and an example of poor judgment. The Agency further found that although the incident may not have been deliberate, the confusion surrounding who would serve as the decision official on the reasonable accommodation request helped to exacerbate the situation.

Upon review of the Report of Investigation, the Agency concludes that it is not clear that the improper disclosure of Complainant's medical information had any impact upon Complainant's health and well-being. We agree with the Agency's assessment of the evidence in the record and find, at best, that Complainant suffered minimal harm.

The Commission has held that nonpecuniary damages are difficult to quantify, and therefore agencies should rely on a comparison of awards in similar cases in recent years. In this case, we consider decisions involving the award of compensatory damages due to *per se* violations of the Rehabilitation Act with respect to the unauthorized disclosure of medical documentation with minimal harm and find that \$2,000.00 is an appropriate amount of nonpecuniary damages in this case.

² Complainant did not submit any receipts or bills to support an award of pecuniary damages. Therefore, he is not entitled to pecuniary damages.

This award is not monstrously excessive and adequately compensates Complainant the minimal harm inflicted by the unauthorized disclosure of his medical information. *Cf. Ingrid C. v. U.S. Postal Serv.*, EEOC Appeal No. 2021002246 (Aug. 8, 2022) (award of \$2,000.00 in nonpecuniary damages where little to no evidence of emotional or physical harm resulted from *per se* violation of the Rehabilitation Act with respect to unauthorized disclosure of medical information); *Angeles C. v. Dep't. of Agric.*, EEOC Appeal No. 2022004959 (Dec. 17, 2024) (\$1,000.00 of nonpecuniary damages awarded to remedy complainant for the harm suffered as a result of *per se* violation of reprisal); *Ebony M. v. U.S. Postal Serv.*, EEOC Appeal No. 2020004813 (Jan. 12, 2022) (EEOC awarded \$2,000.00 in nonpecuniary damages for disclosure of Complainant's medical information); *Michael M. v. U.S. Postal Serv.*, EEOC Appeal No. 2020001464 (Aug. 3, 2021) (\$2,000.00 awarded for single instance of unauthorized confidential medical information); *Hedy B. v. Dep't. of Veterans' Affairs*, EEOC Appeal No. 2021002836 (June 7, 2022) (complainant found entitled to \$2,000.00 in nonpecuniary damages to remedy *per se* violation of the Rehabilitation Act with respect to unauthorized disclosure of medical information).³

CONCLUSION

Accordingly, 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 on compensatory damages.

ORDER

The Agency is ordered to take the following remedial actions, to the extent that it has not already done so:

1. Within 60 days of the date this decision is issued, the Agency shall pay Complainant a \$2,000.00 in nonpecuniary compensatory damages.

³ Compare *Marc L. v. Dep't. of the Air Force*, EEOC Appeal No. 2024001679 (May 13, 2024) (award of \$3,300.00 for improper medical inquiry), with *Keri C. v. Dep't. of Def.*, EEOC Appeal No. 2022004686 (Aug. 29, 2024) (award of \$4,000.00 in nonpecuniary damages for unauthorized disclosure of medical information in violation of the Rehabilitation Act, noting complainant experienced more harm, including hair loss and weight gain, than the complainant in *Marc L.* such that an increase in nonpecuniary compensatory damages was appropriate.

2. The Agency will investigate and report whether Complainant's confidential medical information at issue has been removed and destroyed from their files or not. If it has not been done, this action is to be carried out within 30 days of the date of this decision is issued.
3. Within 90 days of the date this decision is issued, the Agency shall provide one hour of in-person or interactive training to the previously identified Agency officials. The training shall include an emphasis on the requirements related to the confidentiality of medical records under the Rehabilitation Act and the limited exceptions under which confidential medical information can be disclosed.
4. Within 120 days of the date this decision is issued, the Agency shall consider taking disciplinary action against the previously identified Agency officials for violating the Rehabilitation Act. The Commission does not consider training to constitute disciplinary action. The Agency shall report its decision to the Compliance Officer. 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 these individuals have left the Agency's employ, the Agency shall furnish documentation of their departure dates.
5. Within 30 calendar days of the date this decision is issued, the Agency shall post a notice in accordance with the statement entitled "Posting Order." The Agency shall provide the Compliance Officer with the original signed and dated notice, reflecting the dates that the notice was posted, along with evidence that the notice was physically posted at the facility and electronically.

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, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Distribution Center in New Cumberland, Pennsylvania 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).

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

March 6, 2025

Date