



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

[REDACTED]
Latricia P.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2023005251

Agency No. 200H-0631-2022142836

DECISION

On September 22, 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 August 24, 2023, final decision concerning compensatory damages and attorney's fees on a finding of sexual harassment 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 **MODIFIES** the Agency's final decision and **REMANDS** the complaint for further processing.

ISSUES PRESENTED

1. Whether the Agency awarded the appropriate amount in compensatory damages awards following its finding of sexual harassment.
2. Whether the Agency awarded the appropriate amount in attorney's fees following its finding of sexual harassment.

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 Quality Management Officer at the Agency's VAMC facility in Leeds, Massachusetts.

On December 28, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of sex (Female), disability, and reprisal for prior protected EEO activity under Title VII of the Civil Rights Act of 1964 and the Section 501 of the Rehabilitation Act of 1973 when:

1. In 2020, the Medical Center Director ordered Complainant to participate in a random drug test, instead of providing Complainant with assistance, such as a reasonable accommodation.
2. On or around September 17, 2021, the Associate Director made sexual advances towards complainant when he: (a) touched complainant's buttocks and shoulders; (b) asked Complainant to go with him to his car; (c) said they can "work something out"; (d) sent Complainant a picture of his genitals and said "for you to think about"; and (e) promised to create a job for Complainant, after the Associate Director informed Complainant her position was in jeopardy, so Complainant should resign before an Administrative Investigation Board was initiated.
3. Since September 17, 2021, and continuing Complainant had been kept on a detail because she would not have sex with the Associate Director.
4. On an unspecified date after, September 17, 2021, the Director ignored Complainant's requests to meet.
5. In late September 2021 or early October 2021, the Director and Associate Director requested each member of Quality Management to write up a statement about anything they perceived as misconduct by Complainant when Complainant was in the department.
6. On October 28, 2021, the Director assured Complainant no actions would be taken against Complainant after Complainant reported the statements made by the Associate Director; however, on November 9, 2021, Complainant was notified she was the subject of an Administrative Investigative Board.
7. As of December 1, 2021, the Director had not issued Complainant a fiscal year 2020 and fiscal year 2021 performance evaluation.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative

Judge (AJ). In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b) finding Complainant was subjected to sexual harassment but finding no harassment or discrimination with respect to the remaining matters. Having found sexual harassment, the Agency awarded Complainant \$80,000 in non-pecuniary losses and \$25,910.00 in attorney's fees.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant contends that the Agency's Relief Decision was based on errors of fact and law. More specifically, Complainant argues that the Agency award of \$80,000 in damages is too low in comparison to two Commission decision with similar facts. Complainant also argues that the Agency improperly eliminated all hours logged by her Associate Attorney and improperly reduced the hourly rate for her Senior Attorney.

The Agency requests the Commission to affirm its Relief Decision or reduce the award amount to align with comparable cases. The Agency contends that its non-pecuniary damages award of \$80,000 is appropriate, not monstrously excessive, and consistent with awards made in recent, similar cases. The Agency argues that Complainant's damages request on appeal is excessive and not in line with other damages awards.

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

When discrimination is found, an agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore her as nearly as possible to the position 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). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII and the Rehabilitation Act may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and nonpecuniary losses (e.g., pain and suffering, mental anguish) as part of make-whole relief. 42 U.S.C. § 1981a(b)(3). Compensatory damages do not include back pay, interest on back pay, or any other type of equitable relief. 42 U.S.C. § 1981a(b)(2). 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.

Pecuniary Damages

Pecuniary losses are out-of-pocket expenses that are incurred as a result of the employer's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (July 14, 1992), at 14. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, the issuance of a full relief offer, or a voluntary settlement. Id. at 8-9. Future pecuniary losses are losses that are likely to occur after resolution of a complaint. Id. at 9. For claims seeking pecuniary damages, such objective evidence should include documentation of out-of-pocket expenses for all actual costs and an explanation of the expense, e.g., medical and psychological billings, other costs associated with the injury caused by the agency's actions, and an explanation for the expenditure. Id. at 9.

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. EEO MD-110, at Chap. 11, VII.B.2.

In this case, Complainant did not claim any past or future pecuniary losses. In her investigative affidavit and appellate brief, Complainant stated that she sold her car at a \$6,000 loss based on fear due to the sexual harassment, however, Complainant provided no evidence to justify compensation of this as a past pecuniary loss. Therefore, we find no reason to disturb the Agency's decision on this matter and find that Complainant has not established that she is entitled to an award for pecuniary losses.

Non-Pecuniary 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).

Non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish an 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). It is the complainants' burden to provide objective evidence in support of their claims 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).

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 complainants concerning their 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. Complainants' own testimonies, along with the circumstances of a particular case, can suffice to sustain their 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 this case, Complainant initially requested an unspecified amount of non-pecuniary losses "in excess of \$200,000" but under the statutory limit of \$300,000. On appeal, Complainant requests that the award be increased to at least \$100,000. In her affidavit, Complainant stated that the requested losses including the following: a panic attack; hyperventilating; fear for her safety and the safety of her family; anxiety; depression; inability to interact with her children and family members; isolation; becoming withdrawn; loss of self-care such as regular showering, exercise, and adequate meal prepping; 50-pound weight gain; missing out on social activities; loss of intimacy with her boyfriend; nightmares; and intrusive thoughts.

Complainant testified that she sought therapy and medical treatment for some of her claimed losses. Complainant's doctor's statement, dated May 4, 2023, stated that Complainant had a history of major depressive disorder and anxiety disorder that predates the September 2021 sexual harassment. Her doctor stated that, prior to September 2021, Complainant's disorders were well-controlled with as-needed (less than daily) medication. Complainant's doctor stated that beginning in December 2021, Complainant began using her medication with increased frequency, resulting in a reevaluation and change in medication in March 2023.

The record also contains witness statements from Complainant's boyfriend, aunt, and two coworkers.

Complainant boyfriend testified that her personality changed drastically after the sexual harassment, she became extremely frightened, and she stopped driving on the highway because the offender's brother was a state trooper, she began carrying mace, and she traded her car with new license plates. ROI at 71-72. Complainant's boyfriend also testified that Complainant became depressed and withdrawn, had difficulty sleeping, and often stayed in bed exhibiting anxiety, sadness, and lack of energy/desire to engage in task or be around others. Id. Complainant's aunt also testified that Complainant became anxious and withdrawn from family, friends, and coworkers. ROI at 74-75. Complainant's coworker testified that after the incidents, Complainant gained a lot of weight, looked "physically exhausted," had difficulty sleeping and "was reduced to anxiety and fearfulness. ROI at 76-78.

In the Agency's Relief Decision, the Agency found based on the nature and severity of emotional harm to Complainant, the aggravation of her preexisting medical conditions, the egregiousness of the sexual harassment, the senior position of the offender, the amount of damages in similar cases, and the fact that most of Complainant's emotional harm was attributable to the Agency's discriminatory act, Complainant was entitled to \$80,000 in non-pecuniary losses. See Agency Relief Decision at 20. In justification of the award, the Agency found that Complainant's case was most similar to two alleged similar cases with awards of \$50,000 and \$75,000. The Agency reasoned that the two cases, Terrie M. and Roman G.,² were not just similar in harm but also the egregiousness of the circumstances giving rise to the harm, namely the sexual harassment which included unwanted physical touching, pictures of genitalia, threats to her job if she did not engage in sexual behavior, and text messages immediately after she reported the sexual harassment. See Agency's Relief Decision at 19-20.

² See Terrie M. v. Dep't of Defense, EEOC Appeal No. 2022001838 (May 3, 2023)(awarded \$50,000 where complainant was subjected to sexual harassment by a manager, including inappropriate touching and hitting for a period of approximately five months, which resulted in complainant's emotional distress, increased drinking and gambling, frequent crying, and social withdrawal); Roman G. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019005894 (August 31, 2020)(awarded \$75,000 (\$88,207 adjusted to present day value) where complainant was subjected to four years of sexual harassment by the team leader, which resulted in an increase in complainant's smoking and drinking and caused him to be angry, short-tempered, depressed, and socially distant).

However, we disagree. We find that the Agency's award did not consider all components of Complainant's harm including her doctor's testimony that prior to September 2021, Complainant's disorders were well-controlled with as-needed (less than daily) medication, until after the harassment in December 2021 when Complainant began using her medication with increased frequency, resulting in a reevaluation and change in medication in March 2023. There were also physical manifestations of her anxiety, depression, and loss of personal health as reflected in her rapid weight gain after the harassment occurred. Therefore, we find an increase in the award to be appropriate.

Considering these components of Complainant's harm, we find that Complainant's case is more similar to Nancey D cited by the Agency in its Relief Decision. See Nancey D. v. Dep't of Justice, EEOC Appeal No. 2019005600 (September 14, 2020) (awarded \$100,000 (\$121,255.96 adjusted to present day value) where complainant was subjected to three years of sexual harassment by her supervisor, which resulted in severe depression, panic attacks, migraines, erratic sleeping patterns, and Post Traumatic Stress Disorder (PTSD) requiring medical intervention). In both cases, complainants had documented medical effects of the harassment, and medical intervention in the form of additional medication was needed.³ However, we note that the duration of the harassment in Nancey D. was longer than the duration of harassment in the instant case. On appeal, Complainant cited three cases which she asserts are more similar to her case than those cited by the Agency. The cited cases' awards range from a present-day value of \$167,773 - \$258,165. See Complainant's Appellate Statement at 13-17. We note that these decisions were issued between 2014-2018. We also note that neither of the three cases cited by Complainant involved sexual harassment or other claims that were similar to the nature of Complainant's harm.⁴

³ Nancey D. v. Dep't of Justice, EEOC Appeal No. 2019005600 (September 14, 2020)(awarded \$100,000 (\$117,446 adjusted to present day value) where complainant was subjected to three years of sexual harassment by her supervisor, which resulted in severe depression, panic attacks, migraines, erratic sleeping patterns, and Post Traumatic Stress Disorder (PTSD) requiring medical intervention).

⁴ See Dionne W. v. Wilson, EEOC Case No. 0720150040 (March 27, 2018)(awarding \$185,000 or \$227,605 in present-day value); Complainant v. Johnson, EEOC Appeal No. 0720130039 (August 7, 2014) (awarding \$200,000 or present-day value of \$258,165); Complainant v. Donahoe, EEOC Appeal

Instead, we consider Jenna P., EEOC Appeal No. 2019001896 (Aug. 11, 2020) (awarded \$85,000 (\$103,211.11 adjusted to present day value). In Jenna P., after an eight-month period of sexual harassment, the complainant experienced depression, thoughts of suicide, changes in her weight, trouble sleeping and migraines. See id. In this case, the complainant also indicated that the harassment caused problems in her relationship, and triggered memories of childhood abuse. Id. The complainant submitted statements from family members, her pastor, and her friends in support of her claim. Id. We note that the complainant in Jenna P. did not provide any medical documentation nor evidence of medical intervention and had a shorter duration of harm than the Complainant in this case.

After considering all the facts of the case, the cases cited by the parties, and recent Commission cases similar to the instant case, we find Complainant is entitled to \$110,000 in non-pecuniary, compensatory damages. An award of \$110,000 is appropriate and consistent with awards in similar cases.

Attorney's Fees

By federal regulation, an agency is required to award attorney's fees and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. EEOC Regulation 29 C.F.R. § 1614.501(e)(1)(ii). In this case, Complainant contends that the Agency improperly denied all hours logged by an Associate Attorney and improperly reduced the hourly rate for her Senior Attorney.

Associate Attorney's Billing Hours

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. Environmental Protection Agency, EEOC Appeal No. 2021002128 (July 27, 2022). An application for attorney's fees must include a verified petition accompanied by an affidavit executed by the attorney of record itemizing each expense comprising the attorney's charges for legal services, together with bills, receipts, or other appropriate documentation. 29 C.F.R. § 1614.501(e)(2)(ii)(B); MD-110, Chapter 11, Subsection VI(F)(1).

No. 0720130009 (May 14, 2014), recons. denied, 0520140386 (December 11, 2014) (awarding \$130,000 or present-day value of \$167,773).

In this case, Complainant submitted a petition for attorney's fees on May 10, 2023, seeking \$47,300.40. Complainant submitted verified fee billings and a sworn declaration from the attorney of record, the Senior Attorney. The verified billing statement reflected 43.4 hours logged by the Senior Attorney and 22.2 hours logged by the Associate Attorney. However, in its Relief Decision, the Agency denied all hours claimed by the Associate Attorney because the Associate Attorney did not herself include a sworn declaration. In doing this, we find that the Agency improperly applied the regulations in 29 C.F.R. § 1614.501(e)(2)(i). The regulation does not state that each attorney who is claiming billing hours must submit an affidavit, but only the *attorney of record*, which in this case, was in fact the Senior Attorney. Furthermore, the Senior Attorney's affidavit included the Associate Attorney's itemized billing hours as well as information regarding her legal background including education, employment history, level of expertise (time after graduation) and location of legal work. Given this information, we find that the Agency improperly denied Complainant an award of attorney's fees based on the Associate Attorney's verified billing hours.

The Agency also found that the Associate Attorney's billing hours should not be included in Complainant's award of attorney's fees because "the billing statement reflects numerous memoranda and teleconferences between counsel." Agency Relief FAD at 8. While Commission regulation allows awards of attorney's fees for multiple attorneys, the Commission has found that it is reasonable for an agency to disallow the charges of one attorney where both attorneys are charging for time conferring with one another. See Holmes v. Dep't of Energy, EEOC Appeal No. 01976454 (Mar. 13, 2000); see also Ricardo K. v. Dep't of Veterans Affairs, EEOC Appeal No. 2020003751 (Nov. 16, 2021) (an Administrative Judge reduced attorneys' fees, in part, questioning why the attorneys needed to confer with one another so frequently).

As argued on appeal by the Agency, a review of the fee billing chart reveals that in eight billing entries, the Senior Attorney and the Associate Attorney both billed for time spent collaborating with each other. See Complainant's Submission for Attorney's Fees at 23-29; Complainant's Appellate Statement at 22-23. Given this information, we find that a reduction in the Associate Attorney's billing is necessary to account for the time spent collaborating with the Senior Attorney. On appeal, Complainant argued that even if a fraction of the time logged by the Associate Attorney on those dates involved communicating with the Senior Attorney, the remainder of the Associate Attorney's billings reflect time spent on separate legal activities that are not duplicative.

As such, we find that it is appropriate to reduce the Associate Attorney's billing hours for the time spent collaborating on the eight cited dates by 25% (total of 3.1 hours), lowering the overall billing total for the Associate Attorney from 22.2 hours to 19.1 hours.⁵

Hourly Rate

The reasonable hourly rate is generally determined by the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience and reputation. Blum v. Stenson, 465 U.S. 886 (1984). Recent fees awarded by the courts or through settlement to attorneys of comparable reputation and experience performing similar work are also useful guides in setting an appropriate rate. Nat'l Ass'n of Concerned Vet. v. Sec'y of Def., 675 F.2d 319 (D.C. Cir. 1982). There is a strong presumption that the number of hours reasonably expended multiplied by a reasonable hourly rate, the lodestar, represents a reasonable fee, but this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency. 29 C.F.R. § 1614.501(e)(2)(ii)(B).

The circumstances under which the lodestar may be adjusted are extremely limited, and are set forth in EEO MD-110, Ch. 11 § VI.F. A fee award may be reduced: in cases of limited success; where the quality of representation was poor; the attorney's conduct resulted in undue delay or obstruction of the process; or where settlement likely could have been reached much earlier, but for the attorney's conduct. Id. The party seeking to adjust the lodestar, either up or down, has the burden of justifying the deviation. Id. This case presents none of the extremely limited circumstances in which with lodestar should be adjusted.

Nonetheless, the Agency argues that the hourly rate of Complainant's Senior Attorney is too high. In support of the Senior Attorney's hourly rate, Complainant submitted the Fitzpatrick Matrix (2013-2023), the USAO Attorney's Fee Matrix (2015-2021), and the Laffey Matrix (1994-2023). The Laffey Matrix, which has its origins in the case of Laffey v. Northwest Airlines Inc., 572 F.Supp. 354 (D.D.C. 1983), reversed in part on other grounds, 746

⁵ In Complainant's appellate statement, we note that Complainant suggested a 25% reduction in the Associate Attorney's billable hours, if the Commission where to find duplicative entries. See Complainant's Appellate Statement at 23. Therefore, we apply Complainant's suggested reduction percentage in our determination of billable hours.

F.2d 4 (D.C. Cir. 1984), is a chart compiled yearly by the United States Attorney's Office in the District of Columbia. It provides a schedule of hourly rates prevailing in the Washington, D.C. area each year, for attorneys at various levels of experience. We note that the Commission generally accepts the Laffey Matrix to determine the hourly rates for attorneys in the Washington, D.C. area. See Velva B. v. U.S. Postal Serv., EEOC Appeal No. 2020002159 (Nov. 8, 2022); Elliot J. v. Social Security Admin., EEOC Appeal No. 2021004066 (Jul. 18, 2022).

Additionally, in Complainant's fee petition, the Senior Attorney also provided information to prove that his hourly rate is reasonable by other past awards for similar work he has performed. The Senior Attorney asserts that for the past ten years, all of his federal employee clients have been billed for his work at the current hourly rate (\$807). The Senior Attorney identified four of his clients by their initials that have been paying his hourly rate based on the Fitzpatrick Matrix (\$807).⁶ The Senior Attorney listed two 2022 Commission cases where he received fee awards based on his then-current hourly rate of \$736. See Joseph M. v. Dep't of Transportation, EEOC Appeal No. 2022003005 (Sept. 5, 2023); EEOC Hearing No. 480-2021-00243X (Aug. 25, 2022). The Senior Attorney also cited additional Commission decisions from 2017-2021 where him and other attorneys at his firm were awarded the Laffey rate. See Complainant's Submission for Attorney's Fees at 13-14.

On appeal, the Senior Attorney cited two additional 2023 cases where he received fee decisions awarding the full lodestar fee (\$807) for his services.⁷ See Complainant's Appellate Statement at 26-27. Lastly, on appeal, the Senior Attorney included a 2013 awards decision from the same Agency in this case, where there was an award of attorney's fees given for his then-comparable hourly rate (\$613). Considering the recent fees awarded by the Commission and the past award from the responding Agency for the Senior Attorney's work, we find that his hourly rate of \$807 is not excessive and that the Agency erred in not awarding the full lodestar for the Senior Attorney's billable hours at his stated hourly rate.

Since we found that the Agency improperly denied attorney's fees for the Associate Attorney's billable hours, we find it necessary to discuss the

⁶ We note that no evidence was included in Complainant's fee petition to corroborate this assertion by the Senior Attorney.

⁷ The Senior Attorney asserts that the cited fee decisions were not issued until after Complainant's fee petition filing deadline had passed, which is why they were not included in Complainant's fee petition.

Associate Attorney's hourly fee. In Complainant's fee petition, the Associate Attorney's hourly rate is listed as \$553 as reflected in the current Laffey /Fitzpatrick Matrix. As previously noted, the Laffey Matrix is generally accepted by the Commission. As such, we find that the record supports the claimed rate for the Associate Attorney, given her years of experience, and the Agency is required to award Complainant in accordance with this rate.

Therefore, we find the attorney's fees computation to be as follows: Senior Attorney, \$35,023.80 (43.4 hours x \$807); and Associate Attorney, \$10,562.30 (19.1 hours x \$553). We will therefore direct the Agency to award Complainant a total of \$45,586.10 in attorney's fees.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's decision and REMAND the matter to the Agency in order to comply with the ORDER below.

ORDER

To the extent it has not already done so, the Agency shall take the following actions:

1. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$110,000.00 in non-pecuniary compensatory damages.
2. Within 60 calendar days of the date this decision is issued, the Agency shall pay Complainant \$45,586.10 in attorney's fees.

The Agency shall also submit a report of compliance as set forth in the section below entitled "Implementation of the Commission's Decision."

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 (M0920)

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 his or her request for reconsideration, and any statement or brief in support of his or her request, via the [EEOC Public Portal, which can be found at](#)

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her 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 his or her 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(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

January 22, 2025

Date