



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

[REDACTED]
Alvaro M.,¹
Complainant,

v.

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

Appeal No. 2023001849

Hearing No. 440-2020-00086X

Agency No. 4K-270-0035-19

DECISION

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 January 5, 2023, final order 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 MODIFIES the Agency's final order and REMANDS the matter for further action.

ISSUES PRESENTED

The issues presented are whether the Commission should consider the Agency's decision on Complainant's allegation of a settlement breach and his new evidence raised on appeal; and whether the Administrative Judge

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.

properly determined Complainant's award for back pay, compensatory damages, and attorney's fees, following a hearing.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier at the Agency's Chapel Hill Post Office in Chapel Hill, North Carolina.

Settlement Agreement

Prior to the instant EEO complaint, the parties entered into a settlement agreement on February 27, 2018, for Complainant's allegations of harassment and failure to accommodate. The Agency agreed to actions such as ensuring that proper reasonable accommodation requests are complied with. Complainant alleged a breach of the settlement agreement in April 2019, and the Agency issued its determination of no breach on November 2, 2019. Complainant did not appeal the Agency's decision to the Commission.

EEO Complaint

On March 6, 2019, Complainant filed an EEO complaint alleging that the Agency subjected him to a hostile work environment based on disability (lumbar degenerative disc disease and spinal stenosis) when from March 2, 2018, through December 4, 2018, one of Complainant's coworker's (Coworker) threatened Complainant; called him names; and/or harassed Complainant, and the Agency failed to properly address the matter when Complainant reported the incidents on June 23, and 27, 2018; September 18, and 25, 2018; October 9, 2018; December 11, 2018; and other dates.

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 held a hearing on August 25-26, 2022, and issued a decision on December 2, 2022.

As an initial matter, the AJ found that Complainant is an individual with a disability based on a degenerative disc disease and spinal stenosis, and that he was qualified for his position. The AJ then found that the Agency failed to accommodate Complainant and that it was liable for harassment based on his disability.

As part of his duties, Complainant pushed hampers full of mail to his truck. In 2016 or 2017, the Agency acquired new blue hampers which caused Complainant less pain to use than the old orange hampers that were in poor condition and difficult to push. Complainant tried to save blue hampers for his use, but they were not always available. In August 2017, Complainant requested the use of two blue hampers as a reasonable accommodation, which the Agency granted. Complainant stenciled his route number on two blue hampers, but they were frequently taken by other carriers or loaded with mail and other items, preventing his use. Complainant informed a supervisor, but no action was taken.

On December 4, 2018, Complainant and the Coworker got into an altercation after a supervisor instructed Complainant to clean up mail. When Complainant responded that the Coworker, who had "dragged the mail back," should clean it up, the Coworker replied, "why don't you try doing your whole route, dumbass?" The two raised their voices and cursed at each other. Complainant requested leave and noted a "hostile work environment" as the stated reason. Complainant subsequently filed a claim with the Office of Workers' Compensation Program (OWCP) on December 18, 2018.² Complainant initiated the instant complaint on December 23, 2018, alleging a continued hostile work environment and failure to accommodate.

The Coworker admitted to taking Complainant's hampers and calling Complainant names, such as a "lazy son of a bitch," which he considered teasing. The AJ found that the Coworker repeatedly interfered with Complainant's ability to use his granted accommodation through December 4, 2018, and the Coworker's behavior had the effect of unreasonably interfering with Complainant's work performance; exacerbating his back pain; and creating an intimidating, hostile, or offensive work environment. The conduct was pervasive and lasted until December 4, 2018.

The AJ found that the Agency was liable because supervisors knew of the Coworker's conduct but failed to investigate and take prompt corrective action. Notably, Complainant submitted a complaint to the Postmaster on September 25, 2018, but she did not begin the investigation until eleven weeks later and failed to interview witnesses for another two months. Despite finding that harassment had taken place, the Postmaster did not issue the findings or request discipline for another six months. As such, this was not prompt action.

² The OWCP initially denied Complainant's claim but accepted it on November 4, 2019.

The AJ further found that the Agency was liable for a failure to accommodate due to its inaction to meet its ongoing obligation to provide an effective accommodation for Complainant.

As part of the remedies, the AJ considered Complainant's claim for back pay. The record showed that the Agency offered Complainant a suitable position on May 20, 2020, of a Carrier position at the Carrboro Post Office for six months before transitioning him back to the Chapel Hill Post Office. The OWCP found that the job was suitable and within Complainant's medical restrictions. Complainant rejected the job offer, testifying that he felt as if he was being punished. The Agency proposed Complainant's removal and explained that if he failed to accept the position or provide a written explanation his rejection of the position, the OWCP would terminate his compensation rights.³ The AJ determined that Complainant had a duty to mitigate damages to find a suitable position, once he was cleared to return to duty and the OWCP had advised that he would no longer receive OWCP benefits. The Agency offered a suitable position and Complainant refused it. While Complainant stated that the Coworker had influence over the employees at the Carrboro Post Office, the evidence did not support his contention. The AJ noted that Complainant should have accepted the position and raised the transfer/reassignment in the EEO complaint. As such, the AJ found that Complainant's claim for back pay ended on the date that his OWCP benefits ended on November 7, 2020.

The AJ also found that Complainant was entitled to health insurance co-pays of \$415.00; mileage of \$339.00; and costs of \$307.50, totaling \$1,061.50. While Complainant requested costs associated with finding alternative health and life insurance, the AJ found that he was not entitled to such costs because he refused the Agency's offered position. The AJ also ordered that the Agency offer Complainant reinstatement to a permanent position at the Chapel Hill Post Office, with appropriate accommodations.

Regarding non-pecuniary compensatory damages, the AJ determined that the Agency made good faith efforts to accommodate Complainant, and he was therefore, not entitled to compensatory damages for the failure to accommodate claim. However, the AJ found that he was entitled to compensatory damages due to the harassment.

³ Complainant testified that he had not been terminated by the Agency, and that he was on a leave without pay status. Hearing Transcript at 186. On appeal, Complainant disclosed that the Agency placed him on administrative leave on January 14, 2023, pending his reinstatement.

The AJ noted that Complainant and his wife credibly testified about his harms, such as crying; bad dreams; erratic behavior; drastic mood swings; irritability; sleeping late; and damage to his relationships with his family members. Complainant requested \$300,000.00, but the AJ determined that \$50,000.00 was appropriate, citing to various Commission decisions awarding between \$30,000.00 and \$50,000.00. The AJ also granted the entirety of Complainant's request for attorney's fees and costs of \$82,365.00.

The Agency subsequently issued a final order fully adopting the AJ's finding that Complainant proved that the Agency subjected him to discrimination as alleged and the ordered remedies.

The instant appeal followed.

CONTENTIONS ON APPEAL

Complainant requests that the Commission reverse the Agency's determination on his settlement breach allegation from 2019 and consider the period from August 23, 2017, through March 2, 2018, as a factor in his non-pecuniary compensatory damages. Regarding the amount of non-pecuniary compensatory damages, Complainant asserts that the record did not contain statements from his daughter; neighbor; best friend; and in-laws because his attorney did not enter them into the record. Complainant claims that \$50,000.00 is insufficient, and he relies upon other Commission cases awarding between \$90,000.00 and \$150,000.00 to support his request for \$125,000.00. Complainant further notes that the award should be adjusted upward for inflation.

Complainant also requests an additional \$8,807.50 in attorney's fees, and he attached the invoices to support the fees. Complainant challenges the AJ's decision to cut off his back pay award through November 2020. He asserts that he was not represented by an attorney for his OWCP claim, and that he was not advised that he should have accepted the Agency's offered position or raised the transfer/reassignment in his EEO complaint. In addition, Complainant contends that he was unable to seek other employment because he was depressed. He gave supporting medical documentation to his attorney, who informed Complainant that he could not offer it as evidence because discovery had passed, and the doctor could not be located to obtain his testimony. Complainant separately requested additional damages for differences in his family's insurance premiums in 2021 and 2022.

The Agency opposes Complainant's appeal. The Agency asserts that it gave Complainant his appeal rights in its settlement agreement breach determination in 2019, but he did not appeal the decision to the Commission. Further, during the Initial Status Conference on January 21, 2020, the AJ framed the dates of Complainant's claim as between March 2, 2018, and December 4, 2018, and Complainant offered no objection.

The Agency also responds that the cases that Complainant provided in support of his request for increased non-pecuniary compensatory damages are not similar, and that the AJ correctly found that he was entitled to \$50,000.00 for his harms over a period of ten months. While Complainant relies on new evidence to support an increased award, the Agency opposes his attempt to introduce new evidence on appeal that was available prior to the August 2022 hearing. The Agency notes that Complainant conceded that his attorney decided not to introduce this evidence and is attempting to relitigate his non-pecuniary compensatory damages claim on appeal.

In addition, the Agency contends that the AJ's decision to limit Complainant's back pay through November 2020 was appropriate because there is no dispute he did not show any attempts to mitigate his damages. The Agency requests that the Commission affirm the Agency's final order adopting the AJ's decision.

STANDARD OF REVIEW

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

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

ANALYSIS

Settlement Breach Allegation

Complainant argues that the Commission should reject the Agency's determination regarding his allegation of a settlement breach. However, appeals to the Commission must be filed within thirty (30) calendar days after Complainant receives notice of the Agency's final action. 29 C.F.R. § 1614.402(a). It is undisputed that the Agency issued its decision finding no breach on November 2, 2019, and that Complainant did not file an appeal. Complainant did not explain why he did not appeal the Agency's decision in 2019. A review of the Agency's decision clearly shows that it informed Complainant of his right to appeal to the Commission within 30 calendar days from receipt. His attempts to appeal the Agency's settlement breach determination now are extremely untimely. As such, we decline to grant Complainant's requests to reverse the Agency's 2019 settlement breach decision or include the period covered by the settlement agreement when considering Complainant's non-pecuniary compensatory damages claim.

New Evidence

As a general rule, no new evidence will be considered on appeal unless there is an affirmative showing that the evidence was not reasonably available prior to or during the investigation. See EEO MD-110 at Chap. 9, § VI.A.3. Complainant explains that his attorney decided not to admit the additional witness statements regarding his harms into the record or his additional medical documentation because the period for discovery had passed. The Commission has found that when complainants voluntarily entrust representation to an attorney, they may not avoid the consequences of their choice by arguing that the attorney was unable to perform the attorney's duties in a competent manner. See Tyree L. v. Dep't of Homeland Security, EEOC Appeal No. 2021004544 (Jun. 5, 2023); Kennedy v. U.S. Postal Serv., EEOC Request No. 05950157 (Aug. 10, 1995). Since this new evidence was admittedly available prior to the 2022 hearing, the Commission will not consider it on appeal.

Back Pay

As an initial matter, the Agency accepted the AJ's findings of a hostile work environment and a failure to accommodate based on Complainant's disability, and Complainant does not challenge these findings. As such, we AFFIRM the findings of disability discrimination.

Back pay is an equitable remedy, meaning that proof of causation is not required. Once discrimination is found, the Agency must provide Complainant with a remedy that constitutes full, make-whole relief to restore him as nearly as possible to the position he would have occupied in the absence of discrimination. Workers' compensation awards do not preclude back pay, so long as there is no double recovery and any workers' compensation awards should be deducted from the total amount of back pay. Everette C. v. Soc. Sec. Admin., EEOC Appeal No. 2021000753 (Aug. 16, 2022); req. for recon. den. EEOC Request No. 2022004905 (Aug. 10, 2023). Back pay awards typically include all forms of compensation and must reflect fluctuations in working time, overtime rates, penalty overtime, Sunday premium and night work, changing rate of pay, transfers, promotions, and privileges of employment to which Complainant would have been entitled but for the discrimination. Miquel G. v. Dep't of Transp., EEOC Appeal No. 2019002129 (Sept. 23, 2021).

A back pay claimant has a duty to mitigate losses by making a reasonable effort to find other suitable employment. The burden is on the Agency to establish that the employee failed in his duty to mitigate. An agency must generally satisfy a two-prong test which requires it to show: (1) the complainant failed to use reasonable care and diligence in seeking a suitable position; and (2) there were suitable positions available which the complainant could have discovered and for which he was qualified. Where a complainant does not make an effort to mitigate damages and does not explain the lack of effort, the agency does not have to meet the second prong. See Kyong L. v. U.S. Postal Serv., EEOC Appeal No. 2020003693 (July 21, 2021), req. for recon. den., EEOC Request No. 2021004443 (Jan. 10, 2022); Simmons v. U.S. Postal Serv., EEOC Petition No. 04930005 (Dec. 10, 1993).

In this case, Complainant left work on December 4, 2018, due to the hostile work environment and did not return, and instead, filed a workers' compensation claim. The AJ found that Complainant did not use reasonable care and diligence in seeking a suitable position after he was cleared to return to work, and that he rejected a suitable position offered by the Agency. To the extent that Complainant disagreed that the offered position was suitable, he did not look for other opportunities during the relevant time. He testified that he had not applied for any other job prior to his deposition on February 8, 2021, and he started considering other work "later on in the year." Complainant began the hiring process for his current employment in December 2021. Hearing Transcript at 168-9, 184-5, 92.

We find that this is substantial evidence to support the AJ's determination that Complainant did not mitigate his damages because he waited approximately one year after the OWCP ceased his workers' compensation benefits to seek other employment opportunities.

While Complainant asserts that he was not represented by an attorney for his OWCP claim, and that he was not advised that he should have accepted the offered position or raised the transfer/reassignment in his EEO complaint, this does not excuse his obligation to mitigate his damages. In addition, Complainant contends that he could not pursue other employment due to depression, but he offered no such testimony during the hearing when questioned about his employment search efforts. Hearing Transcript at 168-71, 184-5. As such, we AFFIRM the AJ's decision to limit the back pay period from December 4, 2018, through November 7, 2020.

Pecuniary Compensatory Damages

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.

On appeal, Complainant renews his request for additional costs related to increased costs for his family's health insurance in 2021 and 2022. However, he offered no dispute to the AJ's determination that Complainant was not entitled to such costs because he refused the Agency's offered position. We find that the AJ properly denied Complainant's request because there is no evidence that these costs were caused by the Agency's discriminatory conduct, and Complainant incurred them after rejecting the Agency's offer of another position within the Agency.

Neither party challenged the AJ's award of \$1,061.50 in pecuniary compensatory damages for Complainant's medical co-pays; mileage; and costs. Accordingly, we AFFIRM the AJ's decision regarding pecuniary compensatory damages.

Non-Pecuniary Compensatory Damages

Non-pecuniary losses are losses that are not subject to precise quantification, i.e., emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, injury to credit standing, and loss of health. See EEOC Notice No. 915.302, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm, and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). 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).

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.

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

At the hearing, Complainant's wife testified that she observed changes in Complainant, such as crying; waking up to bad dreams; erratic behavior; drastic mood swings; irritability; sleeping late; and issues with his relationships with family members. Hearing Transcript at 205-6, 208-9. Complainant corroborated that the Agency's discriminatory actions affected his relationship with his wife and daughter. Hearing Transcript at 112-13. As such, we find that substantial evidence supports the AJ's determination that Complainant suffered harms of crying; bad dreams; erratic behavior; mood swings; irritability; sleeping late; and damage to his relationships with his wife and daughter.

The AJ did not specify the duration of harms, but Complainant asserts that his harms lasted for fifteen months, in addition to a "belated investigation" lasting for a year. Complainant Appeal Brief at 5. However, he cites to no evidence to support this duration of harms. Regardless, even crediting, for the purposes of this decision, that Complainant's harms lasted approximately two years, we find that the AJ's award of \$50,000 was not "monstrously excessive" and consistent with the amounts awarded in similar cases. For example, the AJ relied on Tera B. v. Department of Homeland Security, EEOC Appeal No. 2020000082 (Jun. 22, 2022), in which the complainant was awarded \$30,000.00 for panic attacks; crying spells; marital and family difficulties; and self-isolation for harassment from 2015 to 2019. Complainant asserts that his award should be adjusted for inflation, but \$50,000.00 is worth more than \$30,000.00 in 2022.⁴

⁴ According to the U.S. Bureau of Labor Statistics Inflation Calculator, \$30,000.00 in June 2022 is approximately \$31,808.00 today.

In addition, other recent Commission decisions support the \$50,000.00 award. In Michael G. v. Department of Veterans Affairs, EEOC Appeal No. 2021002218 (Jun. 29, 2022), the complainant was awarded \$35,000 for harms suffered from 18 months of harassment of stress; moodiness; loss of appetite; strained relationships with his wife and daughter; and becoming quiet and withdrawn. Another complainant was awarded \$50,000.00 in 2022 for harms including extreme stress; lack of social interactions; weight gain; depression; anxiety; insomnia; nightmares; and strain to her relationships with her husband and son, with witnesses adding that the complainant cried frequently and changed from being outgoing and energetic to withdrawn; secluded; and defensive for harassment starting in February 2020 in Lorraine D. v. Department of the Interior, EEOC Appeal No. 2022002934 (July 11, 2022).

On appeal, Complainant simply presents other Commission decisions with greater awards, without explaining how these cases are similar to his situation. Further, he did not challenge any of the cases that the AJ relied upon as distinguishable. While Complainant preferred additional damages, he offers no more than his disagreement with the AJ's decision. As such, we AFFIRM the order awarding \$50,000.00 in non-pecuniary compensatory damages.

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). To determine the proper amount of the fee, a lodestar amount is reached by calculating the number of hours reasonably expended by the attorney on the complaint multiplied by a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886 (1984); Hensley v. Eckerhart, 461 U.S. 424 (1983).

In this case, the AJ awarded the full amount of attorney's fees submitted for work performed through October 10, 2022, of \$82,365.00. On appeal, Complainant requests an additional \$8,807.50 in attorney's fees for work performed in November and December 2022. The Agency did not oppose the request, and we find that the additional work performed was reasonably expended for Complainant's complaint. As such, we MODIFY the award for attorney's fees to include an additional \$8,807.50, for a total of \$91,172.50.

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 final order adopting the AJ's decision and REMAND the matter back to the Agency, in accordance with the Order below.⁵

ORDER

To the extent that it has not already done so, the Agency is ordered to:

1. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall determine the appropriate amount of back pay, with interest, and other benefits due Complainant, pursuant to 29 C.F.R. § 1614.501. The back pay amount shall be computed in the manner prescribed by 5 C.F.R. § 550.805. The back pay period will assume that Complainant held the position of a City Carrier (O-02) and begin on December 4, 2018, and end on November 7, 2020. Complainant's back pay award shall be reduced by his OWCP compensation.

Complainant shall cooperate with the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency within **thirty (30) calendar days** of the Agency's request. Complainant shall submit to the Agency a "Form 8038" Employee Statement to Recover Back Pay.

If there is a dispute regarding the exact amount of back pay, interest, and/or benefits, Complainant may file a Petition for Enforcement with the Commission. The Agency shall still pay Complainant the undisputed amount of back pay owed within **sixty (60) calendar days** of the date the amount is determined. The back pay calculation and payment period should not exceed **one hundred and twenty (120) calendar days**.

⁵ The language from the AJ's Order has been modified to clarify the Commission's intent without substantively changing any of the orders, aside from the modification to the awarded attorney's fees.

2. Complainant may, within **thirty (30) calendar days** of filing his tax return for the year in which he received the lump sum back pay amount, submit a request for reimbursement to the *Agency* (not the EEOC Office of Federal Operations).
3. Complainant has the burden of establishing the amount of increased tax liability, if any. The issue of adverse tax consequences (if applicable) shall be resolved within 120 days of the date Complainant submits his request for reimbursement.

Complainant is advised that any claim for reimbursement should include the tax documentation and calculations showing the tax liability that Complainant actually incurred for each year of the back-pay period, the tax liability that Complainant would have incurred in each of those years if Complainant had received the back pay in the form of a regular salary, and the difference in the amounts (i.e. tax liability that Complainant incurred solely as a result of Complainant's receipt of the lump-sum back-pay award). If applicable, Complainant may provide documentation to support reimbursement of any costs and fees incurred from hiring a Certified Public Accountant to calculate the amount of increased tax liability.

Within **sixty (60) calendar days** of receipt of Complainant's claim and supporting documents, the Agency shall pay the amount of adverse tax consequences and associated attorney or Certified Public Accountant costs and fees.

4. The Agency shall pay Complainant \$1,061.50 in pecuniary compensatory damages for medical co-pays; mileage; and costs, within **sixty (60) calendar days** of the date this decision is issued.
5. Within **sixty (60) calendar days** from the date this decision is issued, the agency shall issue Complainant an unconditional offer of reinstatement to his prior position of City Carrier on Route C8 at the Agency's Post Office in Chapel Hill, North Carolina, or a substantially equivalent position. Complainant's placement into the position shall be retroactive to December 4, 2018. Complainant shall be placed in the grade and step level that he would be in with satisfactory performance had he not been subjected to disability discrimination. If Complainant is placed in a substantially equivalent position, he shall be provided with any training necessary to perform this position within a reasonable period following reinstatement.

The Agency's offer shall provide Complainant with **fifteen (15) calendar days** from receipt of the offer to notify the Agency of whether he accept or decline the offer. Failure to accept the offer within **fifteen (15) calendar days** will be considered a declination of the offer, unless Complainant can show that circumstances beyond his control prevented a response within the time limit.

6. If Complainant accepts the Agency's offer of reinstatement, the Agency shall participate in the interactive process and implement reasonable accommodations to allow Complainant to fulfill the essential functions of his position,⁶ within **thirty (30) calendar days** from the date Complainant returns to his position or a substantially equivalent position.
7. The Agency shall pay Complainant \$50,000.00 in non-pecuniary compensatory damages, within **sixty (60) calendar days** of the date this decision is issued.
8. The Agency shall pay Complainant's attorney's fees, totaling \$91,172.50, within **sixty (60) calendar days** of the date this decision is issued.
9. Within **ninety (90) calendar days** of the date this decision is issued, the individual identified in this decision as the Postmaster shall complete four (4) hours of training on the Agency's obligations under the Rehabilitation Act.⁷ The training shall include an emphasis on anti-harassment and reasonable accommodation for managers and supervisors. The training shall also highlight the Agency's responsibility to take corrective, curative, and preventive action to ensure that similar violations of the law will not recur. See 29 C.F.R. § 1614.501(a)(2).

For assistance in obtaining the necessary training, the Agency may contact the Commission's Outreach, Training and Engagement Division via email, at FederalTrainingandOutreach@eoc.gov.

⁶ Complainant's needs may have changed since he first requested a reasonable accommodation in August 2017.

⁷ The identity of the Postmaster can be found on page 379 of the Report of Investigation.

The Agency shall provide the Compliance Officer with proof of attendance, as well as the contents and materials it used for the training. If any of the individuals has left the Agency's employ, the Agency shall furnish documentation of his/her/their departure date.

10. Within **one hundred twenty (120) calendar days** from the date this decision is issued, the Agency shall consider disciplining the Postmaster for the Agency's failure to accommodate and failure to take prompt and corrective action to address the hostile work environment in violation of the Rehabilitation Act found to have occurred in this decision. *The Commission does not consider training to be 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 this individual has left the Agency's employ, the Agency shall furnish documentation of her departure date.
11. Within **thirty (30) calendar days** of the date this decision is issued, the Agency shall post a notice in accordance with the section listed below, 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 of evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Chapel Hill Post Office facility 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

August 5, 2024
Date