



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations  
P.O. Box 77960  
Washington, DC 20013**

[REDACTED]  
Jenna P.,<sup>1</sup>  
Complainant,

v.

Robert Wilkie,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2019001896

Hearing No. 451-2014-00220X

Agency No. 2003-0116-2013104197

**DECISION**

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's December 20, 2018 final decision concerning her award of compensatory damages regarding her equal employment opportunity (EEO) complaint alleging discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e *et seq.*

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Management Analyst, GS-11, in the Office of Information and Technology at the Agency's National Service Desk in Austin, Texas.

The record indicates that on November 25, 2013, Complainant filed her complaint alleging discrimination based on sex (female) and in reprisal for prior EEO activity when:

1. From September 2012 through May 28, 2013, her first-level supervisor subjected her to sexual harassment; and

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

2. On August 6, 2013, her second-level supervisor informed her that she was not going to be promoted to GS-12, as part of her career ladder.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a hearing but subsequently withdrew her request. On November 18, 2014, the Agency issued its final agency decision finding no discrimination as alleged. Complainant appealed the Agency's decision.

In EEOC Appeal No. 0120150825 (March 9, 2018), the Commission reversed the Agency's finding of no discrimination regarding claim 1. The Commission affirmed the Agency's finding of no discrimination regarding claim 2. Regarding claim 1, the Commission found that Complainant was subjected to sexual harassment by her first-level supervisor and that the Agency was liable for the harassment. The Commission thus ordered the Agency, in relevant part, to pay Complainant attorney's fees and compensatory damages; to restore any leave used as a result of the discriminatory harassment; and to provide eight hours of training to management staff with a focus on preventing sexual harassment in the workplace and management's obligation after receiving a complaint of sexual harassment.

The Agency requested that the Commission reconsider its decision in EEOC Appeal No. 0120150825. In EEOC Request No. 0520180337 (August 2, 2018), the Commission denied the Agency's request and ordered the Agency to comply with the relief in its prior appellate decision.

On September 28, 2018, Complainant submitted her request for compensatory damages seeking a range of \$200,000.00 to \$300,000.00, and restoration of leave in the total amount of 269.75 hours. Complainant requested no pecuniary damages. To support her damages request, Complainant submitted her own statement, statements from her sister, husband, pastor, and friend, describing the physical and mental harms caused by her supervisor's sexual harassment.

In her September 27, 2018 statement, Complainant indicated that she was the survivor of childhood sexual abuse stating by the time she started working for the Agency, she was a confident, happy, optimistic, upbeat, and outgoing person. Complainant stated that since the supervisor's sexual harassment, she experienced deep depression; thoughts of suicide; turmoil in her relationship with her husband; separated from her husband; did not like to be touched intimately; changes in her weight; hair loss; trouble sleeping; nightmares; migraines and stated the experience re-triggered the abuse she endured as a child.

Complainant's sister also submitted her September 28, 2018 statement indicating that she and Complainant grew up in a home with an abusive father and Complainant was subjected to their father's verbal, emotional, and sexual abuse. Complainant's sister also stated that Complainant worked through the abuse and moved on and was a happy person. But after the discriminatory harassment, she stated, Complainant was depressed, cried, did not want to be touched, was shut off emotionally, was frightened, and withdrew from her relationship with her husband.

Complainant also submitted her husband's September 27, 2018 statement indicating that Complainant was a completely different person from when they met and became a couple. He indicated that they were married in 2013 (July 2013) and had been separated since June 2016. He stated that Complainant was closed off, depressed, irritable, not affectionate and experienced weight loss and hair loss.

In his September 24, 2018 statement, Complainant's pastor stated that Complainant joined his church in 2013. The pastor indicated that he had individual counseling sessions with Complainant to help her with her personal life and a lack of sexual desire. At times, her depression was so intense, he believed she was on the border line of becoming suicidal. The pastor indicated that Complainant has improved but still carried the pain she suffered while working for the Agency.

In her September 21, 2018 statement, Complainant's friend indicated that she met Complainant in 2013, and in 2015, Complainant told her about what happened while she was employed by the Agency. She saw Complainant enduring depression, being uncomfortable at home and in her marriage. The friend also indicated that Complainant lost weight rather quickly due to the depression, not eating and not exercising, but then Complainant regained weight by eating more unhealthily and not exercising.

On December 20, 2018, the Agency issued its final decision finding that an award of \$85,000.00 for nonpecuniary damages was appropriate to compensate Complainant for the emotional pain and suffering that resulted from the sexual harassment. The Agency pointed out that Complainant continued to work during the period of harassment; she did not require extensive medical psychiatric treatment; she took no medication for the alleged symptoms of depression and anxiety from which she suffered; and she provided no medical documentation/medical testimony to substantiate her alleged medical harm. The Agency acknowledged the Commission's prior decision ordered it to restore any leave taken as a result of the unlawful harassment. The Agency noted Complainant requested restoration of leave totaling 269.75 hours. The Agency, without making a determination on the total amount of leave due, advised Complainant to contact the Deputy Assistant Secretary for Policy and Compliance, Office of Resolution Management regarding her restoration of leave.

Complainant appealed the Agency's final decision.<sup>2</sup> Regarding her request for leave restoration, Complainant noted her request included 130.50 hours of sick leave, 2.50 hours of family care leave, and 126.75 hours of compensatory time for leave without pay, which she stated she took as a result of the discriminatory harassment, for a total of 269.75 hours of leave to be restored.

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<sup>2</sup> The Agency issued a separate final Agency decision, dated January 8, 2019, concerning Complainant's attorney's fees. Complainant appealed the Agency's determination of attorney's fees, and this matter is currently pending before the Commission under EEOC Appeal No. 2019002510.

Complainant indicated that on January 14, 2019, she contacted an Agency EEO Program Manager who informed her that a “help desk ticket” had been submitted by the Agency to DFAS (Defense Finance and Accounting Service).

### ANALYSIS AND FINDINGS

Here, Complainant appeals from the Agency’s final decision concerning her entitlement to nonpecuniary damages for the Agency’s violation of the Title VII when her first-level supervisor subjected her to sexual harassment from September 2012 to May 28, 2013. Regarding Complainant’s leave restoration, we will not discuss the matter in this decision since the Agency did not make a determination in its decision and since Complainant indicates that the subject matter is pending at this time before DFAS. Complainant did not request pecuniary damages.

This decision concerns the Agency’s decision to award Complainant \$85,000.00 for nonpecuniary compensatory damages.

The Commission notes that damage awards for emotional harm are difficult to determine and that there are no definitive rules governing the amount to be awarded in given cases. A proper award must meet two goals: that it not be "monstrously excessive" standing alone, and that it be consistent with awards made in similar cases. See Cygnar v. City of Chicago, 865 F.2d 827, 848 (7<sup>th</sup> Cir. 1989). Section 102(a) of the 1991 Civil Rights Act authorizes an award of compensatory damages for all post-act pecuniary losses, and for non-pecuniary losses, such as, but not limited to, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to character and reputation, and loss of health. To receive an award of compensatory damages, Complainant must demonstrate that she has been harmed as a result of the Agency’s discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep’t of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), request for reconsideration denied, EEOC Request No. 05940927 (Dec. 8, 1995); EEOC’s Enforcement Guidance: Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 at 11-12, 14 (July 14, 1992) (“Guidance”). Complainant is required to provide objective evidence that will allow an agency to assess the merits of her request for damages. See Carle v. Dep’t of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). The award should take into account the severity and duration of the harm. Carpenter v. Dep’t of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995).

The Commission held that evidence from a health care professional is not a mandatory prerequisite for an award of compensatory damages. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Sinnott v. Dep’t of Def., EEOC Appeal No. 01952872 (Sept. 19, 1996); Lawrence V. U. S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996).

In determining nonpecuniary compensatory damages, the Commission strives to make damage awards for emotional harm consistent with awards in similar cases.

Complainant requested nonpecuniary compensatory damages in the range of \$200,000.00 to \$300,000.00 for the harm caused by her first-level supervisor's (S1) sexual harassment. The Agency determined that \$85,000.00 was appropriate.

The record indicates that Complainant held an MBA (Master of Business Administration) in Operation Management and bachelor's degree in Human Resources Management. She began working as a GS-11 employee at the Agency in August 2012, and she was subjected to the sexual harassment from S1 from September 2012 to May 28, 2013. In May 2013 Complainant's fiancée (who also worked at the Agency) found out about a sexual video that S1 sent to Complainant and discovered sexually-explicit messages from S1 on Complainant's phone. On May 28, 2013, Complainant's fiancée notified his supervisor of S1's conduct. Thereafter, Complainant met with her second-level supervisor (S2) and officials in Human Resources and submitted a Report of Contact detailing S1's harassment. Complainant indicated that S2 then immediately sent S1 home and allowed her to telework. S1 resigned within a week. Complainant had no contact with S1 since May 28, 2013.

Complainant married her fiancée in July 2013; she continued to work in her GS-11, Management Analyst position; she was promoted to a GS-12 grade level on December 15, 2013; and she left the Agency in May 2016. Complainant's husband indicated that they were separated since June 2016.

To support her nonpecuniary damages claim, Complainant cited Glockner v. Dep't of Veterans Affairs, EEOC Appeal No. 07A30105 (Sept. 23, 2004) (\$200,000.00 for damage to complainant's career, i.e., demotions, negative performance comments, denial of leave, work assignments, scheduling and reprimand, and causing her to bite her cheeks which ultimately required surgery). In that case, the complainant was continually harassed and degraded for almost five years and provided sufficient medical documentation of her physical and mental conditions, including her MRI scan, the treatment of her kidney stones, and the removal of an irritational fibroma.

Complainant also cited Alene S. v. U. S. Postal Serv., EEOC Appeal No. 0720150038 (Apr. 6, 2016) (\$200,000.00 for the agency's discriminatory conduct, i.e., harassment, disciplinary action, failure to accommodate complainant's disability, aggravation of a preexisting traumatic situation that prevented her from "ever returning to work"). In that case, the complainant provided medical documentation from her psychologist and psychiatrist to support her permanent post-traumatic stress disorder; she experienced severe additional psychological harm that would not have occurred but for the discrimination; and she was unable to ever work again.

Complainant further cited Looney v. Dep't of Homeland Sec., EEOC Appeal Nos. 07A40124, 01A53252 (May 19, 2005) (\$195,000.00 for discrimination, lasting for almost two years, causing permanent and substantially long-term effects, including depression which was confirmed by complainant's psychologist, humiliation, weight problems, crying, difficulty coping with life, rashes, anxiety, nightmares, difficulty sleeping, considering herself to be unsafe operating a motor vehicle, disinterested in sexual intercourse with her husband, and marital problems).

In that case, the agency's discriminatory conduct involved complainant receiving two suspensions, a transfer, and a detail to a location far from her home for an extended period of time.

Complainant cited Akiko L. v. U.S. Postal Serv., EEOC No. 0720120027 (Apr. 2, 2014) (\$210,000.00 for mental and physical harm for at least two years and beyond due to the agency's particularly egregious harassment). In that case, the complainant provided testimony from her husband and psychologist indicating that she was deeply troubled, anxious, depressed, lonely, suspicious, mentally unfocused, and highly emotional. She experienced weight loss, hair loss, difficulty sleeping, suicidal thought, and chest pain. In that case it was well known that complainant's supervisor was harassing and assaulting her, i.e., touching her buttocks, laughing at her after kicking her, and making references to her as "pretty girl," "my girl," and "bad girl," but the agency took no action to stop the harassment. Further, during the relevant time period, complainant had a miscarriage.

Complainant further cited Valencia L. v. Dep't of Homeland Sec., EEOC Appeal No. 0720130039 (Aug. 7, 2014) (\$200,000.00 for the agency's discrimination for two-year period concerning termination and working conditions). In that case, complainant provided statements from witnesses and her doctor describing the deterioration of her physical appearance and decline of her day-to-day happiness into a state of anxiety and depression. The complainant stated she was humiliated, angry, helpless, and hopeless; she experienced sleeplessness, weight loss, and damage to her skin and hair; she was the chief income earning parent and had difficulty locating work after her termination; she was put in jail three times; and her marriage ended.

Complainant also cited McCormick v. Dep't of Justice, EEOC Appeal No. 0720100040 (Nov. 23, 2011) (\$200,000.00 for the agency's egregious discriminatory and retaliatory conduct when it failed to provide the requested ergonomic accommodations until a year later). In that case, complainant provided substantial evidence in the testimony of her doctors, family, friends, and herself about the physical and mental harm she endured; she suffered severe physical damage and pain to her neck and shoulders, as well as permanent spasms that further damaged the discs in her back; and she continued to suffer migraines, lack of sleep, severe and chronic pain, a loss of enjoyment of life, changes in her physical and mental conditions that imperiled her marriage, hindered her ability to properly care of her young child, created a serious and potentially permanent rift with a child in college, and withdrew socially from friendships.

On appeal, Complainant also cites Lauralee C. v. Dep't of Homeland Sec., EEOC Appeal No. 0720150002 (\$200,000.00 for complainant's physical and mental harm caused by the agency's harassment which was substantiated by her doctor's reports). In that case, the complainant was diagnosed with several new medical conditions, as well as "reactivation of a previously diagnosed condition" since the agency began subjecting her to discriminatory harassment. She was also diagnosed with depression, pancreatitis, irritable bowel syndrome, and temporomandibular joint disorder; she suffered emotional pain and fear of leaving her house; she felt hollow, exhausted, hopeless, and helpless; she cried all the time; and she experienced a loss of interest in interacting with others and sustaining personal relationships.

We note that although Complainant cited Gould v. U.S. Postal Serv., EEOC Appeal No. 07A30114 (May 5, 2004), the Commission, in that case, did not address complainant's compensatory damages rather procedurally dismissed the Agency's appeal from an EEOC Administrative Judge's (AJ) decision, in part, awarding nonpecuniary compensatory damages to complainant. Thus, we find Gould not supportive in determining compensatory damages at issue.

After a review of the cases Complainant cited, as described above, we find that the facts in those cases are distinguishable from the instant case. Those cases involved the agency's discriminatory conduct lasting for more than a year. Further, the discriminatory conduct in those cases caused complainants a financial hardship, a job loss, disciplinary actions, physical and mental harms diagnosed by doctors which was supported by medical documentation, including surgeries, and/or not ever being able to work.

In the instant case, Complainant experienced sexual harassment for nine months and when the behavior was reported to management on May 28, 2013, S2 immediately removed S1 away from her; she and her fiancée continued to stay together and married in July 2013; she was not subjected to any disciplinary action; she did not lose her job or experience other financial hardship; she was promoted on December 15, 2013; and she provided no medical documentation to support her physical or mental harm.

After considering all the facts of the case and the evidence provided by Complainant, we find the Agency's award of \$85,000.00 appropriate and consistent with similar awards. See Cher C. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140445 (Jan. 9, 2017) (awarded \$95,000.00 as a result of the agency's retaliatory harassment lasted for approximately 18 months and complainant experienced stress, loss of professional standing, a panic attack, and exacerbation of her lupus symptoms which were substantiated by medical documentation); Emmett W. v. Dep't of Agriculture, EEOC Appeal No. 0120143098 (May 3, 2016) (\$80,000.00 as a result of the agency's discriminatory termination; complainant, an Iraqi war veteran, experienced a bankruptcy, cancelation of medical insurance, placing his children on state-funded Medicaid, working in a low paying job (almost 80% reduction of his salary at the agency), exacerbated his pre-existing post-traumatic stress disorder and traumatic brain injury, suicidality, and sleeplessness, which were substantiated by the statements from himself, his wife and family members); Ricardo K. v. Dep't of Justice, EEOC Appeal No. 0720170030 (Oct. 12, 2017) (\$75,000.00 for the agency's harassment for his disability; complainant continued to struggle with the trauma and the effects of the harassment, including emotional distress, anxiety, post-traumatic stress disorder, depression, and humiliation; he was forced to take personal sick days to alleviate his stress; he stopped going out to dinner or to social event; his fiancée left him; and his damages were not substantiated by medical evidence but an EEOC AJ found him to be a credible witness during his hearing testimony on his entitlement to damages).

Based on the foregoing, we find that an award of nonpecuniary compensatory damages to Complainant in the amount of \$85,000.00 is entirely appropriate under the circumstances presented in this case.<sup>3</sup> This award takes into account the severity of the harm that Complainant suffered and is consistent with prior Commission precedent.

### CONCLUSION

Accordingly, we AFFIRM the Agency's final decision to award Complainant \$85,000.00 in nonpecuniary compensatory damages.

### STATEMENT OF RIGHTS - ON APPEAL

#### RECONSIDERATION (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party. Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request.

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<sup>3</sup> The Agency has provided the Commission with documentation indicating that payment in the amount of \$85,000.00 has been made via EFT to Complainant on January 31, 2019.



Any supporting documentation must be submitted with your 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).

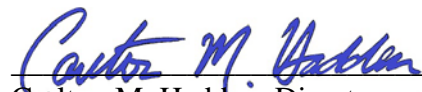
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

August 11, 2020  
Date