



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

[REDACTED]  
Charlotte H.,<sup>1</sup>  
Complainant,

v.

Megan J. Brennan,  
Postmaster General,  
United States Postal Service  
(Pacific Area),  
Agency.

Appeal No. 2019003018

Agency No. 4F-945-0051-16

**DECISION**

On January 18, 2019, 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 December 17, 2018 final decision concerning her entitlement to compensatory damages following a finding of reprisal in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Rural Carrier, 71/0, at the Agency's Vallejo Main Post Office in Vallejo, California.

On July 13, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability and in reprisal for prior protected EEO activity when:

1. On February 19, 2016, and ongoing, Complainant was denied reasonable accommodation when her work hours were cut to 2.3 hours per day; and
2. On June 4, 2016, Complainant was forced to relinquish her assigned rural route.

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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.

Following an investigation, the Agency issued a final decision finding that Complainant was not subjected to discrimination or reprisal. Complainant appealed and, in Pamela L. v. U.S. Postal Serv., EEOC Appeal No. 0120171070 (Nov. 9, 2018), the Commission reversed the final decision and found that the Agency had subjected Complainant to reprisal when management reduced her work hours and forced her to relinquish her assigned rural route. To remedy the discrimination, the Commission ordered the Agency to, among other things, conduct a supplemental investigation into Complainant's entitlement to compensatory damages.

During the supplemental investigation regarding compensatory damages, Complainant signed and returned the Agency's request for an affidavit without answering any of the Agency's questions. Instead, Complainant answered the questions provided by the Agency on its standard Investigative Affidavit for Compensatory Damages. Therein, Complainant claimed that the Agency's actions "negatively impacted my financial status for more than 10 years. My financial hardships have had a great impact on my household and my ability to provide for my family." Complainant also asserted that she experienced emotional stress as a result of her financial situation. Complainant conceded she does not have medical documentation to support her claim for damages. In addition, Complainant provided copies of her Internal Revenue Service Form W-2s from several years, and a fee agreement between her and her representative.

In its decision on compensatory damages, the Agency noted Complainant's tax documentation and explained that back pay is not an element of compensatory damages. The Agency further concluded that no attorney's fees were warranted in this matter because Complainant's representative did not demonstrate that she was an attorney and did not file an attorney's fees petition. In light of the limited evidence Complainant provided, the Agency concluded that Complainant was entitled to \$2,000 in compensatory damages. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant reiterates the Agency discriminated against her and argues she was subjected to a hostile work environment. Complainant again concedes she has no medical documentation to support her claim for damages but asserts that the discrimination "dramatically changed her emotional state."

### ANALYSIS AND FINDINGS

When discrimination is found, an agency must provide the complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position she or he 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 her claim of unlawful discrimination may receive, in addition to equitable remedies, compensatory damages for past and future pecuniary losses (i.e., out of pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish). 42 U.S. C. § 1981a(b)(3). For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. Id.

To receive an award of compensatory damages, a complainant must demonstrate that he or she has been harmed because 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), req. for recon. den'd, EEOC Request No. 05940927 (Dec. 8, 1995); EEOC 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 11-12, 14.

#### *Pecuniary Compensatory 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 on Compensatory and Punitive Damages 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.

The Agency denied Complainant's claim for past pecuniary damages finding that Complainant was unable to establish that she suffered any pecuniary loss as a result of the discrimination at issue here. Upon review, we find that Complainant failed to provide any evidence to show that she is entitled to pecuniary damages. Complainant submitted evidence relevant to the issue of back pay and a fee agreement with her representative. The Agency correctly determined that back pay damages constitute equitable relief and is distinct from the question of compensatory damages. Likewise, the Agency properly denied any recovery regarding the fee arrangement as the document does not identify or itemize any services rendered regarding the EEO complaint. As a result, the Commission finds that Complainant is not entitled to pecuniary 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 Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil

Rights Act of 1991, EEOC Notice No. 915.302 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). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice, or be “monstrously excessive” standing alone, but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

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 complainant concerning his 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.

In this case, Complainant offers little more than a statement that she suffered emotional distress as a result of the Agency's actions. Complainant did not provide any documentation or statements from friends or family members. Accordingly, we find that \$2,000 is an appropriate amount of compensatory damages. This amount takes into consideration the nature of the retaliatory acts, the severity of the physical and emotional harm suffered, and is consistent with prior Commission precedent. See Complainant v. Dep't of Agric., EEOC Appeal No. 0120131546 (June 10, 2015) (complainant awarded \$2,000 based upon scant evidence of harm suffered); Barbie W. v. Dep't of the Army, EEOC Appeal No. 0120171302 (Apr. 9, 2019) (\$2,000 awarded where complainant experienced physical and psychological distress as a result of retaliation but submitted minimal medical documentation in support); and Pamila R. v. U.S. Postal Serv., EEOC Appeal No. 0120182822 (Nov. 6, 2019) (complainant awarded \$2,000 for stress and sleeplessness supported only complainant's affidavit). We find that this amount is not motivated by passion or prejudice or “monstrously excessive” standing alone and that it is also consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (March 4, 1999).

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final decision and REMAND the matter for action in compliance with the ORDER below.

ORDER

To the extent it has not already done so, within 60 days of the date this decision issued, the Agency shall pay Complainant \$2,000 in non-pecuniary compensatory damages.

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 CFR § 1614.503(f) for enforcement by that agency.

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. 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 (R0610)

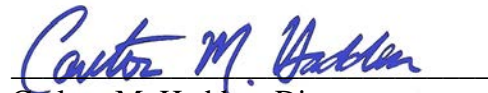
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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 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. **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 18, 2020

Date