



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

[REDACTED]
Cleo S.,¹
Complainant,

v.

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

Appeal No. 2019003273

Agency No. 4G-760-0061-16

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 November 6, 2018 final decision awarding him compensatory damages in the amount of \$5,000 in connection with his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier, Q-CC-01, at the Agency's Post Office in Hurst, Texas. Complainant filed an EEO complaint in which he alleged that the Agency subjected him to discrimination on the basis of disability (traumatic brain injury) when, between April 4 and May 6, 2016, he was provided a light duty assignment of less than eight hours per day, which required him to use sick leave, and that since May 2016, he had not received a written decision from the District Reasonable Accommodation Committee (DRAC) on his request for reasonable accommodation.

Following an investigation, the Agency issued a decision finding that Complainant was not subjected to discrimination as alleged. Complainant filed an appeal with the Commission.

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.

In Demarcus I. v. U.S. Postal Serv., EEOC Appeal No. 0120171336 (Sept. 21, 2018), the Commission found that the Agency had failed to provide Complainant with a reasonable accommodation since April 4, 2016. To the extent that the Agency argued that it accommodated Complainant when it gave him a light duty assignment, the Commission found that the light duty assignment was not an effective accommodation in that it forced him, a full-time employee, to work part time and take leave to cover his forced absences. The Agency had failed to show that providing Complainant with an effective accommodation would have imposed an undue hardship. As a result, the Commission found that the Agency failed to provide Complainant reasonable accommodation in violation of the Rehabilitation Act. Among the items in its ensuing order for relief, the Commission directed the Agency to conduct a supplemental investigation and issue a final decision addressing Complainant's entitlement to compensatory damages.

In its decision issued on November 6, 2018, the Agency determined that Complainant had not submitted any evidence in support of his claim for pecuniary compensatory damages and that a nonpecuniary compensatory damages award in the amount of \$5,000 was appropriate. The Agency found that Complainant did not present any medical evidence of long-term physical or mental problems caused by the Agency's failure to accommodate him in mid-2016, and that the information provided by Complainant, his own statement and a statement from his wife, was conclusory and not limited to the issues involved in his complaint or the time periods involved.

On June 4, 2019, the Agency issued Complainant a check in the amount of \$5,000, but five days later, Complainant returned the check. He informed the Agency that he was still awaiting the Commission's decision on his appeal of its final decision on damages.

ANALYSIS AND FINDINGS

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").

Compensatory Damages

Pursuant to section 102(a) of the Civil Rights Act of 1991, a Complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq, or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive 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) as part of "make whole" relief. 42 U.S.C. § 1981a(b)(3). 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. 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. 42 U.S.C. § 1981a(b)(3); Wilda M. v. Dep't of Homeland Sec., EEOC Appeal No. 0120142660 (Dec. 2, 2016).

In any claim for compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, that he suffered harm as a result of the Agency's discriminatory action; the extent, nature, and severity of the harm suffered; and the duration or expected duration of the harm. Pasquale D. v. Dep't of Homeland Sec., EEOC Appeal No. 0120160892 (Apr. 12, 2018); Archie G. v. Dep't of Justice, EEOC Appeal No. 0120141305 (Nov. 30, 2016); Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsideration denied, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, (Guidance on Damages) EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14. Thus, the size of a compensatory damages award will be governed by the severity and duration of the harm suffered and the documentation of both the harm and the causal connection to the Agency's acts of discrimination. In general, the more severe the harm, the longer its duration, the stronger its connection to the Agency's discriminatory acts, and the more thorough its documentation, the higher the award will be.

In both of his affidavits, Complainant averred that he had been suffering from migraine headaches and that he experienced constant anxiety from thinking about whether he was going to be accommodated and whether he was going to be able to hold on to his job. He maintained that he had to cope with job-related stress on a daily basis, and that in addition to stress and anxiety from not being granted his reasonable accommodation request, he suffered from mental anguish, frustration, loss of enjoyment of life and mental fatigue. In her declaration, Complainant's wife stated that her husband experienced stress, anxiety, depression, and insomnia. Complainant's psychiatrist reported in December 2016 that Complainant had been experiencing anxiety, ruminating thought, sleeplessness, and migraine headaches that were overwhelming at times. His diagnosis included: adjustment disorder with mixed emotions; post-traumatic stress disorder. The psychiatrist's recommendations for treatment included individual psychotherapy but neither the report nor the progress notes include any information relating to prognosis or duration of Complainant's symptoms. We find the record sufficient to document that Complainant has indeed suffered harm as a result of the Agency's discriminatory acts.

In his original affidavit, Complainant averred that he had several preexisting conditions that were made worse by management's forcing him to take leave and failing to respond to his accommodation requests, including his migraines. In his supplemental affidavit on damages, Complainant attributed his stress and anxiety in part to an accusation from one of his managers that he had committed fraud. He also mentioned in his answer to question (3) of the supplemental affidavit that he had been fighting for a reasonable accommodation since he first arrived in Hurst in 2009. According to the psychiatrist's report, Complainant's symptoms were due mainly to the stress associated with his job and the lack of accommodations for his injury. But the report also mentioned that Complainant had suffered a traumatic brain injury in a car accident that occurred in 1992 which had left him prone to not only headaches, but also to seizures and blurred vision.

While the harm Complainant experienced is partly attributable to the Agency's failure to respond to his request for reasonable accommodation between April 4 and May 6, 2016, other factors by his own admission played a role in causing or aggravating his symptoms, including problems he was having with management that led to the fraud accusation and the reasonable accommodation requests that predated the request at issue in his complaint.

Pecuniary Losses

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. Guidance on Damages at 14. 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. See e.g. Elsa S. v. Nat'l Aeronautics & Space Admin., EEOC Appeal No. 0720180021 (Feb. 14, 2020); Foster M. v. Dep't of Energy, EEOC Appeal No. 0120182008 (Dec. 13, 2019); Kuepfer v. Dep't of Veterans Affairs, EEOC Appeal No. 01A43491 (July 29, 2005), req. for recon. dismissed EEOC Request No. 05A51229 (Oct. 19, 2005). The agency is only responsible for those damages that are clearly shown to be caused by the agency's discriminatory conduct. Timothy M. v. Dep't of the Navy, EEOC Appeal No. 2019001562 (Feb. 4, 2020).

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. Guidance on Damages, supra at 8-9. The record in this case does not include any receipts from pharmacies or physicians' offices or any other documentation of medical expenses that Complainant actually incurred. As a result, the Commission finds that Complainant is not entitled to any damages for past pecuniary losses.

Future pecuniary losses are losses that are likely to occur after the final resolution of an EEO complaint. Guidance on Damages, supra at 9. Such losses typically consist of medical expenses likely to be incurred after final adjudication or settlement. Id. Complainant has not presented any documents or testimonial evidence establishing that he is likely to incur additional medical expenses or any other future pecuniary loss. Accordingly, the Commission finds that the Agency properly found that Complainant is not entitled to any pecuniary compensatory damages.

Non-Pecuniary Losses

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 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 punish the Agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or “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.

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. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his 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.

As noted above, Complainant established that he had suffered harm in the form of migraine headaches, depression, and anxiety that was due in part to the Agency's placing him on a part-time light duty assignment and failing to respond to his reasonable accommodation request between April and May 2016. He claimed entitlement to the statutory maximum of \$300,000. However, in order to obtain such an award, Complainant must thoroughly document that he suffered extremely severe harm over an extended period of time. See e.g. Taunya P. v. U.S. Postal Serv., EEOC Appeal No. 0720180022 (Sept. 27, 2019) (\$250,000 awarded where testimony from physician established that the complainant suffered nerve damages and experienced pain so severe as to be unresponsive to pain-killing medications over indefinite time frame); Geraldine B. v. Dep't of Agric., EEOC Appeal No. 0720180025 (June 5, 2019) (\$250,000 awarded where testimony from the complainant's spouse, physician, and therapist established that she suffered from severe and prolonged post-traumatic stress syndrome and depression from which she would never fully recover).

After carefully considering all of Complainant's statements in conjunction with that of his spouse and the psychiatrist's report and progress notes, we find that an award of \$10,000 in nonpecuniary, compensatory damages is appropriate in this case. We note that this amount meets the goals of not being motivated by passion or prejudice, not being "monstrously excessive" standing alone, and being consistent with the amounts awarded in similar cases. We find that the weight of our prior decisions supports an award of \$10,000 in the instant case. See Ralph B. v. Dep't of Homeland Security, EEOC Appeal No. 0120161451 (April 25, 2018) (\$10,000 in nonpecuniary compensatory damages awarded where the complainant submitted his own statement that he suffered from stress, anxiety, depression, and emotional withdrawal along with medical report that not include data pertaining to the discriminatory incidents); Caneva v. Dep't of Def., EEOC Appeal No. 01A32890 (July 15, 2004) (\$10,000 in nonpecuniary compensatory damages awarded where the complainant became depressed but presented no medical evidence); McManaway v. U.S. Postal Serv., EEOC Appeal No. 01993233 (Aug. 23, 2002) (\$10,000 in nonpecuniary, compensatory damages awarded where complainant submitted un rebutted statement that he experienced aggravation, frustration, humiliation, marital strain, and financial stress). Based on the foregoing, we find that Complainant is entitled to an award of nonpecuniary, compensatory damages in the amount of \$10,000.

CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we MODIFY the Agency's final decision and award Complainant \$10,000 in nonpecuniary compensatory damages in accordance with our order below.

ORDER (C0618)

Within sixty (60) days of the date this decision is issued, the Agency is ordered to pay Complainant non-pecuniary compensatory damages in the amount of \$10,000.

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 the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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 (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 (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

August 18, 2020
Date