



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

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

v.

Dr. Mark T. Esper,  
Secretary,  
Department of Defense  
(Defense Health Agency),  
Agency.

Appeal No. 2019003299

Agency No. DHANCR-14-0009

**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 7, 2019 final decision concerning her entitlement to compensatory damages and other remedies with respect to her 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.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Medical Records Technician, GS-0675-06, at the Agency's Walter Reed National Military Medical Center in Bethesda, Maryland.

On January 18, 2014, Complainant filed an EEO complaint wherein she claimed that the Agency discriminated against her on the basis of her race (African-American) when:

1. In March 2012, Complainant did not receive a Quality Step Increase that had been approved by her prior manager;

---

<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. In June 2012, Complainant was repeatedly disrespected by her second and third-level supervisors; and
3. In December 2013, Complainant was denied a promotion to a GS-7 after a reclassification of her position.

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 Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a final order pursuant to 29 C.F.R. § 1614.110(b). The Agency determined that Complainant failed to prove that management subjected her to discrimination as alleged.

Complainant appealed the Agency's final decision to the Commission. In Danielle H v. Dep't of Def., EEOC Appeal No. 0120152515 (Oct. 19, 2017), the Commission found that the Agency discriminated against Complainant with respect to the denial of both a Quality Step Increase and a promotion to a GS-7. Specifically, we found that Complainant established a prima facie case of race discrimination as to both claims. We stated that despite the fact she was approved for a Quality Step Increase, upper level management effectively denied it to her while granting Quality Step Increases to Caucasian employees. We further found that although Complainant was selected over two other employees for a promotion to a GS-7 position, upper level management refused to place her in the position. We found that the Agency failed to meet its burden to articulate legitimate, nondiscriminatory reasons for its actions, and therefore failed to rebut Complainant's prima facie case of race discrimination.

To remedy the discrimination, the Commission ordered the Agency to retroactively provide Complainant the QSI and promote her to GS-7 along with all resulting back pay with interest; consider Complainant's entitlement to compensatory damages; provide training to the responsible management officials; consider disciplining the responsible management officials; and to post a notice. The Agency subsequently filed a request for reconsideration. In Danielle H v. Dep't of Def., EEOC Request No. 0520180111 (Mar. 9, 2018), we denied the Agency's request for reconsideration.

Complainant submitted a request for \$400,000 in non-pecuniary damages to the Agency. Complainant maintained that she suffered medical harm, humiliation, extreme emotional stress, pain and suffering, loss of enjoyment of life, and damage to her reputation as a result of the discriminatory acts of Agency management officials. Complainant also requested that 84.5 hours of annual leave and 96.5 hours of sick leave be restored given that she used that amount of leave due to the hostile work environment. Complainant also requested \$100,000 for future medical treatment.

In support of her request, Complainant submitted medical and/or psychological documentation indicating she had numerous appointments between November 2013 and March 2014 that may be related to stressors at work associated with the classification of her position description and/or Quality Step Increase.

In its final decision concerning compensatory damages, the Agency determined that Complainant's statements and supporting documentation did not support an award of the maximum amount of compensatory damages. Rather, the Agency determined that an award of \$8,500 was an appropriate amount for non-pecuniary damages. The Agency stated that Complainant provided leave usage records from December 2013 through August 2014. The Agency observed that Complainant utilized 31.5 hours of sick leave from December 2013 through May 2014. According to the Agency, Complainant only had medical appointments during that period of the requested restoration timeframe, but canceled appointments on at least two occasions. The Agency restored 31.5 hours of sick leave. The Agency reasoned that Complainant did not provide sufficient information that a total of 181 hours of leave were associated with medical appointments caused by and/or because of the discrimination, especially when the last referenced medical appointment occurred in May 2014. The Agency rejected Complainant's request for \$100,000 for future mental health treatment in its entirety noting that Complainant did not submit any supporting evidence.

Finally, although Complainant was a prevailing party in her complaint, the Agency determined that Complainant was not entitled to an award of attorney's fees and/or costs. According to the Agency, Complainant did not present any information that she was represented and/or incurred any attorney's fees or costs associated with the pursuit of her complaint. The instant appeal followed.

#### CONTENTIONS ON APPEAL

On appeal, Complainant contends that she experienced increased blood sugar levels during the period in which discrimination occurred. Complainant argues that management discriminatorily denied her the GS-07 position and at that time her physician had to prescribe her anti-anxiety and insomnia medications. According to Complainant, management removed duties she had performed in order to justify the position description it created for her, and to avoid promoting her. Complainant maintains that this caused her mental anguish as she felt that she was being mocked and insulted. Complainant states that she is requesting restored leave for the leave she took from January 2013 – November 2014. Complainant explains that this was the time frame of the Quality Step Increase and her position reclassification. Complainant states that she took leave and came in late, and left early, to cope with working in the department. Complainant contends that she deserves a much greater award than that awarded by the Agency in light of the nearly two years of discrimination and manipulation.

In response, the Agency asserts that Complainant filed an untimely appeal. The Agency states that it provided Complainant with its final decision on January 17, 2019, in response to Complainant informing it that day that she had not received the final decision that the Agency issued on January 7, 2019. The Agency argues that Complainant's appeal was not received until February 27, 2019, beyond the 30-day filing period.

Assuming *arguendo* that the instant appeal was timely filed, the Agency notes that Complainant submitted medical and/or psychological documentation indicating she had numerous appointments between November 2013 and March 2014 that may be related to stressors at work associated with the classification of her position description and/or Quality Step Increase. The Agency asserts that Complainant has merely reiterated her initial claim for damages and has not provided sufficient evidence to support an award of damages in the large amount she seeks.

With respect to Complainant's request for restoration of annual leave and sick leave, the Agency asserts that Complainant utilized 31.5 hours of sick leave from December 2013 through May 2014. The Agency maintains that Complainant only had medical appointments during that period of the requested restoration timeframe, but canceled appointments on at least two occasions. The Agency argues that Complainant did not provide sufficient information that a total of 181 hours of leave were associated with medical appointments caused by and/or because of a discriminatory hostile work environment, especially when the last referenced medical appointment occurred in May 2014. Finally, the Agency asserts that Complainant did not provide evidence to support her claim that her future medical treatment expenses will be \$100,000.

### ANALYSIS AND FINDINGS

As an initial matter, the Commission notes that EEOC Regulation 29 C.F.R. § 1614.402 provides that appeals to the Commission must be filed within 30 calendar days after Complainant receives notice of the Agency's decision. The Agency states that Complainant received the final decision on January 17, 2019. Therefore, Complainant's appeal had to be filed by Tuesday, February 19, 2019, since the 30<sup>th</sup> day fell on Saturday, February 16, 2019 and Monday, February 18, 2019 was a Federal holiday, which requires the extension of the applicable filing period to the next business day. A review of the record reveals that Complainant submitted her appeal to the Post Office on February 17, 2019. Therefore, the appeal was timely filed.

#### *Non-Pecuniary Compensatory Damages*

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See Equal Employment Opportunity Management Directive (EEO MD-110) for 29 C.F.R. Part 1614 at Chapter 11, § VII (citing Carey v. Piphus, 435 U.S. 247, 254 (1978)) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights"). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and non-pecuniary loss (emotional harm). See EEO MD-110 at Chapter 11, § VII B; and Goetze v. Dep't of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

Non-pecuniary losses are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing and reputation. There is no precise formula for determining the amount of 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 a complainant concerning his or her 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.

With regard to a complainant's claim for compensatory damages, the complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. A complainant must establish a causal relationship between the alleged harm and the discrimination. Absence such proof of harm and causation, a complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. The Commission has held that evidence of emotional distress should include detailed information on physical or behavioral manifestations of the distress, if any, and any other information on the intensity of the distress, information on the duration of the distress, and examples of how the distress affected complainant both on and off the job. Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). In addition to a detailed statement by the individual claiming emotional distress damages, other evidence of such damages could include statements by health care professionals, such as physicians, psychologists, psychiatrists, therapists or counselors, as well as friends, family or coworkers who could attest to the existence, nature and severity of complainant's distress, its duration and causation.

In this case, Complainant provided supporting documentation from her primary care physician who stated that Complainant sought and received both primary and behavioral health care for reported stressors stemming from a toxic administrative work environment in late 2013. The physician noted that she provided medical services to Complainant on November 25-26, 2013 and December 20, 2013. The physician stated that following the latter appointment, Complainant transitioned her ongoing behavioral health care visits to a Veterans Administration clinic therapist. In her letter dated July 24, 2018, the physician asserted that Complainant's work-related stressors have since been corrected and she does not require ongoing primary or behavioral health/counseling support for this issue. We observe that in a note dated November 25, 2013, to the Agency, the physician recommended that Complainant have a change in work environment when she returned from work after three days of being off from work. The physician prescribed valium for Complainant as needed for her panic attacks. In a medical record dated November 26, 2013, the physician indicated that Complainant was nervous, anxious, crying just thinking about office dynamics as people are very difficult in her office, and that Complainant stated she is unable to function in her work environment. Another medical provider noted on December 2, 2013, that an occupational stressor for Complainant was a new position description that is different than expected and communication challenges that are contributing to anxiety and frustration in the workplace.

Complainant also submitted a laboratory report dated January 2, 2014, indicating she registered high hemoglobin A1c levels on several occasions from August 2012 – December 2015. Complainant submitted a report dated January 2, 2014, from a social worker who stated that Complainant in an initial appointment sought treatment for stress, difficulty sleeping, distraction and ruminating. The social worker indicated that Complainant reported that her mood was overwhelmed and that she expressed her stress, frustration and worry were all work-related. Complainant indicated a recent loss of interest in doing activities she previously enjoyed and that she frequently feels very sad.

We observe that the Agency issued an award of \$8,500 to Complainant for non-pecuniary damages. Taking into account the evidence submitted by Complainant, including her statements, and statements from her medical providers and social worker regarding her insomnia and anxiety, the Commission determines that an award of \$8,500 is inadequate and we modify the award to \$25,000 in non-pecuniary compensatory damages, which is consistent with the awards in similar cases.<sup>2</sup> This amount takes into consideration the severity of the harm suffered and is consistent with prior Commission precedent. See Kiara R. v. United States Postal Service, EEOC Appeal No. 0120152620 (Aug. 10, 2017) (\$25,000 where Complainant suffered emotional distress, worried, had difficulty sleeping, recurring headaches, weight loss, nausea, and anxiety); Minna Z. v. Dep't of the Air Force, EEOC Appeal No. 0720160009 (Mar. 10, 2017) (\$25,000 in non-pecuniary damages awarded where Complainant experienced insomnia, depression, anxiety, humiliation, damage to her professional reputation, diminished quality of life, damage to

---

<sup>2</sup> Complainant requested \$400,000 in non-pecuniary damages. However, for an employer with more than 500 employees, such as the Agency, non-pecuniary damages are limited to a maximum of \$300,000.

relationships with friends and family members, and aggravation of her preexisting mental and physical conditions); Elbert H. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120140032 (Nov. 13, 2015) (\$23,375.00 awarded to Complainant, who suffered embarrassment, would avoid other people, including family members, experienced increased blood pressure and weight, and stopped working out); Dallas D. v. U.S. States Postal Serv., EEOC Appeal No. 0120150319 (Mar. 24, 2017) (\$30,000 awarded where Complainant experienced emotional and mental distress, exacerbation of his preexisting conditions, anxiety, and isolation from his family and social gatherings).

#### *Future Pecuniary Damages*

Complainant requested \$100,000 for future medical treatment. We are not persuaded that an award of future pecuniary damages is appropriate especially in light of Complainant's physician's statement dated July 24, 2018, that Complainant's work-related stressors have since been corrected and she does not require ongoing primary or behavioral health/counseling support for this issue. Accordingly, we find that the Agency properly denied this award.

#### *Restoration of Leave*

With respect to Complainant's request for 84.5 hours of annual leave and 96.5 hours of sick leave to be restored, the Agency issued Complainant a restoration of 31.5 sick leave hours for sick leave that appears to have been taken from March 25, 2014 – May 19, 2014. This period encompasses the months in which Complainant was receiving medical treatment. Our review of the pertinent leave records indicates that Complainant took 34.5 hours of sick leave during this period. Therefore, we shall restore 34.5 hours of sick leave to Complainant's sick leave total. As for the requested 84.5 hours of annual leave, we do not discern sufficient evidence presented by Complainant to show that this annual leave was utilized in response to the Agency's discriminatory conduct.

### CONCLUSION

The Agency's determination in its final decision is MODIFIED. Complainant is awarded \$25,000 in non-pecuniary damages and 34.5 hours of sick leave.

### ORDER

The Agency, to the extent it has not already done so, is ordered to take the following actions:

1. Within sixty (60) calendar days of the date this decision is issued, the Agency shall pay Complainant non-pecuniary compensatory damages in the amount of \$25,000.
2. Within sixty (60) calendar days of the date this decision is issued, the Agency shall restore 34.5 hours of sick leave.

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.

#### 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 (T0610)

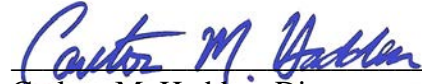
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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