



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

[REDACTED]
Mario K.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Great Lakes Area),
Agency.

Appeal No. 2019003967

Agency No. 4J481013016

DECISION

On June 4, 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 May 3, 2019 final decision concerning his entitlement to compensatory damages following a violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

On July 14, 2016, Complainant, a PS-07 Building Maintenance Custodian at the Main Post Office in Rochester, Michigan, filed an EEO complaint alleging that the Agency discriminated against him and subjected him to a hostile work environment based on race (Caucasian), sex (male), color (white), disability (back and knee impairment), age (50), and in reprisal for prior protected EEO activity when: (1) he was made to work outside his medical restrictions; (2) the Postmaster (PM) (African-American, female, 45 years old) refused to communicate with him; (3) on February 3, 2016, PM read a Veterans' Day Appreciation letter that was dated three months earlier and he believes that she purposely waited to do this; (4) a co-worker (Caucasian, female, age 53) refused to move out of his way when he walked by her; (5) on March 2, 2016, his supervisor (S1A) cursed at him; (6) on April 19, 2016, he returned to work and his work route was a mess because the custodian assigned to clean in his absence refused to clean and management does nothing; (7) on

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.

May 16, 2016, co-workers harassed him about his work performance and management did nothing; (8) PM harassed him about his work performance; (9) on May 18, 2016, PM would not allow S1A to give him help with a task; (10) on May 19, 2016, he was accused of stealing; (11) he was not given copies of forms that he requested; (12) on May 20, 2016, PM harassed him about using the training room; (13) on May 24, 2016, a letter carrier purposely walked into him; and (14) his coworkers told PM things about him and she immediately had him investigated.

Following an investigation, the Agency issued a final decision finding that Complainant did not establish discrimination or reprisal as alleged. In Mario K. v. U.S. Postal Serv., EEOC Appeal No. 0120172206 (Feb. 15, 2019), the Commission reversed the Agency's final decision, in part, and found that Complainant was subjected to a retaliatory hostile work environment by management and coworkers over an eight-month period (between February 2016 and September 2016).² Our previous decision concluded that management expected Complainant to perform an unrealistic amount of physical labor before he was permitted to work on his then-pending EEO complaints to punish him and make it impossible for him to do any EEO work. In addition to loading Complainant with twice the amount of work than his predecessor, management and coworkers often complained about his work performance and gave him a hard time in general. Although Complainant could perform the essential functions of his job without a reasonable accommodation, the excessive work assigned to him caused him to suffer increased physical difficulties and pain.

To remedy the discrimination, the Commission ordered the Agency, inter alia, to undertake a supplemental investigation concerning Complainant's entitlement to compensatory damages and to determine the amount of damages due. The Agency, thereafter, requested evidence in support of Complainant's claim for compensatory damages and Complainant submitted his evidence and arguments to the Agency on April 9, 2019. On or about May 3, 2019, the Agency issued a final decision and awarded Complainant \$10,000 in non-pecuniary compensatory damages.³

ANALYSIS AND FINDINGS

To receive an award of compensatory damages, a complainant must demonstrate that he has been harmed from the agency's discriminatory action; the extent, nature and severity of the harm; and the duration or expected duration of the harm. See Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for reconsid. den'd, EEOC Request No. 05940927 (December 11, 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).

² In its decision on compensatory damages, the Agency erroneously asserts that the harassment occurred over a four-month period.

³ The Agency did not award pecuniary damages because Complainant did not produce objective evidence in support of this claim. We agree with the Agency's decision with respect to pecuniary damages and note that Complainant does not raise this issue on appeal.

A complainant is required to provide objective evidence that will allow an agency to assess the merits of his request for damages. See Carle v. Dep't of the Navy, EEOC Appeal No.01922369 (Jan. 5, 1993).

The Commission applies the principle that “a tortfeasor takes its victims as it finds them.” See Wallis v. U.S. Postal Serv., EEOC Appeal No. 01950510 (Nov. 13, 1995) (quoting Williamson v. Handy Button Machine Co., 817 F.2d 1290, 1295 (7th Cir. 1987)). However, the Commission also applies two exceptions to this general rule. First, when a complainant has a pre-existing condition, the agency is liable only for the additional harm or aggravation caused by the discrimination. Second, if the complainant's pre-existing condition inevitably would have worsened, the agency is entitled to a reduction in damages reflecting the extent to which the condition would have worsened even absent the discrimination; the burden of proof is on the agency to establish the extent of this entitlement. Wallis, EEOC Appeal No. 01950510 (citing Maurer v. United States, 668 F.2d 98 (2d Cir. 1981)); Finlay v. U.S. Postal Serv., EEOC Appeal No. 01942985 (Apr. 29, 1997). The Commission notes, therefore, that complainant is entitled to recover damages only for injury, or additional injury, caused by the discrimination. See Terrell v. Dep't of Housing and Urban Dev., EEOC Appeal No. 01961030 (Oct. 25, 1996); EEOC Notice No. N 915.002 at 12.

After establishing entitlement to an award of compensatory damages, 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). It should likewise be consistent with amounts awarded in similar cases. See Hogeland v. Dep't of Agric., EEOC Appeal No. 01976440 (June 14, 1999). Moreover, we point out that non-pecuniary compensatory damages are designed to remedy a harm and not to punish the agency for its discriminatory actions. 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 (March 4, 1999).

The Commission has held that evidence from a health care provider is not a mandatory prerequisite for recovery of compensatory damages. See Carpenter v. Dep't of Agric., EEOC Appeal No. 01945652 (July 17, 1995). Courts also have held that “expert testimony ordinarily is not required to ground money damages for mental anguish or emotional distress.” See Wulf v. City of Wichita, 883 F.2d 842, 875 (10th Cir. 1989). A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his burden in this regard. Nonetheless, the absence of supporting evidence may affect the amount of damages deemed appropriate in specific cases. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr. 18, 1996).

We agree with the Agency in concluding that the medical records provided by Complainant in support of his claim for non-pecuniary damages contradict his assertion that the hostile work environment caused the exacerbation of his preexisting medical and psychological conditions.

According to an August 28, 2017 report from one of Complainant's therapists (P1), his psychological symptoms are the product of a non-combat brain injury dating back to when he was in the military. P1's report does not link any of Complainant's current symptoms with his workplace. Another therapist reports that Complainant's psychological symptoms are related to his brain injury suffered in 1985 and does not mention Complainant's work environment at all. In addition, in 2017, one of Complainant's doctors attributed Complainant's orthopedic problems to his military service. Documentation from another physicians' group, indicates that Complainant's knee problem preexisted the events in this complaint. The record is devoid of evidence that Complainant's knee or back problems were exacerbated by anything at work. Another physician attributes Complainant's tinnitus to his active duty in the military.

The documentary evidence submitted also attributes Complainant's problems in his marriage to his behavior following his discharge from the military and his difficulties to assimilate to civilian life. P1's report notes that Complainant's "maladaptive coping skills" following his discharge caused "severe separation between him and his family." Complainant described his relationship with his wife as "very strained" and his wife volunteered that "over the years" Complainant's personality had changed, and their communication and intimacy had diminished. While Complainant blames the Agency, his medical providers and spouse indicate that something unrelated to work was responsible.

We also find the case law cited by Complainant not at all relevant to his case in terms of either the severity and duration of the discriminatory conduct involved or the quality and credibility of the evidence concerning causation and harm. For example, in Finley v. U.S. Postal Serv., EEOC Appeal No. 01942985 (Apr. 29, 1997), the complainant endured sexual harassment for four years and presented persuasive psychiatric evidence (specific as to the nature and causation of the harm) that she was unable to return to work.⁴ In contrast, Complainant experienced eight months of harassment, was not rendered unable to work, and did not offer any persuasive medical evidence of causation. The same is true of Complainant's reliance on Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998) where the Commission awarded \$80,000 in non-pecuniary damages. In Bernard, a blind employee was subjected to two years without a reasonable accommodation resulting in his non-selection for a position. In addition, the complainant and a host of co-workers and friends testified in great detail to the physical, emotional, and behavioral manifestations of the emotional distress caused by the agency's actions. In the present matter, Complainant experienced discrimination for a fraction of that time and the evidence he submitted concerning the effects of the discrimination is contradictory and less-than-convincing. Complainant also cites Bahaudin v. Dep't of the Army, EEOC Appeal No. 01993594 (Sept. 13, 2000) where the complainant submitted credible and persuasive medical documentation and testimony concerning exacerbation of her physical injuries and increased pain, sleeping problems, migraine headaches, and other new medical conditions. Complainant also relies on McCormick v. Dep't of Justice, EEOC Appeal No. 0720100040 (Nov. 23, 2011) where the Commission awarded \$200,000 in non-pecuniary damages to a complainant who was denied an accommodation for an extended time and, as a result, suffered severe depression which rendered her unable to

⁴ In Finley, the Commission awarded \$100,000 in non-pecuniary damages.

work. Unlike the present matter, the complainant in McCormick presented corroborating testimony from doctors, family and friends of extensive harm caused by the Agency's discrimination.

Upon consideration of the contradictory documentary evidence and the limited testimonial evidence presented by Complainant we find an award of \$10,000 is neither monstrously excessive nor the product of passion or prejudice and is consistent with prior EEOC precedent. See Rowan v. Dep't of Veterans Affairs, EEOC Appeal No. 0120070384 (June 19, 2009) (Commission awarded complainant \$10,000 for non-pecuniary damages where complainant established that at least some of the exacerbation of his stress, humiliation, anxiety, sleeplessness, fears of termination, and depression were attributable to the Agency's discriminatory conduct); Riddick v. Dep't of Veterans Affairs, EEOC Appeal No. 0720110011 (Nov. 18, 2011) (\$10,000 non-pecuniary damages award based on pressure to withdraw pending EEO claims and resulting exacerbation of pre-existing depression and greater alcohol and substance abuse problems); Starr R. v. Gen'l Servs. Admin., EEOC Appeal No. 0120143031 (Jan. 12, 2017) (EEOC affirmed the Agency's award of \$12,000 in nonpecuniary compensatory damages when the complainant experienced more seizures than normal and her health declined even though the evidence suggested that the increased seizures were primarily caused by the stress of processing the EEO complaint and the workplace environment and not the denial of her request for reasonable accommodation); Taber v. U.S. Postal Serv., EEOC Appeal No. 01983780 (July 18, 2001) (the Commission awarded \$15,000 where the complainant established that there was a connection between the disability discrimination and the worsening of his condition but that the worsening condition was partially attributable to other factors as well); and Complainant v. Dep't of the Treasury, EEOC Appeal No. 0120133266 (February 11, 2015) (\$10,000 in nonpecuniary damages awarded where agency discriminated against complainant when her supervisor threatened complainant with disciplinary action and refused to modify her workload which exacerbated her existing medical condition, as well as impacted her emotional wellbeing), req. for reconsid. den'd, EEOC Request No. 0520150280 (July 30, 2015).

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 on compensatory damages. The Agency is directed to implement the following corrective action in accordance with the ORDER below.

ORDER

Within 60 days of the date this decision is issued, to the extent that it has not already done so, the Agency shall pay Complainant \$10,000 in nonpecuniary compensatory damages.

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 evidence that the corrective action has been implemented.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

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.

STATEMENT OF RIGHTS - ON APPEAL RECONSIDERATION (M0620)

The Commission may, in its discretion, reconsider this appellate decision if the complainant or the agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)

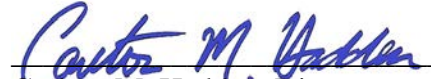
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this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

October 1, 2020
Date