



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

[REDACTED]
Coralee H.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
United States Postal Service
(Capital Metro Area),
Agency.

Appeal No. 2019004219

Agency No. 1K-221-0052-16

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 April 30, 2019, final decision addressing compensatory damages concerning an equal employment opportunity (EEO) complaint claiming employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Full Time General Clerk, PS-6, at the Agency's Northern Virginia Processing and Distribution Center in Merrifield, Virginia.

On February 15, 2019, this Commission issued an appellate decision concluding Complainant, who was deaf, had established a violation of the Rehabilitation Act when, on June 28, 2016, Agency management denied her request for a sign language interpreter as an accommodation to her disability. Complainant v. United States Postal Service, EEOC Appeal 0120172277 (Feb. 15, 2019). Among other remedies, the Commission ordered the Agency to conduct a supplemental investigation to determine whether Complainant was entitled to compensatory damages as a result from the Agency's discriminatory action.

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.

On April 30, 2019, following its supplemental investigation, the Agency issued a final decision on compensatory damages. The Agency rejected Complainant's request for \$50,000 in non-pecuniary compensatory damages and concluded that an award of \$5,000 was appropriate. In reaching this amount, the Agency reasoned that Complainant was relying on her entire employment/complaint history to support for her compensatory damages, even though only one matter, which occurred on June 28, 2016, was found to be discriminatory. Agency indicated that Complainant discussed settlements she had with the Agency that occurred in 1992, 1998, 1999, 2000 and 2002 and other ongoing acts she sustained by management. The Agency further indicated that Complainant explained that she suffered emotion harm. However, the Agency noted that Complainant stated that her emotional harm began in 2015, even though the issues included in her formal complaint did not occur until June 2016. The Agency also noted that Complainant's testimony as well as testimony from her husband and co-workers mentions issues in the formal complaint that the Commission found not to be discriminatory. Finally, the Agency reasoned that Complainant had pre-existing conditions that were unrelated to Complainant's denial of an interpreter on June 28, 2016, and therefore, there was insufficient evidence that Complainant's conditions worsened because of the Agency's denial.

The Agency noted that Complainant submitted receipts for co-payments she incurred from 50 medical visits totaling \$760.00 and the Agency construed this submission as request for pecuniary damages. However, the Agency rejected this request. The Agency reasoned that seventeen visits occurred before June 28, 2016 and the Agency determined that there was no documentation for the visits that occurred after this date reflecting that Complainant's need for these visits were related to the Agency's denial of an interpreter on June 28, 2016.

To the extent that Complainant sought reimbursement for medication purchases she made between January 9, 2015 and March 18, 2019 totaling \$511.53, the Agency rejected this request. The Agency determined that 24 purchases predate June 28, 2016, and the next purchases for an antibiotic and opioid pain medication did not occur until six months after June 8, 2016, and were unrelated to the Agency's denial of an interpreter. The Agency further noted that Complainant purchased anxiety medications in August 2015 and February 2016, well before June 28, 2016, and Complainant purchased anxiety medications in September 2017, February 2018, and March 2019. The Agency reasoned that there no sufficient evidence to support that the Agency's denial of interpreter services on June 28, 2016 exacerbated Complainant's pre-existing anxiety or other health conditions.

Finally, the Agency noted that Complainant submitted a reimbursement request from a firm that transcribed American Sign Language to writing on eight occasions, totaling \$340.00. The Agency explained that only one invoice provided, dated April 4, 2019, indicates the services rendered and therefore, the Agency only reimbursed Complainant \$50.00 for this service.

The instant appeal followed.

On appeal, Complainant argues that the Agency has been aware, since she began employment 37 years ago, that she required an interpreter because she is deaf.

Complainant cites her prior EEO settlements in 1992, 1998, 2000, and 2002 regarding her need for an interpreter. Complainant further cites incidents in 2018² where she was denied an interpreter and argues that she continues to experience “ongoing discrimination and hostility.” Complainant states that she continues to experience profound feelings of “low self-esteem and extreme frustration associated with her work environment.” Complainant further states that she experiences excessive stress at work, leading to anxiety, depression, issues with sleeping, fatigue, trouble concentrating, muscle tension, headaches, stomach problems, and social withdrawal.

Complainant requests \$50,000 in non-pecuniary damages for emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, and loss of health. Complainant further asserts that she has “experienced emotional distress since 2015, stemming from the treatment she has received in the workplace.”

Regarding pecuniary damages, Complainant requests reimbursement of \$460.00 for services she received from a firm that transcribed American Sign Language into English to help her prepare her documentation for her appeal. Additionally, Complainant requests reimbursement for mailing costs totaling \$88.20, medical visit co-payments (\$760.00), and medication purchases (\$511.53). Complainant also requests reimbursement for the 342 missed work days she incurred since 2016 at the rate of \$29.00/hour. Complainant provides documentation in support of these requests.

ANALYSIS AND FINDINGS

Past Pecuniary Damages

Pecuniary damages are quantifiable out-of-pocket expenses incurred due to the Agency's discriminatory actions. Damages for past pecuniary damages will not normally be granted without documentation such as receipts, records, bills, cancelled checks, or confirmation by other individuals of actual loss and expenses.

Complainant requested reimbursement for health insurance co-payments, medication purchases, postage, transcription services, and lost wages for days she missed work. We address each of these requests below. However, we will address Complainant's request for postage and transcription services separately as they are associated costs related to the processing of her EEO complaint.

² Specifically, Complainant references another complaint, Agency No. 1K-221-0041-18, which states is pending before the Commission on appeal. We note that the Commission has adjudicated this matter and found no discrimination. See Davina W. v U.S Postal Service, EEOC Appeal No. 2019002501 (May 27, 2020).

Co-payments

In her supplemental affidavit and on appeal, Complainant request reimbursement for co-payments incurred from 50 medical visits from January 9, 2015 through April 5, 2019. The record reflects that 17 of the 50 medical visits occurred from January 9, 2015 through April 15, 2016 which were before the June 28, 2016 discriminatory act at issue. Therefore, the co-payments incurred from these visits were not attributable to the Agency's discriminatory acts.

The record further reflects that Complainant did not resume her medical visits until four months after June 28, 2016, beginning on October 10, 2016, and continuing through November 16, 2016. Complainant then resumed her medical appointments for a third time from January 2018 through November 2018, and she resumed her medical appointments for a fourth time from January 2019 through April 2019. There is no specific indication from the record that Complainant attended these medical appointments in direct relation to the Agency's denial of interpreter services on the day in question. Other than attending these appointments, there is no indication about the nature of the appointments or the treatment that Complainant received. The record includes a December 2017 physician's note indicating that Complainant had recurrent, severe and generalized anxiety disorder as well as depression due to working in a hostile work environment for at least the past two years. However, we clarify that the Commission exclusively limited its finding of discrimination to the *June 28, 2016* denial of interpreter services. Therefore, Complainant has not sufficiently demonstrated how the co-payments she made for physician visits before and after June 28, 2016 were related to the Agency's denial of interpreter services on the one day at issue. Therefore, we find that the Agency properly denied Complainant's request for a pecuniary damages award of \$760.00 for co-payments incurred from medical visits.

Medication Purchases

In her supplemental affidavit, Complainant explained that, because of the Agency's discriminatory actions, she has been prescribed nine medications to treat high blood pressure, high cholesterol, vertigo, restless leg syndrome, stomach ulcers, and anxiety. Complainant submitted a list of medication purchases occurring from January 9, 2015 through March 18, 2019, totaling \$511.53.

We note that 26 of these purchases occurred before June 28, 2016,³ the date of the discriminatory act. Therefore, they cannot be included as part of Complainant's pecuniary damages award. Of these 26 purchases, the record reflects that Complainant was prescribed high blood pressure medication (Lisinopril) and high cholesterol medication (Simvastatin) as early as May 12, 2015, and again on May 27, 2016. Moreover, Complainant was prescribed an anti-anxiety medication (Lorazepam) as early as August 4, 2015, and again on February 18, 2016. The record further indicates that Complainant was not prescribed any medications after May 27, 2016 until December 2016, approximately six months after the June 28, 2016 discriminatory act, when she was Azithromycin (antibiotic medication) and Hydrocodone (opioid pain medication).

³ These medication purchases were made from January 9, 2015 through May 27, 2016.

The record further indicates that after December 2016, Complainant was prescribed additional medications at specific intervals including the following time period: February 2017; July 2017 through October 2017; January 2018 through May 2018; July 2018 through November 2018; and January 2019 through March 2019. The record reflects that during these periods, Complainant was prescribed the following: Amitriptyline (restless leg syndrome medication) on May 18, 2018; Simvastatin again on July 15, 2017, February 15, 2018, and August 15, 2018; Lorazepam again on March 14 and 18, 2019; and Promethazine (vertigo medication) on March 7, 2019.

Based on the dates of these purchases, we find that Complainant has not shown that these medication purchases resulted from the June 28, 2016 discriminatory act. Several of these medications were prescribed before June 2016, and were prescribed again, and in some cases for the first time, after a significant period had passed after June 2016. Therefore, we affirm the Agency's decision to deny Complainant's request for a pecuniary damages award of \$511.53 for medication purchases.

342 Days of Missed Work (lost wages)

We note that Complainant requests compensation, for 342 days of missed work she allegedly incurred as a result of the Agency's discrimination. Complainant submits, on appeal, documentation reflecting her absences from work. However, Complainant has not shown that her absences from work were related to her denial of interpreter services on June 28, 2016. The attendance records Complainant submitted indicate that Complainant took Leave Without Pay (LWOP) as early as February 2016 through April 2016, and she resumed taking LWOP in September 2016. To the extent that Complainant is requesting pecuniary damages for lost wages, we note lost wages are statutorily excluded from compensatory damage awards. See 42 U.S.C. § 1981a(b)(2), 1991.

Therefore, we affirm the Agency's decision not to award Complainant any pecuniary damages for lost wages.

Non-Pecuniary Damages

Non-pecuniary compensatory damages 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: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991 (EEOC Guidance), EEOC Notice No. 915.002 at 10 (July 14, 1992). Non-pecuniary damages must be limited to compensation for the actual harm suffered as a result of the Agency's discriminatory actions. See *Carter v. Duncan-Higgans, Ltd.*, 727 F.2d 1225 (D.C. Cir. 1994); EEOC Guidance at 13. Additionally, the amount of the award should not be "monstrously excessive" standing alone, should not be the product of passion or prejudice, and should be consistent with the amount awarded in similar cases. See *Jackson v. U.S. Postal Serv.*, EEOC Appeal No. 01972555 (April 15, 1999) (citing *Cygnar v. City of Chicago*, 865 F.2d 827, 848 (7th Cir. 1989)).

The Agency awarded \$5,000 in nonpecuniary damages. We find, however, that that an award of \$10,000 is more consistent with the amounts awarded in similar cases. In her supplemental affidavit, Complainant explained that the Agency was aware that she was deaf and required an American Sign Language interpreter, given her prior EEO complaints and settlements on this very matter. Given this prior history, Complainant indicated that her need for an interpreter has been an “on-going” issue with the Agency. Specifically, Complainant testified that

Today, I continue to experience profound feelings of low self-esteem and extreme exhaustion associated with my work environment, where I endure ongoing acts of degradation by my manager and supervisors because of my disability. As a result of this demeaning treatment, I am angry inside and hurting deep down, and feels isolated and ashamed of my disability. . . . I often wish I was never born because of how they treatment and how they make me feel.

Consequently, Complainant explained that the Agency’s continuous denial of her reasonable accommodations has caused her to feel not confident, overwhelmed, irritable, angry, and withdrawn. Complainant further explained that she has “suffered emotion distress since 2015,” and she has experienced anxiety, depression, sleeping issues, fatigue, difficulty concentrating, muscle tension, headaches, stomach problems, and social withdrawal.

Complainant’s husband, who is also deaf, testified, in pertinent part, that he worked at the same Agency and that on “numerous occasions” Complainant approached him at work “in tears and shaking uncontrollably” when M1 demanded that Complainant could either read lips or write instead of providing an interpreter. Complainant’s husband explained that he and Complainant have “repeatedly informed [M1] that [he and Complainant] are not good lipreaders.” Complainant’s husband indicated that forcing deaf employees to lipread creates more stress and causes them to make more mistakes than if they had an interpreter. As a result of M1’s actions, Complainant’s husband stated that Complainant has had sleeping problems, vertigo attacks, nausea, anxiety, and depression. Additionally, Complainant has considered quitting or retiring to “escape the mental and verbal abuse.”

The supplemental investigation contains testimony from two of Complainant’s co-workers (“CW1” and “CW2”) who are also deaf. Both CW1 and CW2 recounted similar instances where M1 denied them an interpreter and required that they lipread or write to communicate with M1.

We concur with the Agency that the award should only encompass the harm Complainant sustained by the discriminatory acts at issue (denial of interpreter services on June 28, 2016). We also acknowledge the difficulty in distinguishing the emotional harm Complainant sustained from the June 28, 2016 denial given Complainant’s prior history with the Agency regarding her need for interpreter services. Here, Complainant has offered testimony referencing a time span of events that are outside the scope of this matter by indicating that she has suffered emotional harm since 2015 and by references prior settlement agreements with the Agency regarding her need for interpreter services.

For these reasons, we only consider testimony from Complainant; Complainant's husband, and Complainant's co-workers that relate to the specific discriminatory act at issue – the denial of interpreter services on June 28, 2016.

We note that 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 Service, EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Department of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning 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.

As previously discussed, Complainant's testimony identifies the type of harm she suffered and adequately ties that harm directly to the Agency's actions. Based on Complainant's representations of harm, we find that the weight of our prior decisions supports an award of \$10,000 in non-pecuniary compensatory damages. See Kiara R. v. U.S. Postal Service, EEOC Appeal No. 0120152620 (Aug. 10, 2017) (\$25,000 in non-pecuniary damages awarded where complainant suffered emotional distress when the agency failed to provide her with an interpreter for a series of events over a 22-month period); see also, Darius C. v U.S. Postal Service, EEOC Appeal No. 0120171165 (Oct. 12, 2018) (\$1,000 in non-pecuniary damages awarded where agency failed to provide complainant with an interpreter for one service talk and complainant provided testimony from his wife that referenced a span of events that were outside the scope of the matter which was limited to complainant's denial of interpreter services on one day).

Therefore, we modify the Agency's award of non-compensatory damages to provide for an award of \$10,000.

Costs

By federal regulation, the Agency is required to award attorney's fees⁴ and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. EEOC Regulation 29 C.F.R. § 1614.501(e)(1)(ii). Reasonable costs can include court reporter fees, transcripts, printing, witnesses, photocopying, mileage, postage, telephone calls, or any other reasonable out-of-pocket expense incurred by the attorney that are normally charged to a fee-paying client in the normal course of providing representation. 29 C.F.R. § 1614.501(e)(2)(ii)(C); MD-110 at 11-12 and 11-13.

To determine the precise amount of fees and costs due, the complainant's attorney must submit to the agency a verified statement of attorney's fees (including witness fees, if applicable) and other costs, as appropriate. See 29 C.F.R. § 1614.501(e)(2)(i).

⁴ Complainant's representative is not an attorney. Therefore, she has not requested, and is not entitled to, attorney's fees.

This statement must be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. Id. The agency must then issue a decision determining the amount of attorney's fees or costs it deems to be due and include in this decision the specific methods applied in determining the amount of this award. See 29 C.F.R. § 1614.501(e)(2)(ii)(A). If the complainant is dissatisfied with this decision, he or she may appeal it to EEOC. Id.

Postage

We acknowledge that on appeal, Complainant asserts that she spent \$88.20 in costs covering the mailing of her formal complaint, affidavit, and appeal. Complainant submits two mailing receipts, one for \$10.40 and the other for \$14.70, but she does not explain what items were mailed. Therefore, these mailing costs cannot be reimbursed.

However, Complainant also submits on appeal copies of the mailing envelopes containing the postage amounts for her submission to the EEO Counselor (\$6.45), the mailing of her formal complaint (\$6.45), and the mailing of her appeal to the Commission (\$7.35) which total \$20.25. Therefore, we find that Complainant is entitled to \$20.25 in mailing costs.

Transcription Services

The record supports that Complainant initially requested reimbursement for \$340.00 in total costs incurred from her hiring a company to edit and transcribe testimony and documents from American Sign Language to English. In support of this request, Complainant submitted one invoice dated April 4, 2019 reflecting that she paid \$50.00 for editing of her affidavit response. Complainant also submitted one document listing seven dates and associated costs totaling \$290. It is unclear, however, from the document as to what specific services Complainant received on those seven days. Therefore, we agree with the Agency's decision to only grant Complainant reimbursement for \$50.00.

We also acknowledge that Complainant submits additional documentation on appeal related to editing expenses she incurred. Specifically, Complainant submits an invoice dated June 28, 2019 reflecting that she paid a total of \$120.00 for editing of her appeal and transcribing four witness statements submitted with her appeal. We note that two of those witness statements are already included in the supplemental investigation. Therefore, we determine that Complainant is entitled to reimbursement for these costs. Therefore, we modify the Agency's decision to reflect that Complainant is entitled to an increased amount for interpretation services cost totaling \$170.00.

CONCLUSION

We Affirm the Agency's April 30, 2019 determination on past pecuniary damages. We MODIFY the Agency's determination on non-pecuniary compensatory damages and associated costs. These matters are REMANDED to the Agency for further processing in accordance with the ORDER below.

ORDER

To the extent that it has not already done so, the Agency is ORDERED to take the following actions:

1. Within sixty (60) calendar days from the date this decision is issued, the Agency shall pay Complainant \$10,000 in nonpecuniary damages.
2. Within sixty (60) calendar days from the date this decision is issued, the Agency shall pay Complainant \$20.25 for mailing costs and \$170.00 for associated costs with interpretation services.

The Agency is further directed to submit a report of compliance, as provided, in the statement entitled "Implementation of the Commission's Decision."

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 6, 2020

Date