



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

[REDACTED]
Israel F.,¹
Complainant,

v.

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

Appeal No. 2020001565

Hearing No. 531-2017-00100X

Agency No. 4K210009916

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 14, 2019, final decision addressing compensatory damages on an equal employment opportunity (EEO) complaint claiming 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.

BACKGROUND

During the period at issue, Complainant worked as a Carrier Technician at the Agency's Loch Raven Branch in Baltimore, Maryland.

On August 11, 2016, Complainant filed a formal EEO complaint claiming that the Agency discriminated against and harassed him based on his age (42), race (Caucasian), or in reprisal for filing the instant complaint. Complainant raised thirteen allegations in support of his complaint.

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.

After investigation of the accepted complaint, the Agency issued a final decision concluding no discrimination was established with regard to any of the allegations raised. Complainant appealed.

In EEOC Appeal No. 0120181863 (September 26, 2019), we affirmed the Agency's finding of no discrimination for all allegations except one.² The decision found unlawful retaliation against Complainant when management officials charged him eight (8) hours of Absent Without Leave (AWOL) on September 3, 2016. The record reflected that Complainant should have been charged Leave Without Pay (LWOP) instead of AWOL for any insufficient leave because a copy of the union settlement agreement established that employees with insufficient leave balances had the option to use LWOP or cancel part of their leave and report to work. For relief, the decision required, in pertinent part, that the Agency remove the AWOL charge for September 3, 2016, and replace it with 7.49 hours of annual leave and 0.41 hours of LWOP and conduct a supplemental investigation to make a proper determination on damages.

On November 14, 2019, following its investigation, the Agency issued a final decision on compensatory damages. The Agency clarified that Complainant's entitlement for an award of compensatory damages was solely limited to the September 3, 2016 discriminatory incident. The Agency denied Complainant's request for \$54,728.81 in compensatory damages.³ Instead, the Agency awarded Complainant \$800.00 in non-pecuniary compensatory damages, for emotional harm even though medical documentation failed to indicate the cause of Complainant's emotional distress (anxiety). The Agency noted that the medical records also failed to indicate whether Complainant's anxiety was work-related. The Agency further noted that Complainant's weight issue, which Complainant had addressed, began in 2013 and was a pre-existing condition. Finally, the Agency reasoned that the duration of the discriminatory act was short and only occurred on one day.

Regarding pecuniary damages, the Agency denied all of Complainant's requests. Specifically, the Agency denied Complainant's request to: (1) convert the 7.59 hours into administrative leave; (2) pay \$41,112.96 which amounted to a pay rate of \$255.36 per day for the 161 weeks between the week of September 3, 2016 and November 14, 2019; (3) 140 hours of official time for processing his complaint; (4) \$4,411.29 reimbursement for two sets of snowboarding equipment purchased in April, July, and August 2019, snowboarding lessons, and a trip to Wyoming in February 2019; (5) \$4,745.00 reimbursement for 35 visits to a weight loss facility from 2018 and 2019; and (6) \$5,000 reimbursement for funds Complainant borrowed from a

² Complainant only raised reprisal as the basis for this claim.

³ The record reflects that Complainant's request is primarily a request for past pecuniary damages. Complainant requested, in pertinent part, reimbursement for medical services, hours spent filing the instant complaint, and purchases. Although Complainant did not specifically request non-pecuniary damages, the Agency awarded Complainant non-pecuniary compensatory damages because Complainant asserted that he suffered emotional harm from the discriminatory act.

friend. The Agency reasoned that there was no causal connection between the discriminatory act in September 2016 and any of these requests.

The instant appeal followed.

On appeal, Complainant does not expressly dispute the Agency's award of \$800 in non-pecuniary compensatory damages. Instead, Complainant reiterates his requests for pecuniary damages which the Agency denied, asserts that he suffered emotional harm, and argues that the Agency has still failed to remove the September 3, 2016 AWOL charge from his record.

ANALYSIS AND FINDINGS

Past Pecuniary Damages

Pecuniary damages are quantifiable out-of-pocket expenses incurred as a result of 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.

Here, the Agency denied Complainant's request for past pecuniary damages which included: conversion of LWOP hours into administrative hours and reimbursement for official time used, medical visits, snowboarding equipment and lessons, a trip to Wyoming, and a loan. We discuss each of these requests below.

Conversion of LWOP and Failure to Remove LWOP Charge

Complainant argues that because the AWOL charge has not been removed from his record, he should be reimbursed for these hours at the pay rate of \$31.92 per hour (\$255.36 a day) for 161 weeks spanning from 2016 through 2019, for a total payment of \$41,112.96. Complainant provides a copy of a detailed time and attendance report reflecting that as of October 27, 2019, the 2016 charge of LWOP had not been removed from his record.

Here, the Agency was required, per the Commission's September 26, 2019 order, to remove the LWOP charge from Complainant's record within thirty calendar days, or October 28, 2019.⁴ Our compliance records reflect that the Agency complied with the September 26, 2019 order and removed the September 3, 2016 AWOL charge and replaced it with 7.59 hours annual leave and 0.41 LWOP on December 3, 2019.

Additionally, the scope of the Commission's September 26, 2019 order only determined that Complainant was entitled to 7.59 hours of Annual Leave and 0.4 hours of LWOP.

⁴ We note that thirty days from September 26, 2019, fell on Saturday October 26, 2019. Consequently, the Agency's deadline to comply extended to the next business day on October 28, 2019.

The order did not indicate that Complainant was entitled to a reimbursement for the 7.59 hours converted to Annual Leave. Therefore, we find that the Agency properly denied Complainant's request for \$41,112.96 in past pecuniary damages for 161 weeks from 2016 to 2019 where his records reflected that he had been charged LWOP in 2016.

Reimbursement for Official Time

Complainant asserts that he used a total of 140 hours to file his complaint, write his statements, consult with his representative, and appeal the decision. Complainant asserts that at the rate of \$32.92 per hour, he should be reimbursed for \$4,608.80.

Our review of the record indicates that there is insufficient evidence to substantiate a reimbursement for official time. The record only includes an unsigned handwritten document, presumably written by Complainant, indicating that Complainant spent 80 hours filing the complaint, answering questions, and writing statements; he spent 20 hours consulting with his representative; and he spent 40 hours appealing the Agency's final decision on compensatory damages. Additionally, there is no documentation in the record that Complainant had previously requested to use official time or whether the request was granted or denied. Therefore, we find that the Agency properly denied Complainant's request for \$4,608.80 in past pecuniary damages for official time used.

Snowboarding Equipment and Lessons and February 2019 Wyoming Trip

Complainant explained in his supplemental affidavit that because of the Agency's discrimination, he lost his joy of snowboarding and stopped snowboarding after he was charged AWOL in 2016. Complainant further explained that he did not go snowboarding in 2017 and 2018, and he had to cancel a February 2019 trip to Wyoming (snowboarding trip) because he was unable to snowboard with his friends. Complainant asserted that when he finally decided that he would go snowboarding, he had to buy new equipment and he required training lessons.

The record includes receipts totaling \$2,372.69 for snowboarding equipment purchased by Complainant in April, July, and August 2019 and snowboarding lessons purchased in October 2019.⁵ The record also includes airfare and lodging receipts totaling \$2,038.60 for his cancelled February 2019 trip to Wyoming. However, Complainant has not provided a causal connection between the discriminatory act (the one-time AWOL charge on September 3, 2016) and Complainant's loss of enjoyment for snowboarding for over a two-year period. Neither has Complainant provided an explanation how this one-time discriminatory act prevented him two years later from attending his trip. Therefore, we affirm the Agency's denial of \$4,411.29 in past pecuniary damages for snowboarding equipment, lessons, and the Wyoming trip.

Weight Loss Facility (medical) Visits

⁵ There is no indication as to the scheduled dates for the snowboarding lessons.

Complainant asserted that he was stressed by the September 3, 2016 AWOL charge and he incurred out-of-pocket expenses, totaling \$4,745.00, for treatment at a weight loss clinic in 2018 and 2019.

The record indicates that Complainant made 35 visits to a weight loss facility from April 2018 through October 2019, totaling \$4,745 in medical expenses. The record also includes Complainant's weight chart beginning in 2013. The chart indicates that Complainant's weighed fluctuated. Complainant was 200 pounds in June 2013, 218 pounds in October 2016, 207 pounds in May 2017, 192 pounds in November 2018, and 209 pounds in January 2019. However, none of these records attribute Complainant's weight fluctuation with the September 3, 2016 AWOL charge. Additionally, Complainant only seeks reimbursement for weight loss clinic visits that occurred two years after the discriminatory act. Consequently, Complainant has not established a causal connection between the discriminatory act and the medical visits he had two years after he was charged AWOL in 2016. Therefore, we affirm the Agency's denial of \$4,745.00 in past pecuniary damages for weight loss clinic visits occurring from 2018 through 2019.

Loan

Complainant stated in his supplemental affidavit that he had to borrow \$5,000 from his friend. However, Complainant did not provide any additional information in his affidavit or on appeal regarding this loan. Consequently, Complainant has not provided any explanation for how this loan is related to the September 3, 2016 AWOL charge. Therefore, we affirm the Agency's denial of \$5,000 in pecuniary damages for a loan made to his friend.

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). Objective evidence in support of a claim for non-pecuniary damages claims includes statements from Complainant and others, including family members, co-workers, and medical professionals. See id.; see also Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). 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)).

Although Complainant does not expressly dispute on appeal the Agency's non-pecuniary compensatory damages award, Complainant asserts that he experienced emotional harm from the Agency's discriminatory act. For this reason, we construe Complainant's appeal to dispute the amount of the Agency's non-pecuniary compensatory damages awarded.

The Agency awarded \$800 in non-pecuniary damages. We find however, that an award of \$1,500 is more consistent with the amounts awarded in similar cases. On appeal, Complainant asserts that he experienced a loss of joy for snowboarding and weight gain during the period at issue. In his supplemental affidavit, Complainant explained he experienced a loss of joy in his life and he was diagnosed with anxiety, depression, and weight gain. Complainant further explained that he still struggles with anxiety and weight gain and he was just starting to regain his self-confidence after he received a favorable decision from the Commission.

While not mandatory for recovery of compensatory damages for emotional harm, the record includes medical documents indicating that Complainant had physician visits on October 3, 2016, November 14, 2016, and May 17, 2017 indicating that Complainant was on anxiety medication. Although the medical documentation omits the cause of Complainant's anxiety, the October 3, 2016 medical visit indicates that Complainant began the anxiety medication in October 2016. Additionally, Complainant's weight records indicate that his weight increased from 205 pounds in May 2016 to 218 pounds in October 2016. Consequently, Complainant's weight gain and initial prescription of anti-anxiety medication occurred one month after the September 3, 2016 AWOL charge.

As previously discussed, Complainant's testimony identifies the type of harm he suffered and adequately ties that harm directly to the Agency's action. Based on Complainant's representations of harm, we find that the weight of our prior decisions supports an award of \$1,500 in non-pecuniary compensatory damages. See Stone v. Dep't of Veterans Affairs, EEOC Appeal No. 0720100004 (Jan. 11, 2011) (awarding \$3,000 in nonpecuniary damages where complainant was charged 3.75 hours AWOL); see also Martinsen v. Dep't of Treasury, EEOC Appeal No. 0120112969 (Mar. 21, 2012) (awarding \$1,000 in nonpecuniary damages where the agency failed to restore five hours of leave that was incorrectly charged).

CONCLUSION

We AFFIRM the Agency's November 14, 2019 determination past pecuniary damages. We MODIFY the Agency's determination on non-pecuniary compensatory damages. 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 \$1,500 in non-pecuniary damages.

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 (M0920)

The Commission may, in its discretion, reconsider this appellate decision if 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, a 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).

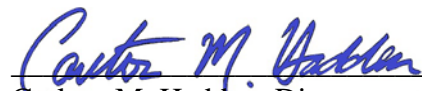
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

March 2, 2021

Date