



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Stanton S.,¹
Complainant,

v.

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

Appeal No. 2019004097

Agency No. 4F-945-0049-16

DECISION

On May 23, 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 April 23, 2019 final decision concerning compensatory damages related to his 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Postal Support Employee (PSE) - Sales and Service/Distribution Associate at the Agency's Seven Trees Station in San Jose, California.

During this time period, the Agency was awarded a contract with Amazon to deliver packages, including on Sundays. The Agency indicated that all PSEs had to be trained and available for scheduling for Amazon deliveries. On August 14, 2014, Complainant submitted a written request to his Manager for a religious accommodation, stating that due to his religious beliefs he is not permitted to work on Sunday. He asked that he not be assigned to work, including making Amazon deliveries, on Sundays.

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.

The Manager responded to Complainant's religious accommodation request in writing, notifying him that another employee had volunteered to work on Sundays so he would not need to be routinely assigned to work on that day. However, he would still need to train as a backup for the Sunday PSE.

On July 9, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), religion (Methodist), and reprisal for prior protected EEO activity (request for religious accommodation) when:

1. on September 3, 2014, management denied his request for religious accommodation (off on Sundays);
2. on October 3, 2014, management issued him a Notice of Removal ("Removal 1") to be effective November 7, 2014; and
3. on October 30, 2014, management issued Complainant a second Notice of Removal ("Removal 2") to be effective on November 30, 2014.

Following an EEO investigation into his claims, the Agency provided Complainant with a copy of the report of investigation and notice of the right to request a hearing before an EEOC Administrative Judge (AJ) or an immediate final agency decision. Complainant requested the latter. In accordance with Complainant's request, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b), concluding Complainant failed to prove that the Agency subjected him to discrimination or unlawful retaliation as alleged.

Complainant filed an appeal with this Commission, which was docketed as EEOC Appeal No. 0120172696. On February 5, 2019, the Commission found that Complainant established a prima facie case of denial of religious accommodation. EEOC found the record established that Complainant has a bona-fide religious belief that he must not work on Sundays and, the Agency sought to assign him to work on Sundays as a backup to another PSE. In addition, the Agency instructed Complainant to attend training on September 7, 14, and 21, 2014, which were Sundays. The Commission concluded that the Agency failed to meet its burden of proving undue hardship in granting Complainant's religious accommodation and, thereby, violated its obligations under Title VII.

Further, based on Complainant's failure to attend the training, Complainant was issued Removal 1. EEOC found Removal 1 was inextricably intertwined with the Agency's unlawful denial of religious accommodation and, thus, also constituted a violation of Title VII. Further, the Commission found that the Agency's issuance of Removal 2 was, at least in part, in retaliation for Complainant's protected activity. EEOC reversed the Agency's final decision and remanded the matter for remedial relief as ordered.

The Commission ordered the Agency to retroactively reinstate Complainant to the position he would have held absent the unlawful discrimination/retaliation; remove and expunge all documents and records relating to Removal 1 and Removal 2 from all Agency official personnel files; determine the appropriate amount of back pay, with interest, and other benefits due the

Complainant, pursuant to 29 C.F.R. § 1614.501; conduct a supplemental investigation to determine whether Complainant is entitled to compensatory damages incurred as a result of the Agency's discriminatory actions; provide at least eight (8) hours of in-person training for the Manager and the supervisors responsible for issuing both removal notices, as well as consider disciplinary action against them; and post an appropriate notice of EEOC's finding of discrimination.

On April 23, 2019, the Agency issued a final decision regarding compensatory damages. The Agency stated that it would only consider damages as they pertain to the Commission's finding of discrimination for a September 2014 denial of religious accommodation and October 2014 removal actions. The Agency stated that Complainant alleged financial duress but did not present documentary evidence (such as receipts) of pecuniary damages.

As to nonpecuniary damages, the Agency stated there is no evidence of any long-term physical or mental condition caused by the Agency's failure to accommodate or its October 2014 removal actions. The Agency stated that Complainant's medical documentation, from an Internist, neither identified the medical condition for which Complainant is being treated nor does it establish that the conditions were caused or exacerbated by the Agency actions found to be discriminatory. The Agency stated that Complainant cited hair and weight loss, increased alcohol intake, anxiety, depression, mental anguish, trouble sleeping, humiliation, embarrassment, loss of interest in outside activities, and conflict with his wife which led to them contemplating divorce. The Agency stated that the lack of adequate medical documentation affects the amount of nonpecuniary damages awarded, and that Complainant cited events beyond those found to be discriminatory by the Commission. The Agency estimated that Complainant was off work for perhaps four months based on removal effective dates of November 7, 2014 and then November 30, 2014, and that both removals were rescinded on March 24, 2015 and Complainant was instructed to return to work on March 30, 2015. The Agency noted that Complainant failed to return to work. Summarily, the Agency stated, "[b]ased on the nature of the issues involved, the duration of the harm and the quality of the evidence submitted, the agency believes that an award of \$10,000.00 in non-pecuniary compensatory damages is appropriate in this case."

The instant appeal from Complaint followed. Complainant stated that he suffered stress due to financial strain from his removal. Complainant stated that he has a wife and five children and had no income until he found another job in April 2016. He stated that they had to sell his wife's wedding band for money.

Complainant provided medical documentation, dated December 16, 2014, from his Internal Medicine Doctor (IMD) stating “This patient is under treatment and taking Xanax and Lexapro.” He also provided a September 16, 2014 prescription for Ambien. Complainant provided a visit summary for November 11, 2014 stating, in pertinent part: “sleeping difficulty[,] going [through] a lot[,] job being terminated by end of Nov.[,] Ambien didn’t work[, and] feeling depressed but no suicidal ideation.”

Complainant stated that he had difficulty obtaining medical documents from IMD because a patient must schedule an appointment to request documents and IMD’s office has limited hours and their hours are typically while Complainant is at work. He submitted a May 21, 2019 receipt for \$20 paid to IMD’s office for records.

With this documentation, Complainant stated that he showed he was prescribed two mental health medications (Lexipro and Xanax) and medication to treat insomnia (Ambien). Complainant stated that he had emotional distress, difficulty sleeping, major depressive disorder, anxiety, mental suffering, and hypertension. Complainant stated that his doctor mentioned troubles at job and impending termination in his medical documentation. Complainant stated that he feared becoming addicted to the prescribed medications, as well as side effects, so he stopped taking the medications. Complainant stated that he experienced emotional distress from three years of harassment and berating by management. Complainant stated that the Agency could not guarantee that he would not return to a “toxic work environment” so he declined the reinstatement offer. Complainant stated, he “is currently suffering and will continue to suffer irreparable character, reputation and monetary damages as a direct result of the Agency’s deprivations and discriminatory practices.” Complainant stated that he had physical manifestations such as insomnia, loss of hair, and chest pains. Complainant requested \$120,000 in nonpecuniary damages.

Complainant also stated, since 2012, management subjected him to harassment, including reduction of work hours, withholding his wages for three pay periods without explanation, and battery by a coworker, which he stated was intentional infliction of emotional distress. Complainant stated, in November 2012, his apartment residence manager threatened eviction. Complainant acknowledged that, on August 22, 2019, he received a check from the Agency for \$10,000. He stated that he intended to return the check to the Agency due to its noncompliance with the Commission’s Order.

ANALYSIS AND FINDINGS

The primary issue before us is whether the Agency, in its April 23, 2019 final decision, properly decided the amount of compensatory damages due Complainant related to the September 2014 denial of religious accommodation and related October 2014 removal actions. Complainant requested \$120,000 in nonpecuniary, compensatory damages. Specifically, we discuss herein whether the Agency’s decision to award Complainant \$10,000 for non-pecuniary, compensatory damages was proper, as well as the decision to provide Complainant with no pecuniary damages.

Non-pecuniary Compensatory Damages

Nonpecuniary damages are for 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, II.A.2 (July 14, 1992) (Compensatory Damages Guidance). There is no precise formula for determining the amount of damages for nonpecuniary 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 (August 29, 1997). The Commission notes that nonpecuniary, compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Id. 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 (March 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 Service, EEOC Appeal No. 01952288 (April 18, 1996) (citing Carpenter v. Dep't of Agriculture, EEOC Appeal No. 01945652 (July 17, 1995)). Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain her burden in this regard. See Lawrence, EEOC Appeal No. 01952288. 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.

During the supplemental investigation for compensatory damages, Complainant requested \$120,000 in non-pecuniary, compensatory damages for stress due to financial strain, emotional distress from three years of harassment and managerial berating, difficulty sleeping, major depressive disorder, anxiety, mental suffering, hypertension, chest pains, loss of hair, and irreparable harm to his character and reputation. He provided medical documentation, dated December 16, 2014, from his internist, IMD, stating, “[t]his patient is under treatment and taking Xanax and Lexapro.” He also provided a September 16, 2014 prescription for Ambien. Complainant provided a visit summary for November 11, 2014 stating, in pertinent part: “sleeping difficulty[,] going [through] a lot[,] job being terminated by end of Nov.[,] Ambien didn’t work[, and] feeling depressed but no suicidal ideation.”

Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. Man H. v. Dep't of Homeland Security, EEOC Appeal No. 0120161218 (May 2, 2017). Complainant must also establish a causal relationship between the alleged harm and the discrimination. Id. Absent such proof of harm and causation, a Complainant is not entitled to compensatory damages, even if there were a finding of unlawful discrimination. Id.

Based on the foregoing, we find that an award of \$30,000 is more appropriate than the \$10,000 awarded by the Agency. We find \$30,000 in nonpecuniary compensatory damages adequately compensates Complainant for the harm he suffered as a result of the September 2014 denial of accommodation and October 2014 removal actions. It is not “monstrously excessive” standing alone and is consistent with prior Commission precedent. See Thaddeus G. v. Dep’t of the Navy, EEOC Appeal No. 2019004733 (September 29, 2020) (\$30,000 awarded where Complainant experienced emotional harm, damage to professional standing and reputation, increased anxiety and panic, depression, stress, sleep disturbances, shortness of breath, and marital problems due to the Agency’s discrimination); Sang G. v. Dep’t of Homeland Security, EEOC Appeal No. 0120151360 (July 28, 2017) (\$25,000 in nonpecuniary, compensatory damages awarded to Complainant for physical and mental pain and suffering, extreme anxiety and panic attacks, insomnia, excessive alcohol intake, and severe depression, (which impacted his relationship with his wife and teenage son) he experienced as a result of the Agency’s retaliatory termination); Utt v. U.S. Postal Service, EEOC Appeal No. 0720070001 (March 26, 2009) (\$25,000 in nonpecuniary, compensatory damages awarded to Complainant for emotional distress, low self-esteem, financial stress, difficulty sleeping, weight gain, and loss of enjoyment in extracurricular activities he experienced as a direct result of the Agency’s discriminatory termination).

While Complainant may feel he is entitled to more, this award considers the nature of the Agency's action, the degree of harm Complainant experienced, and the amount of supporting evidence Complainant offered. The Commission notes that nonpecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. We note that Complainant cited actions (three years of harassment) that were not part of the Commission’s finding of discrimination in EEOC Appeal No. 0120172696.

Pecuniary Compensatory Damages

Pecuniary damages are available for out-of-pocket expenses shown to be related to the discriminatory conduct. Typically, these damages include reimbursement for medical expenses, job hunting expenses, moving expenses, and other quantitative out-of-pocket expenses. The Commission requires documentation in support of these expenses, typically in the form of receipts, bills, or physicians’ statements. See, e.g. Minardi v. U.S. Postal Service, EEOC Appeal No. 01981955 (October 3, 2000); Gause v. Social Security Administration, EEOC Appeal No. 01972427 (March 8, 2000).

We award Complainant \$20 in pecuniary, compensatory damages. Complainant stated that he had difficulty obtaining medical documents from IMD because a patient must schedule an appointment to request documents and IMD’s office has limited hours and their hours are typically while Complainant is at work. He submitted a May 21, 2019 receipt for \$20 paid to IMD’s office for records related to the instant matter.

CONCLUSION

Accordingly, the Agency's final order is MODIFIED. The Agency is directed to implement the following corrective action in accordance with the ORDER below.

ORDER

The Agency, within 60 days of the date this decision is issued, to the extent that it has not already done so, shall pay Complainant \$30,000 for nonpecuniary compensatory damages and \$20 for pecuniary damages. If the Agency previously issued a check for compensatory damages to Complainant and Complainant returned the initial check/failed to present for payment, the Agency shall reissue payment in compliance with this Order. If Complainant cashed the previously issued check, the Agency may deduct that amount from the \$30,020 award.

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).

ATTORNEY'S FEES (H1019)

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

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g).

Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled “Right to File a Civil Action.” 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (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 (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

April 15, 2021
Date