



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

[REDACTED]
Candice B.,¹
Complainant,

v.

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

Appeal No. 2020000411

Hearing No. 443-2019-00073X

Agency Nos. 4J-604-016814 & 4J-604-0030-15

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403, from the decision of an Equal Employment Opportunity Commission (EEOC or Commission) Administrative Judge (AJ) regarding an award of compensatory damages after finding that she was subjected to discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 *et seq.*² The appeal is deemed timely and is accepted pursuant to 29 C.F.R. § 1614.405(a).

During the relevant time, Complainant worked as a Full-time City Letter Carrier at the Wood Dale Post Office, located in Wood Dale, Illinois. On October 27, 2014, Complainant filed a formal complaint alleging she was discriminated against when, on September 13, 2014, she was issued a 14-Day Suspension. Thereafter, on February 20, 2015, Complainant filed another complaint comprised of three claims, including the Agency's alleged failure to provide her with a reasonable accommodation from October 6, 2014 through November 7, 2014.

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.

² The record indicates that the Agency did not issue a final action following the AJ's decision. But, on September 11, 2019, the Agency sent Complainant payment for the amount ordered by the AJ.

After the investigations of both complaints, Complainant requested a hearing before an AJ. The AJ consolidated the two cases and granted Complainant's motion for a decision without a hearing. In a decision issued on December 23, 2016, the AJ determined that Complainant was subjected to disability discrimination when issued the suspension and during the time she was not provided with a reasonable accommodation. The Agency was ordered to expunge the suspension, restore sick leave, provide training and consider discipline. Complainant was awarded \$733.30 in out-of-pocket medical expenses. However, without conducting a hearing on damages or requesting evidence from Complainant regarding her entitlement to compensatory damages, the AJ denied her request for non-pecuniary compensatory damages. Complainant filed an appeal.

In EEOC Appeal No. 0120171129 (Dec. 11, 2018), the Commission disagreed with the AJ's determination that Complainant was not entitled to non-pecuniary damages. The appellate decision noted that in Complainant's pre-hearing submission for damages she described "irreparable harm" and "mental anguish". The decision concluded that Complainant stated a claim for non-pecuniary compensatory damages. See id. The case was remanded to the Hearings Unit for a determination of such damages. See id.

In compliance with the Commission's order, a hearing was held on June 4, 2019. Thereafter, on June 26, 2019, the AJ issued a bench decision awarding Complainant a total of \$9,500 in non-pecuniary compensatory damages. Specifically, the AJ concluded that Complainant suffered \$7,000 in emotional harm regarding the suspension and \$2,500 for the Agency's failure to accommodate her for five to six hours over a two-day period. In declining to award a larger amount, the AJ noted that in her earlier affidavits regarding compensatory damages Complainant attested that she did not suffer any financial difficulties or medical problems because of the discrimination. This statement conflicted with Complainant's subsequent testimony at the June 4, 2019 hearing, where she claimed long-term and on-going debilitating stress and headaches. In his decision, the AJ explicitly stated that he found Complainant's testimony was neither credible nor supported by evidence. According to the AJ, the \$9,500 award was based on the extent of Complainant's harm and the absence of any additional evidence beyond her testimony. Complainant filed the instant appeal.

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC Management Directive 110, Chapter 9, at § VI.B. (Aug. 5, 2015).

Upon careful review of the AJ's decision and the evidence of record, as well as the parties' arguments on appeal, we conclude that substantial evidence of record supports the AJ's determination that Complainant is entitled to \$9,500 in non-pecuniary compensatory damages.³

CONCLUSION

Accordingly, the AJ's decision is **AFFIRMED**.

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.

³ The parties do not dispute that Agency provided payment of \$9,500 to Complainant prior to the filing of the instant appeal.

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).

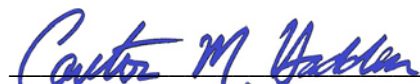
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (S0610)

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. 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 16, 2021
Date