



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

[REDACTED]
Michael M.,¹
Complainant,

v.

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

Appeal No. 2020001464

Hearing Nos. 480-2014-00610X; 480-2015-00601X; 480-2016-00123X

Agency Nos. 4E-890-0082-13; 4E-890-0067-14; 4E-890-0090-14

DECISION

Complainant filed an appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 6, 2019 final order concerning his equal employment opportunity (EEO) complaints 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

At the time of events giving rise to this complaint, Complainant worked as a City Letter Carrier, CC-01, at the Red Rock Vista Station in Las Vegas, Nevada. Complainant filed three complaints alleging that the Agency discriminated against him and subjected him to a hostile work environment on the bases of sex (male), disability (residual effects of back injury), and in reprisal for prior protected EEO activity when:

1. From August 10 through September 17, 2013, the Agency failed to provide Complainant with a reasonable accommodation;
2. On August 20, 2013, an Agency Manager told Complainant to end his cell phone call, despite Complainant telling him that it was an emergency;

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.

3. On August 20-22, 2013, Complainant's scheduled leave requests were recorded as unscheduled absences;
4. Complainant was not paid for his absences on August 20-22, 2013 until September 27, 2013;
5. On August 29, 2013, the Agency denied Complainant permission to speak with employees regarding an alleged threat made by a manager on August 24, 2013;
6. On August 29, 2013 and September 10, 2013, an Agency manager disclosed Complainant's medical condition and restrictions to other employees;
7. Since February 6, 2014, the Agency failed to provide Complainant with a reasonable accommodation;
8. On August 19, 2013, after Complainant told a coworker he needed a medical accommodation, the coworker responded that her back hurt too and on August 28, 2013, a coworker called Complainant a "fairy;"
9. Between August 10 – September 30, 2013, and July 21-29, 2014, a supervisor criticized Complainant regarding his office time;
10. Since May 8, 2014, the Agency failed to provide Complainant with a reasonable accommodation;
11. On June 10, 2014, Complainant learned that on various dates from November 2013 through January 2014, several of his previously scheduled absences were recorded as unscheduled; and
12. Since July 21, 2014, the Agency did not permit Complainant to work for more than two hours per day.

Following investigations of the complaints, Complainant requested hearings before an EEOC Administrative Judge (AJ). The AJ assigned to the matters consolidated the complaints and held a hearing. The AJ issued a decision finding that Complainant was not subjected to discrimination or reprisal as alleged. However, the AJ found that the Agency wrongfully disclosed Complainant's confidential medical information as alleged in claim (6) in violation of the Rehabilitation Act. Specifically, on September 10, 2013, the Customer Service Supervisor (CSS) sent an email to six employees which included a statement that Complainant needed an accommodation for lifting. The AJ concluded that in making that disclosure, the CSS violated the Rehabilitation Act's prohibition against the disclosure of an employee's confidential medical information.

To remedy the violation, the Agency ordered the Agency to pay Complainant \$1,500 in non-pecuniary compensatory damages; provide training to the CSS and other managers and supervisors regarding the necessity and importance of maintaining the confidentiality of employees' medical information; and to post notice that a violation of the Rehabilitation Act had occurred at the facility.

The Agency subsequently issued a final order in which it implemented the AJ's decision. The instant appeal followed.

ANALYSIS AND FINDINGS

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. Nat'l Labor Relations Bd., 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 has not established that he was subjected to discrimination, reprisal, or hostile work environment as alleged. Additionally, we find that substantial record evidence supports that CSS disclosed Complainant's confidential medical information in violation of the Rehabilitation Act.

REMEDIES

Nonpecuniary Compensatory Damages

We turn now to Complainant's contention regarding the adequacy of the Agency's \$1,500 award for nonpecuniary compensatory damages. Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under either Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq, or Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. may receive compensatory damages for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of "make whole" relief. 42 U.S.C. § 1981a(b)(3).

In West v. Gibson, 527 U.S. 2012 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process. For an employer with more than 500 employees, such as the Agency, the limit of liability for future pecuniary and non-pecuniary damages is \$300,000. 42 U.S.C. § 1981a(b)(3); Wilda M. v. Dep't of Homeland Security, EEOC Appeal No. 0120142660 (Dec. 2, 2016).

In a claim for compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, that she suffered harm that was caused by the Agency's discriminatory action; the extent, nature, and severity of the harm suffered; and the duration or expected duration of the harm. Pasquale D. v. Dep't of Homeland Sec., EEOC Appeal No. 0120160892 (Apr. 12, 2018); Archie G. v. Dep't of Justice, EEOC Appeal No. 0120141305 (Nov. 30, 2016); Rivera v. Dep't of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recon. den. EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, (Guidance on Damages) EEOC Notice No. 915.002 (July 14, 1992), at 11-12, 14.

Non-pecuniary losses 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 EEOC Notice No. 915.302 at 10 (July 14, 1992). 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). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the Agency for the discriminatory action. 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 (Mar. 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 Serv., EEOC Appeal No. 01952288 (Apr 18, 1996) citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Objective evidence of compensatory damages can include statements from Complainant concerning his 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.

Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his burden in this regard. Id.

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.

We find that an award of \$2,000 in nonpecuniary compensatory damages is appropriate and consistent with Commission precedent involving single instances of inadvertent but unauthorized disclosures of a complainant's confidential medical information. See e.g. Becky P. v. Dep't of Transp., EEOC Appeal No. 0720180004 (Nov. 15, 2018) (\$2,000 awarded for improper disclosure of medical information where Complainant experienced stress, embarrassment, loss of dignity, sadness, fell into a deeper depression, and became more withdrawn), req. for reconsideration. EEOC Request No. 2019002712 (June 18, 2019); Merilyn v. U.S. Postal Serv., EEOC Appeal No. 0120140433 (Apr. 8, 2016) (complainant awarded \$2,000 for the emotional stress caused when her supervisor discussed her health with the Union Steward); Grey v. U.S. Postal Serv., EEOC Appeal No. 0120131060 (June 5, 2013). We find that this amount is not motivated by passion or prejudice or "monstrously excessive" standing alone and that it is also consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

CONCLUSION

Accordingly, we MODIFY the Agency's final order. We REMAND this matter to the Agency to take the corrective actions in accordance with the following Order.

ORDER (C0618)

The Agency shall undertake the following measures of remedial relief, to the extent that it has not already done so:

1. Within 60 days of the date this decision is issued, pay Complainant nonpecuniary damages in the amount of \$2,000.
2. Within 90 days of the date this decision is issued, provide a minimum of four hours of in-person or interactive EEO training, with a special emphasis on maintaining the confidentiality of employees' medical information in accordance with the Rehabilitation Act to the CSS and all managers and supervisors at the facility at which the violation occurred. If any of these individuals have left the Agency, it shall furnish evidence of their departure dates.
3. Within 90 days of the date this decision is issued, consider disciplinary action against the individual identified in this decision as the CSS. The Commission does not consider training to constitute discipline. The Agency shall report its decision to the Compliance Officer. If the Agency decides not to discipline this individual, it shall specify the reason(s). If this individual has left the Agency, it shall furnish evidence of his departure date.

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 supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

Unless it has already done so, the Agency is ordered to post at the Red Rock Vista Post Office in Las Vegas, Nevada copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material.

The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See [29 C.F.R. § 1614.403\(g\)](#).

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

August 3, 2021

Date