



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

[REDACTED]
Susan B.,¹
Complainant,

v.

John E. Whitley,
Acting Secretary,
Department of the Army,
Agency.

Appeal No. 2020001632

Hearing No. 480-2016-00589X

Agency No. ARHMPHRY12NOV04720

DECISION

Following its January 6, 2020 final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency requests that the Commission affirm its rejection of an EEOC Administrative Judge's (AJ) finding of 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. The Agency also requests that the Commission affirm its rejection of the relief ordered by the AJ.

BACKGROUND

During the period at issue, Complainant worked as a Supervisory Contract Specialist, NH-1102-03, at the Agency's 411th Contracting Support Brigade in Camp Humphreys, South Korea.

On March 15, 2013, Complainant filed a formal EEO complaint claiming that the Agency discriminated against her because of her disability (Complex Regional Pain Syndrome/CRPS) and/or in reprisal for prior protected EEO activity² when:

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.

- a. for more than four months beginning on September 4, 2012, Complainant was not provided a timely reasonable accommodation for her disability;
- b. on December 15, 2012, Complainant was accused of not being able to do her job and it was insinuated Complainant would not last until the end of her supervisory probationary period; and
- c. on January 7, 2013, Complainant received a lowered Contribution-based Compensation Appraisal System (CCAS) performance evaluation reflecting a score of 71.

After an investigation of the 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). Complainant timely requested a hearing.

During a July 17, 2019 pre-hearing conference, Complainant withdrew claims (b) and (c). Consequently, the AJ issued a July 22, 2019 Hearing Order indicating that claim (a) was the sole issue remaining and scheduled a hearing, to be held on August 28 and 29, 2019, regarding the merits of this claim.

Following the hearing, the AJ issued a bench decision concluding that Complainant established a violation of the Rehabilitation Act when the Agency failed to accommodate her disability for a period of four months beginning in September 4, 2012. First, the AJ determined that the record supported a finding that Complainant was a qualified individual with a disability. The AJ noted that Complainant had CRPS and experienced flareups of this condition which included severe pain in her right hand and wrist that was exacerbated by repetitive motion, especially while typing and using a mouse. The AJ reasoned that Complainant could have performed all the essential function of her position if the Agency had timely provided her a reasonable accommodation.

The evidence showed Complainant's physician recommended that she use specific ergonomic equipment to relieve her symptoms (tingling sensations while typing and severe pain). These devices included a vertical mouse with mouse platform to steering pad mouse, a professional talk-to-type program, an ergonomic workstation, an adjustable chair, back and neck support, and a split or wave ergonomic keyboard. Complainant submitted a reasonable accommodation for this equipment on September 4, 2012. However, the Agency did not submit an order for the devices until December 4 and 6, 2012.

² Complainant testified in her affidavit that she participated in prior EEO activity when on October 25, 2012, she made a public announcement during a staff meeting about her inability to receive a reasonable accommodation. Complainant further testified that she informed her first-level supervisor in late November or early December 2012 that she planned to file a formal EEO complaint.

The AJ identified the Chief of Mission Support Branch (Chief) as the responsible Agency official for facilitating Complainant's request for reasonable accommodation. Although the AJ noted that the Agency failed to provide any meaningful reason for the delay, the AJ clarified that there was no evidence of retaliatory animus for the Chief's neglect and carelessness in facilitating Complainant's reasonable accommodation request over a four-month period. The AJ indicated that during the period Complainant was waiting to receive the ergonomic equipment, Complainant's pain increased such that she was unable to type, use the mouse, use the phone, or handwrite with her right hand, and she was placed on medical leave on December 14, 2012.³ The AJ noted that Complainant never returned to the office after she was placed on medical leave. The Agency directed Complainant to return to work on May 6, 2013. She was eventually removed from her position, effective July 5, 2013.

By way of relief, the AJ awarded Complainant \$190,000 in non-pecuniary compensatory damages and \$60,000 in past pecuniary damages. Because the AJ determined that Complainant would have been working but for the Agency's discriminatory actions, the AJ also awarded Complainant back pay, leave restoration, and benefits⁴ from the day she stopped working on December 14, 2012, to the effective date of his decision (November 29, 2019).

In a separate decision, the AJ awarded Complainant attorney's fees in the amount of \$115,513.30 and legal costs in the amount of \$14,321.75.

The Agency issued a final order rejecting the AJ's findings of discrimination. The Agency then filed the instant appeal challenging the AJ's finding of discrimination and order for relief.

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. 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).

³ The requested ergonomic equipment arrived in the office between December 31, 2012 and February 14, 2013.

⁴ The AJ clarified that benefits included the Agency's contributions to health benefits, life insurance premiums, and the Thrift Saving Plan.

Liability - Reasonable Accommodation

To establish that she was unlawfully denied a reasonable accommodation, Complainant must show that: (1) she is an individual with a disability, as defined by 29 C.F.R. § 1630.2(g); (2) she is a “qualified” individual with a disability pursuant to 29 C.F.R. § 1630.2(m); and (3) the Agency failed to provide her with a reasonable accommodation. See EEOC Enforcement Guidance on Reasonable Accommodation and Undue Hardship under the Americans with Disabilities Act (Enforcement Guidance), EEOC Notice No. 915.002 (Oct. 17, 2002). A qualified person with a disability is an individual who can perform the essential functions of the position with or without an accommodation.

Our review of the record supports that Complainant had a disability. Complainant testified that she was diagnosed with CRPS in her right arm beginning in May 2005. Complainant explained that she took medications to manage her pain from this condition but was subject to intermittent flare-ups of her symptoms.

On appeal, the Agency first argues that Complainant was not “qualified” for her position because of her disability. The Agency reasons that Complainant had chronic degenerative pain disease sporadic pain flareups that prevented her from completing the essential functions her position with or without accommodation. The Agency notes that Complainant was an emergency essential employee, and she was always subject to removal if she failed to maintain her fitness.

However, we are persuaded that the AJ correctly determined that despite the CRPS flareups, Complainant would have been able to successfully perform the essential functions of her position with the requested accommodations. Before assuming her Supervisory Contract Specialist position with the Agency on March 11, 2012, Complainant testified that she had received reasonable accommodations when she worked for the Agency in a different office in 2005. Specifically, Complainant explained that in 2005, she was placed on limited typing duty, was not allowed to work overtime, and she was provided ergonomic assistive devices to help with her work functions. Complainant further testified that she had another CRPS flareup in 2008 and she requested and received the same ergonomic equipment from the Agency that she requested in September 2012. However, by September 2012,⁵ Complainant explained, in her affidavit, that she experienced a “major flare up” which prompted her to see a physician on September 3, 2012 and request a reasonable accommodation on September 4, 2012.

The record indicates that Complainant emailed the Chief on September 4, 2012, stating:

I would like to know how to request for workplace accommodations. I have chronic pain disease (Complex Regional Pain Syndrome, Type 1) that is aggravated by repetitive motion. Previously, when I worked for CCK back in 2005, they were able to purchase Dr. prescribed items to help minimize the

⁵ Documentation in the record supports that Complainant’s CRPS flareups began as early as late August 2012.

aggravation of my disease. I went to the Dr. yesterday, and he prescribed the same ergonomic remedies – please see attached document with the diagnosis and prescription.

There is no indication in the record that Complainant could not have performed the essential functions of her position in September 2012 with the ergonomic equipment recommended by her physician. As a Supervisory Contract Specialist, Complainant had an emergency essential position and was required to pass a physical examination. It is undisputed that Complainant passed the required physical exam. Complainant was also required to work in a field environment under environmental conditions including excessive heat, cold, humidity, dust, constant noise, stress as well as physical requirements of walking over uneven and slippery surfaces for up to two hours and lifting and carrying up to 44 pounds. Notably, the Agency ultimately determined that Complainant could perform the essential functions of her position with accommodation when, on December 4, 2012, the Agency approved the paperwork necessary for Complainant to receive the requested ergonomic equipment. It was not until June 20, 2013, that the Agency determined that Complainant could no longer perform the essential functions of her position as a result of her extended absence due to her medical condition and removed Complainant from the Agency, effective July 5, 2013. Therefore, we find that the AJ correctly determined that Complainant was a qualified individual with a disability within the meaning of the Rehabilitation Act.

Next, the Agency argues that even assuming Complainant was a qualified individual with a disability, there was no discriminatory intent to delay completion of Complainant's reasonable accommodation request and therefore, the Agency should not be held liable. The Agency reasons that management officials made good faith efforts to order the ergonomic equipment but experienced delays due to funding and a misunderstanding as to who was responsible for ordering the equipment. We are not convinced. Our review of the record indicates that the AJ correctly determined that the Agency failed to act promptly which resulted in an unreasonable four-month processing delay.

An employer should respond expeditiously to a request for reasonable accommodation. Enforcement Guidance on Reasonable Accommodation at Question 10. If the employer and the individual with a disability need to engage in an interactive process, this too should proceed as quickly as possible. Id. Similarly, the employer should act promptly to provide the reasonable accommodation. Id. Unnecessary delays can result in a violation. Id. In determining whether there has been an unnecessary delay in responding to a request for reasonable accommodation, relevant factors include: (1) the reason(s) for delay, (2) the length of the delay, (3) how much the individual with a disability and the employer each contributed to the delay, (4) what the employer was doing during the delay, and (5) whether the required accommodation was simple or complex to provide.

The record indicates that Complainant made her reasonable accommodation request in the form of ergonomic equipment on September 4, 2012, and promptly cooperated with the Agency to move the approval process forward.

When the Chief asked Complainant to provide additional information on the specific ergonomic equipment Complainant needed, Complainant responded the next day on September 5, 2012. Complainant not only identified what devices she needed, she also indicated where the devices could be found.⁶ Complainant then completed an ergonomic assessment on September 13, 2012, and a report was generated that identified the equipment Complainant needed, per her physician's recommendations, and where the equipment could be purchased. The Chief acknowledged receipt of the ergonomic assessment in a September 25, 2012 email. Specifically, the Chief stated that she "was planning to share with [Complainant] the process of acquiring [the ergonomic equipment]" and she would "provide guidance on how to acquire or take appropriate action to acquire on behalf of [Complainant]."

However, the Chief never provided Complainant the necessary guidance. By October 19, 2012, the Chief emailed Complainant stating, "I'll send you information later today." But no information came. Consequently, Complainant emailed her third level superior on October 22, 2012, for assistance. A day later, Complainant received an October 23, 2012 email from the Chief. This time, the Chief informed Complainant that she had been out of the office due to an illness, she stated that funding was available to purchase her requested items, and she informed Complainant that she would forward Complainant the necessary information once she returned from a meeting. However, Complainant did not receive any information from the Chief that day. Consequently, on October 25, 2012, Complainant announced, during an EEO training meeting in front of all her civilian supervisors, her difficulty in getting her September 4, 2012 reasonable accommodation processed. It was during this meeting that the EEO representatives recommended that Complainant contact the United States Army Garrison (USAG) Humphreys EEO Manager (EEO Manager).

On November 6, 2012, Complainant emailed the EEO Manager. The EEO Manager responded in an email on November 29, 2012, and explained that the Chief was working on Complainant's reasonable accommodation request with the Disability Program Manager. Subsequently, Complainant emailed the Disability Program Manager on November 29, 2012, stating the following:

. . . please let me know if there is anything I can do to expedite this. Everyday [sic] without these accommodations is another day aggravating my existing pain condition. My initial request for these accommodations was made on 4 Sep 12, almost 90 days ago. I was told by [the Chief] that funding was available in her email dated 23 Oct 12, over 30 days ago. So I'm curious – why the extended delay on this? In my job in contracting, we have to buy the same supplies for our customers – and by USFK regulation, we only have a 30-day timeline to buy these – but it's taken longer than that to get them for me.

⁶ Complainant indicated that some ergonomic devices her physician recommended were available on the CAP website, but she conducted a Google search for the other recommended devices and provided the Chief a printout of these items.

Subsequently, the Disability Program Manager provided Complainant with the reasonable accommodation request form which Complainant completed on November 29, 2012. Thereafter, the Agency finally accepted Complainant's reasonable accommodation request on December 3, 2012, and the Chief provided Complainant with the necessary paperwork to obtain the requested ergonomic equipment. On December 4, 2012, the Chief ordered some equipment through CAP and the Agency ordered the remaining non-CAP items on December 6, 2012.

Here, the Agency asserts that the AJ erred in determining that the Chief was not a credible witness when she testified that she believed Complainant could have ordered the ergonomic equipment herself through the CAPS program. However, the record supports that the Chief was the responsible management official for processing Complainant's reasonable accommodation request and identified herself as the individual responsible for processing Complainant's request throughout the four-month processing period. The Chief received Complainant's request, the Chief instructed Complainant to provide specifics regarding the equipment needed, and the Chief was the Agency official who received a copy of Complainant's ergonomic assessment which included a detailed description of the equipment and where it could be purchased. Additionally, the Chief was the Agency official who provided the necessary paperwork to obtain the ergonomic equipment through CAPS on December 4, 2012. This evidence supports the AJ's determination that the Chief's testimony, regarding her belief that Complainant could have ordered the ergonomic equipment through CAPS, was not credible.

In sum, the evidence fully supports the AJ's conclusion that the Agency failed to promptly provide Complainant a reasonable accommodation and failed to provide a reasonable justification for the delay. The record supports that Complainant engaged in the interactive process by being responsive, cooperative, and in many cases proactive. However, the Agency consistently provided delayed responses to Complainant's emails even though Complainant had provided all documentation needed to process the request. These delays were unnecessary, violated the Agency's responsibility to expeditiously respond to a request for reasonable accommodation, and demonstrated a lack of good faith in the Agency's accommodation efforts. Although the AJ found no retaliatory animus as a contributing factor to the Agency's delay, we note that a finding of discriminatory intent is not an element of a failure to timely accommodate. Therefore, we find that the AJ correctly determined that the Agency violated the Rehabilitation Act when it unreasonably delayed processing Complainant's reasonable accommodation request by four months.

The AJ's finding that the Agency was in violation of the Rehabilitation Act due to its unreasonable delay in providing Complainant with reasonable accommodations is AFFIRMED.

Remedies

As an initial matter, we note that, on appeal, the Agency only disputes the AJ's remedial award of \$190,000 in non-pecuniary compensatory damages. Therefore, we need not disturb the AJ's other remedial awards including: (1) back pay with interest (including benefits) from the period of December 14, 2012 to November 25, 2019; (2) restoration of leave from December 14, 2012

to November 25, 2019; (3) pecuniary damages in the amount of \$60,000; and (4) attorney's fees in the amount of \$115,513.30 and legal costs in the amount of \$14,321.75. Therefore, these awards are AFFIRMED.

We next address the AJ's determination that Complainant was entitled to compensatory damages due to the Agency's failure to promptly respond to Complainant's reasonable accommodation request. Our review of the record supports the AJ's determination that the Agency's violation of the Rehabilitation Act (the four-month delay in processing Complainant's reasonable accommodation request) resulted in Complainant's increased pain and stress which resulted in Complainant's December 14, 2012 departure from work on medical leave and contributed to her subsequent removal from the Agency on July 5, 2013, for inability to perform the essential functions of her position due to medical reasons.

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)).

When a Complainant has a pre-existing condition, the Agency is liable only for the additional harm or aggravation caused by the discrimination. If Complainant's pre-existing condition inevitably would have worsened, the Agency is entitled to a reduction in damages reflecting the extent to which the condition would have worsened even absent the discrimination; the burden of proof is on the Agency to establish the extent of these offsets. Wallis v. U.S. Postal Serv., EEOC Appeal No. 01950510 (Nov. 13, 1995) (citing Maurer v. United States, 668 F.2d 98 (2d Cir. 1981)); Finlay v. U.S. Postal Serv., EEOC Appeal No. 01942985 (Apr. 29, 1997). The Commission notes, therefore, that Complainant is entitled to recover damages only for injury, or additional injury, caused by the discrimination. See Terrell v. Dep't of Housing and Urban Dev., EEOC Appeal No. 01961030 (October 25, 1996); EEOC Notice No. N 915.002 at 12.

The evidence shows that Complainant saw a physician while she was working in Korea on September 3, 2012, who diagnosed her with CRPS. The physician testified that patients with CRPS experience pain at the same level as pain experienced in childbirth.

The physician explained that “physical and emotional stress will increase the symptom[s] of CRPS and it – the syndrome itself get worse.” Accordingly, the physician indicated that the prescribed ergonomic equipment would reduce unnecessary movement and resulting pain in Complainant’s arm which would ultimately reduce Complainant’s continuing pain. The physician indicated that, initially, Complainant’s condition was controlled with nerve block treatment, but “[b]y October, with all that stress, she was getting worse,” especially in the beginning of November, and she continued to have more trouble with her hand by December 3, 2012. Complainant’s pain increased so much that the physician testified that he recommended Complainant take medical leave on December 14, 2012, which she did.

However, despite being on medical leave, Complainant’s condition continued to worsen. On January 10, 2013, the physician noted:

Complainant’s symptoms increased to the point where she was no longer able to tolerate the working environment and this delay did have considerable impact on her symptom aggravation. The symptoms will continue to be aggravated until her workplace has been configured to reduce physical stress of her affected arm. In addition, she has presented a state of severe emotional distress as a result of her reported struggle with her workplace to receive these accommodations.

The physician also noted other factors that attributed to Complainant’s emotional distress. Specifically, the physician stated that Complainant:

had an extreme emotional issue upon receiving a draft of her final performance appraisal and is now seeing a psychiatrist for treatment of her emotional stress related to these work issues.⁷ The psychiatrist has diagnosed her with depression and insomnia and he is treating her both clinically and medically for these issues. Therefore, it is my opinion that [Complainant] see continued care to alleviate both emotional and physical stress.

The physician further testified at the hearing that Complainant “broke down a lot by January,” had lack of sleep, considered having her arm amputated, developed a tremor by January 31, 2013, and by July 2013 the physician, did not believe that Complainant would ever recover from CRPS.

The record indicates that the Agency removed Complainant from employment, effective July 5, 2013, for “inability to perform as a result of a medical condition.” Consequently, the physician stated at the hearing and indicated in his notes that “[Complainant’s] “lack of accommodation was the primary cause of [the September 2012] flareup.”

⁷ Complainant testified at the hearing that her performance appraisal rating “was the straw that broke the camel’s back” and she left work after she received the appraisal.

Although the physician acknowledged “other factors” attributing to Complainant’s emotional stress and physical pain, the physician explained that he believed if Complainant had received the ergonomic equipment within 30 days or sooner of the September 2012 request, her condition would have stabilized, and she would not have had “any kind of problem for doing her regular work routine.”

Complainant’s psychologist testified that he first evaluated Complainant in September 2014. After evaluation, the psychologist diagnosed Complainant had major depressive disorder secondary to pain, as well as unrelated obsessive-compulsive disorder (OCD). The psychologist noted that Complainant’s pain from her CRPS caused her depression, including symptoms of sadness, frustration, poor self-esteem, lack of sleep, difficulty sleeping due to pain, and difficulty concentrating.⁸ The psychologist also noted that Complainant’s family members have to “walk on eggshells” around her because they do not know what mood she will be in on any particular day. The psychologist asserted that Complainant’s CRPS is a very painful condition and stress can increase a severe pain problem. The psychologist also identified additional sources of Complainant’s stress including her child custody battle with her ex-husband and financial issues since Complainant had not been paid for “quite some time.” However, the psychologist clarified that if Complainant did not suffer from pain, “she’d still be working full-time and she wouldn’t be suffering from depression and the anxiety that she’s going through now.”

Complainant’s anesthesiologist and pain management doctor (anesthesiologist) testified that he began treating Complainant in 2014 and completed a report in April 2015 which indicated that Complainant’s CRPS was caused by injury (repetitive typing) while working as a Contract Specialist. The anesthesiologist denied being aware of any intervening causes between the 2012 and August 29, 2019,⁹ that would have caused Complainant’s CRPS flareup. The anesthesiologist clarified that Complainant was in a car accident in September 2013,¹⁰ which could have exacerbated her pain, but the anesthesiologist noted that the car accident was not the original cause of her CRPS. A copy of the anesthesiologist’s May 29, 2015 evaluation states:

She has right-sided reflect sympathetic dystrophy, CRPS of the right upper extremity, depression and myofascial pain. The patient’s injuries are still medically present and debilitating due to her limited response to continued treatment, she will most likely require these injections indefinitely. The patient’s continued condition is not due to any preexisting condition and she developed this

⁸ The psychologist also indicated in a March 18, 2019 note that Complainant still diagnosed with major depressive disorder, generalized anxiety disorder, primary insomnia, and pain disorder with related psychological factors.

⁹ The anesthesiologist testified at the hearing on August 29, 2019.

¹⁰ Complainant testified that she only injured her right shoulder (labral tear) but her right arm and wrist were not injured. Complainant further testified that she had surgery on her shoulder to resolve the injury.

syndrome because of work requirements. The condition is not likely to resolve. CRPS is not a temporary condition.

Testimony from Complainant's mother and childhood friend further corroborate Complainant's testimony that her family relationships suffered and became strained after she was not provided a reasonable accommodation for her CRPS.

On appeal, the Agency argues that the AJ's award of non-pecuniary damages was excessive and should be reduced to \$30,000. The Agency reasons that Complainant's CRPS injuries occurred due to Complainant's irrational belief that "everyone was out to get her" and did not result from the lack of accommodation. The Agency further reasons that Complainant's increased stress and subsequent emotional breakdown, suicide attempt, depression, and anxiety were attributed to Complainant receiving her annual performance evaluation. Consequently, the Agency asserts that these factors were non-related to the discrimination and the non-pecuniary damages award should be reduced.

We concur with the Agency that this award should *only* encompass the harm Complainant sustained by the discriminatory act at issue to the extent that this discriminatory act exacerbated Complainant's CRPS. In this case, it is evident from the record that Complainant was diagnosed with CRPS in 2005 and she had previously received reasonable accommodations, including the ergonomic equipment at issue, for this condition in 2005 and 2008 and was subsequently able to perform the essential functions of her position. The record supports the AJ's finding that the Agency's four-month delay in providing similar ergonomic equipment was a triggering event which further exacerbated Complainant's major CRPS flareup to the extent that she could not continue working. Additionally, the record supports that the nature of Complainant's condition is further exacerbated by stress induced by her physical pain, including frustration with the delays in processing her reasonable accommodation request.

While attributing at least some Complainant's increased pain and subsequent diagnoses of anxiety and depression to the Agency's failure to timely respond to Complainant's reasonable accommodation request, the medical experts acknowledged additional contributing factors to Complainant's decline. These additional factors included significant anxiety caused by Complainant's OCD rather than the actions of the Agency, as well as a contentious child custody battle with her ex-husband. As such, we conclude that the AJ's award of \$190,000 did not adequately account for these other factors unrelated to discrimination. We conclude that an award of \$100,000 is more consistent with prior EEOC precedent. See, e.g., Spence v. Nuclear Regulatory Commission, EEOC Appeal No. 0120093193 (September 12, 2012) (\$100,000 awarded in compensatory damages in reasonable accommodation case where harm caused by Agency's actions and other, unrelated factors).

CONCLUSION

Accordingly, we REVERSE the Agency's final order rejecting the AJ's findings of discrimination. We MODIFY the AJ's remedial order as stated in our Order below. We REMAND this matter to the Agency in accordance with the ORDER below.

ORDER

The Agency is ORDERED to take the following actions within one-hundred and twenty (120) calendar days from the date this decision is issued:

1. The Agency shall pay Complainant \$60,000 in past pecuniary damages.
2. The Agency shall pay Complainant \$100,000 in non-pecuniary compensatory damages.
3. The Agency shall pay Complainant the \$115,513.30 in attorney's fees and 14,321.75 costs ordered by the AJ.
4. The Agency shall calculate the amount of back pay with interest owed Complainant for the period of December 14, 2012 to November 25, 2019, including contributions to health benefits, life insurance premiums, and the Thrift Saving Plan, and offset by workers' compensation benefits Complainant received and any paid leave provided. Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to Complainant for the undisputed amount within sixty (60) days of the date the Agency determined the amount it believes to be due.

POSTING ORDER (G0617)

The Agency is ordered to post at its 411th Contracting Support Brigade in Camp Humphreys, South Korea, 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).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she 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 the date this decision was issued. 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 (M0620)

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

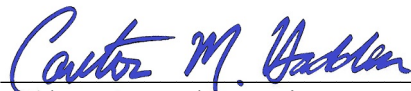
This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this 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

June 16, 2021

Date