



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Trey M.,¹
Complainant,

v.

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

Appeal No. 2020002804

Hearing No. 430-2017-00478X

Agency No. 4K-270-0057-17

DECISION

Complainant filed the instant appeal, pursuant to 29 C.F.R. § 1614.403(a), from the Agency's November 6, 2019 final decision concerning his award of compensatory damages regarding his equal employment opportunity (EEO) complaint alleging discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. The Agency's decision is AFFIRMED.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a City Carrier, Q-01, at the Agency's Durham East Station in Durham, North Carolina.

Complainant believed that he was subjected to sexual harassment by a female coworker (Coworker). He indicated that in June 2016, the Coworker was working a portion of Complainant's route. During this time, the Coworker contacted Complainant about the Coworker's relationship problem with her then boyfriend (Boyfriend), a non-employee of the Agency.

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.

Complainant listened and told the Coworker to contact the Employee Assistance Program (EAP) for more guidance. Several days later, Complainant was receiving text messages from Boyfriend asking about the whereabouts of the Coworker and harassing and threatening him. Complainant indicated that he received a card and a gift from the Coworker for helping her, and on July 2, 2016, the Coworker left him a note indicating her wish to pursue a romantic relationship with him. He expressed he was not interested to which she responded she understood. Complainant reported the incident to his supervisor and his manager. The Coworker sent Complainant text messages on June 24, July 11, August 20, August 24, August 25, and August 29, 2016.

On February 16, 2017, Complainant was informed that the Coworker, who was on light duty due to her pregnancy, was assigned to assist "overload" work from Complainant's route. Complainant objected to this assignment. Complainant was told not to speak to the Coworker and to just put the mail on the float for the Coworker.

On February 21, 2017, Complainant contacted an EEO Counselor alleging sexual harassment from the Coworker. Unable to resolve the matter informally, on June 6, 2017, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American), sex (male), and in reprisal for prior protected EEO activity arising under Title VII when he was subjected to harassment. In support of his claim, Complainant alleged that the following events occurred:

1. On July 2, 2016, the Coworker left a note indicating that she wanted to pursue a romantic relationship with Complainant;
2. On August 19, 2016, September 8, 2016, September 13, 2016, and September 19, 2016, Complainant has been harassed and threatened by the Supervisor and the Manager;
3. On August 19, 2016, September 8, 2016, September 13, 2016, and September 19, 2016, after reporting that Complainant was receiving unwanted text messages and/or notes and felt threatened, management failed to properly address the matter;
4. On August 19, 2016, September 8, 2016, September 13, 2016, and September 19, 2016, after contacting the Office of Inspector General (OIG) to report that Complainant received unwanted text messages and/or notes, and felt threatened, the OIG failed to properly address the matter;
5. On February 16, 2017, the Coworker was assigned to assist Complainant on his route; and
6. On February 19, 2017, and February 20, 2017, Complainant's personal vehicle was vandalized.

Complainant worked the route with the Coworker on February 16, 2017, but the other times, the Coworker worked the route without Complainant.

Complainant indicated that the Coworker was assigned to his route on March 21, 2017, but he did not work the route on that date. He reported no other incident involving the Coworker since then. Complainant and the Coworker are still working at the same facility, Durham East Station in North Carolina.

On November 27, 2017, the Agency issued its final decision finding no discrimination. Upon Complainant's appeal, the Commission, in EEOC Appeal No. 0120180781 (July 23, 2019), reversed the Agency's decision. The Commission found that the Agency discriminated against Complainant based on sex when he was sexually harassed by the Coworker and based on reprisal when he was assigned to work with the Coworker after reporting the sexual harassment. The Commission found that Complainant was subjected to harassment from June 2016, to March 2017.

The Commission ordered the Agency to take the following remedial actions:

1. Within 15 calendar days of the date this decision is issued, the Agency shall give Complainant notice of his right to submit objective evidence (pursuant to the guidance given in Carle v. Dep't. of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)) in support of his claim for compensatory damages. Complainant shall have 45 calendar days from the date the Complainant receives the Agency's notice to submit his compensatory damages evidence. The Agency shall complete the investigation on the claim for compensatory damages within 45 calendar days of the date the Agency receives Complainant's claim for compensatory damages. Thereafter, the Agency shall process the claim in accordance with 29 C.F.R. § 1614.110. Within 30 calendar days of determining the amount of compensatory damages due Complainant, the Agency shall pay that amount to Complainant.
2. The Agency is directed to conduct eight hours of in-person or interactive training for Supervisor1, Supervisor2, Manager SC, and Manager POO, particularly regarding recognizing a hostile work environment and reprisal discrimination. The Agency shall address management's responsibilities with respect to eliminating harassment in the workplace. The Agency shall conduct the training within 90 days from the date the decision is issued.
3. The Agency is directed to conduct four hours of in-person or interactive training for all members of the workforce at the Durham East Station, regarding anti-harassment. The Agency shall conduct the training within 90 days from the date the decision is issued.
4. The Agency is directed to conduct eight hours of in-person or interactive training for the Coworker regarding hostile work environment in the workplace. The Agency shall conduct the training within 90 days from the date the decision is issued.
5. Within 60 days from the date the decision is issued, the Agency shall consider disciplining the Coworker. The Agency shall report its decision.

6. If the Agency decides not to discipline the Coworker, the Agency shall set forth the reason(s) for its decision not to impose any disciplinary action. If the Coworker is no longer employed by the Agency, the Agency shall furnish proof of her date of separation.
7. Within 60 days from the date the decision is issued, the Agency shall consider taking disciplinary action against the management officials (Supervisor1, Supervisor2, Manager SC, and Manager POO) who have subjected Complainant to unlawful retaliation and failed to address the sexual harassment. The Agency shall report its decision. If the Agency decides not to issue any disciplinary action any of the named management officials, it shall set forth the reason(s) for its decision not to impose any disciplinary action. If any of the named management officials is no longer employed by the Agency, the Agency shall furnish proof of the date(s) of separation.
8. The Agency shall, within 30 days of the date this decision is issued, post a notice in accordance with the Order below.

On November 6, 2019, the Agency issued its final decision awarding Complainant \$7,500.00 in compensatory damages. Regarding pecuniary damages, the Agency denied Complainant's request for restoration of 192 hours of sick or annual leave (\$5,184.00) because it was an equitable remedy which was not available as compensatory damages. The Agency further noted that there was no credible evidence that any of the leave used was caused by harassment by the Coworker.

The record indicates that Complainant sought compensatory damages as follows (in Complainant's wording):

a. Reimbursement for purchasing a gun	-	\$405.65
b. Reimbursement for purchasing another gun	-	\$407.54
c. Home closing on April 28, 2017, for the difference between the sale price of his former residence and the purchase price of his new residence	-	\$206,803.55
d. Tires replaced, nails in car tires on September 19, 2017	-	\$327.92
e. Tires replaced, nails in truck tires on April 12, 2018	-	\$487.81
f. Paint his car, paint being thrown on his car	-	\$3,191.63
g. His son's private school tuition in 2018	-	\$4,802.80
h. 192 hours of leave time	-	\$5,184.00
i. Attorney fees associated with setting up a trust arrangement for a confidential mailing address on May 23, 2017	-	\$1,500.00
j. Attorney fees associated with EEO complaint, court appearance related to the 50-C No Contact Order, the appeal of this matter, and so forth	-	\$5,000.00
k. Cellphone, March 25, 2017	-	\$489.52
l. Cellphone, March 31, 2019	-	\$855.99
m. Home security camera, November 18, 2018	-	\$149.79
n. <u>Cellphone, February 16, 2019</u>	-	<u>\$1,123.21</u>
Total =		\$230,729.41

o. Severe Emotional Distress - \$250,000.00

Regarding Item j, Complainant provided four cash receipts (\$500.00 for his EEOC case on August 11, 2017; \$500.00 for his EEO case on September 22, 2017; \$300.00 for legal fees on October 6, 2017; and \$300.00 for legal services on October 20, 2017) paid to his attorney.

Complainant also provided a copy of misdemeanor criminal summons, dated September 11, 2016, for a charge filed by Boyfriend against Complainant in the General Court of Justice, District Court Division in the State of North Carolina, Durham County, for harassing phone calls Complainant made on September 10 - 11, 2016.

The record indicates that on December 5, 2016, Complainant obtained a No Contact Order issued by the General Court of Justice, District Court Division in the State of North Carolina, Wake County, against Boyfriend who allegedly appeared at Complainant's home on two occasions and left threatening messages.

The Agency found that there was no evidence the Coworker trespassed at Complainant's former residence or threatened him or his family, or vandalized his cars, or that his telephones were actually compromised. Based on the evidence provided by Complainant, the Agency concluded that Complainant was not entitled to pecuniary damages.

Regarding Complainant's request for nonpecuniary damages in the amount of \$250,000.00, under Item "o" above, the Agency stated that Complainant failed to provide any evidence that he suffered any mental or physical condition as a result of receiving notes and text from the Coworker or that his emotional state was affected by the issues in the complaint.

To support his claims, Complainant provided medical documentation to the Agency. Complainant's medical records indicate that in January 2015, he was in an automobile accident which caused injuries to his shoulder, arm, ankle, and foot.

Complainant's medical records also indicate that on September 15 and 26, 2016, he visited a certified physician assistant for headache, anxiety disorder (unspecified), adjustment insomnia, Dorsalgia - severe lower back pain, and muscle spasm of back. The certified physician assistant indicated that on September 15, 2016, Complainant informed her that he was being stalked for the past few months by "an unknown male" which caused him stress and feeling anxious; police became involved about this "last year"; the unknown male left notes at his house; he was concerned for his safety; and he denied any history of anxiety or depression. Complainant was prescribed with medications for his headache, back pain, anxiety, and insomnia.

Complainant's medical records indicate that on July 18, 2018, he visited the certified physician assistant for his trouble sleeping, eating, and severe headaches.

The certified physician assistant noted that Complainant informed her that he was stalked by a female coworker; this has been going on since 2016; the coworker was accusing him of stalking her; he sustained personal property damage; he felt threatened; he was going to take emergency leave; and he was worried about losing his job. The certified physician assistant also noted that Complainant told her that his wife has cancer; his friend was recently killed in a driving accident; his anxiety had worsened; he was having trouble sleeping and eating which started up again; he was having headaches; and he was taking Tylenol as needed. Complainant also told the certified physician assistant that he had no depression. The certified physician assistant prescribed him medications for his anxiety, insomnia, and headaches.

The Agency concluded that based on the evidence provided by Complainant, an award of \$7,500.00 in nonpecuniary damages was appropriate since there was no evidence that he was rendered unable to work or he suffered significant disruptions to familial relationships as a result of the harassment. The Agency submits to the Commission a copy of the check in the amount of \$7,500.00 issued to Complainant for his nonpecuniary damages on December 6, 2019.

Complainant appeals from the Agency's final decision concerning his award of compensatory damages. Complainant claims that he is entitled to compensatory damages in a higher amount of \$280,729.41. Complainant is now seeking the amount of \$180,729.41 (by deducting \$50,000.00 under Item c, home closing) for pecuniary damages and \$100,000.00 for his emotional distress, nonpecuniary damages. Complainant also indicates that the Agency failed to meet the posting requirement and the disclosure of disciplinary action taken against the Coworker requirement in accordance with the Commission's previous decision.

ANALYSIS AND FINDINGS

Initially, we note that despite Complainant's contentions, the Agency submitted to the Commission a copy of the notice posted from August 30, 2019, to October 30, 2019, pursuant to the Commission's July 23, 2019 decision. Further, the Agency submitted its October 10, 2019 letter to the Commission stating that after the Coworker was given training and was interviewed, it decided not to discipline the Coworker since there has been no other incidences involving the Coworker and Complainant since 2017. Thus, we find that the Agency has complied with the posting and consideration of discipline requirements in the prior Order.

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e 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. 212 (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 \$300,000.00. 42 U.S.C. § 1981a(b)(3).

Pecuniary losses are out-of-pocket expenses incurred because of the agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110, at Chap. 11, VII.B.2 (Aug. 5, 2015) (internal citations omitted). Future pecuniary damages are losses likely to occur after the resolution of the complaint.

In a claim for pecuniary, compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the Agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. *Id.* (citations omitted).

Nonpecuniary 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, Enforcement Guidance on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, 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 a 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, and 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 the 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.

Complainant has the burden of proving the existence, nature and severity of the alleged emotional harm. Man H. v. Dept. 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.; Wilda M. v. U.S. Postal Service, EEOC Appeal No. 0120141087 (Jan. 12, 2017) (awards for emotional harm are warranted only if complainant establishes a sufficient causal connection between the agency's illegal actions and her injury).

Initially, we note that Complainant's request for 192 hours of sick or annual leave restoration constitutes equitable relief. As the Commission declined to grant these remedial awards in its previous decision, we decline to review these matters further.

Complainant requests \$180,729.41 in pecuniary damages for the discrimination. After a review of the evidence, we agree with the Agency that Complainant has not established that he was entitled to pecuniary damages. Pecuniary damages are only appropriate if they are directly or proximately caused by the Agency's discrimination. In this case, we find that Complainant did not persuasively establish that the Agency's discriminatory actions were the cause of his expenses. Contrary to his assertions, Complainant did not have to buy a more expensive house, three cellular phones, and two guns, send his son to a private school, set up a trust for his residence, and install a home security system as a result of the sexual harassment and the discrimination. There is no evidence, other than Complainant's speculation, that his cars were vandalized by the Coworker, or even by Boyfriend. It is noted that Complainant told the certified physician assistant on September 15, 2016, that there was police involvement regarding an "unknown male" stalking him back in 2015, which was not within the time period of the discrimination. Complainant was not identifying this "unknown male" as Boyfriend.

We will now address Complainant's request for nonpecuniary damages. Complainant provided medical evidence that on September 15 and 26, 2016, he visited the certified physician assistant for headache, anxiety disorder (unspecified), adjustment insomnia, Dorsalgia - severe lower back pain, and muscle spasm of back. Some symptoms were contributed by his injuries caused by a car accident in 2015. There is no evidence Complainant sought any medical attention regarding his emotional stress any other time during the period of the discrimination, i.e., from June 2016, to March 2017, other than in September 2016. Almost 16 months after the discrimination, on July 18, 2018, Complainant mentioned to the certified physician assistant that he was stalked by the Coworker which had been going on since 2016. At that time, Complainant also mentioned about his wife's illness and his friend's recent death which also contributed to his medical conditions.

Complainant claims that he should be awarded \$100,000.00 in nonpecuniary damages. Taking into consideration the evidence of nonpecuniary damages submitted by Complainant, including his own statement, we find that his request for \$100,000.00 to be excessive. Rather, we find that the Agency's award of nonpecuniary damages in the amount of \$7,500.00 is supported by the evidence, neither "monstrously excessive" nor the product of passion or prejudice, and consistent with prior Commission precedent. See Miriam B. v. Dep't of Veterans Affairs, EEOC Appeal No. 0720150022 (Mar. 20, 2018) (\$7,500.00 was awarded in nonpecuniary damages for harm caused by the hostile work environment over a period of nine months), denial of request for reconsideration, EEOC Request No. 05201800370 (Oct. 12, 2018); Darla W. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120160042 (Dec. 12, 2017) (\$7,500 was awarded for nonpecuniary damages for mental anguish, physical and emotional distress, including depression, insomnia, and exacerbation of cardiac condition). The record indicates that the Agency paid Complainant \$7,500.00 in nonpecuniary, compensatory damages.

CONCLUSION

Accordingly, the Agency's final 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.

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

April 26, 2021
Date