



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Bill A.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2020003332

Agency Nos. 1B-007-0016-17, 1B-007-0011-18

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 29, 2020 final decision concerning his consolidated equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the final agency decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Mail Handler at the Agency's Processing and Distribution Center in San Juan, Puerto Rico.

As more fully detailed in Bill A. v. United States Postal Service, EEOC Appeal Nos. 0120182340, 2019005819 (Feb. 26, 2020), Complainant filed two EEO complaints on October 20, 2017, and on September 11, 2018. Complainant subsequently amended the second EEO complaint. Collectively, Complainant alleged that the Agency discriminated against him on the bases of disability (lower back) and in reprisal for prior protected EEO activity when:

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<sup>1</sup> 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.

1. beginning on or about May 15, 2017, Complainant's request for reasonable accommodation has not been answered;
2. on August 4, 2017, Complainant was sent a letter requesting him to provide updated medical information to justify his absences;
3. on August 11, 2017, Complainant received a letter notifying him that his tour would be changed effective August 19, 2017;
4. on August 21, 2017, Complainant received a letter notifying him that his bid would be abolished effective September 16, 2017;
5. on November 21, 2017, Complainant's request for reasonable accommodation was denied;
6. on or about December 26, 2017, Complainant was issued a letter of warning;
7. on February 1, 2018, Complainant realized that his leave status for pay period 02-2018, and continuing, was changed to absent without leave (AWOL);
8. on January 30, 2018, Complainant was issued a Notice of Seven-Day Suspension for his failure to be regular in attendance;
9. On or about March 1, 2018, May 19, 2018, and June 11, 2018, management sent him several letters scheduling him for an investigative interview for attendance issues;
10. Since March 1, 2018, and continuing, Complainant's request for reasonable light duty accommodation has not been granted;
11. on October 9, 2018, Complainant requested that management fill out a VA Form 21-4192, and they have failed to honor his request; and
12. on December 18, 2018, Complainant received a letter notifying him that if he did not apply for disability retirement within 30 days, the Agency would take administrative action to separate him because he is unable to perform his duties due to his medical condition.

In the previous decision, we reversed the Agency's final decision in part and found discrimination with respect to Claims (1), (2), (4) – (10), and (12). Specifically, we found that the Agency fell short in the reasonable accommodation process when it failed to explore reassignment as a reasonable accommodation for Complainant's disability. We noted that the record reflected Complainant was separated from the Agency effective April 2019, but did not address his separation, since it was not part of his complaints. We found no discrimination as to Complainant's other allegations, and remanded the matter for, among other relief, a supplemental investigation and determination on compensatory damages.

Complainant submitted an affidavit in the supplementary investigation. Therein, Complainant asserts that he has been in and out of psychological treatment since May 2017, and has been diagnosed with Major Depressive Disorder, moderate to severe anxiety, and insomnia. As a result, he takes medication. Complainant contends that the Agency's actions exacerbated his psychological conditions, and further caused him to suffer gastrointestinal issues, begin to hear voices, and suffer suicidal thoughts. Complainant argues that his symptoms were the result of management's decision to send him home, refusal to allow him to return to work or to accommodate him, and decision to discipline and suspend him.

Complainant also argues that the Agency's actions caused him significant loss in income, which led him and his family to use credit cards to pay their bills. Complainant sought \$13,149.10 in pecuniary damages because he can only pay the minimum balance required by his credit cards, which caused him to accrue credit card debt. Complainant identifies 12 separate credit cards with interest charged since May 2017, ranging from \$21.93 to \$2,538.55. Complainant provided the front page of his credit card bills in support.

Complainant then requested \$107.85 in connection with postage paid to pursue his EEO complaints and provided receipts in support of this claim. In addition, Complainant requested \$582.14 for the cost of two dog silencers, two sound amplifying cones, and noise canceling headphones. Complainant explains that the Agency's actions caused his mental conditions to worsen, which made Complainant "shout to whatever was producing [a] noise, even if [his] family tried to control [his] behavior." Therefore, the devices were necessary to control noise triggers.

Complainant requested \$10.67 for the cost of acetaminophen medication to control his headaches. Complainant admits he was taking more than the recommended dosage and that "pills have no costs when prescribed by VA Hospital."

Lastly, Complainant requested \$384 for medication for his wife. Complainant explains that after he lost his employer-provided healthcare coverage, he had to begin paying out of pocket for his wife's medication.

Complainant's wife provided an affidavit for the record. She confirmed Complainant's increased symptoms and added that Complainant started to hit himself, throw things around, and use offensive languages. Complainant's wife had to prevent him from hitting his head into the wall. Complainant's wife had to hide the hammer because Complainant said he wanted to bash his own head in with the hammer. Complainant's wife said he had never had these experiences in the past and that "[h]is sweetness as a husband just disappeared." She experienced a loss of consortium.

On April 29, 2020, the Agency issued a final decision regarding Complainant's entitlement to compensatory damages. As to Complainant's claim for pecuniary damages, the Agency determined that Complainant provided no documentation to support his claim for increased credit card debt but awarded Complainant 10 percent of his claim citing Commission precedent. The Agency agreed with Complainant's request for postage expenses but denied the claim for noise-canceling devices because Complainant did not show that he was unable to address noise problems in a less costly manner. The Agency rejected Complainant's claim for acetaminophen expenses because Complainant "should not have exceeded the dosage recommended by [his] health care professional in [his] prescription." If Complainant desired a higher dosage, he "should have sought a new prescription." Complainant's wife's medication was denied because it was not supported by prescription. In all, the Agency granted Complainant \$1,422.76 in pecuniary damages.

The Agency noted that Complainant previously received \$85,000 in non-pecuniary damages as a result of a prior EEO complaint that was addressed in Scott K. v. U.S. Postal Serv., EEOC Appeal No. 0120182127 (Feb. 20, 2020). Therein, the Commission found the Agency failed to provide Complainant with reasonable accommodations on June 1, 2016. That decision noted that Complainant was diagnosed with Major Depressive Disorder and experienced ongoing mental and physical impairments similar to those cited herein as a result of the Agency's actions. The Agency attempted to limit Complainant's current claim of compensatory damages to the Agency's actions starting on May 15, 2017.

The Agency concluded that Complainant's medical conditions were "mostly pre-existing" and that the prior damages award covered these conditions. The Agency deemed Complainant's complaint of gastrointestinal issues and other medical problems as "nothing more than speculation." The Agency determined that the Commission's decision found that Complainant's conditions were "caused by the Agency's discriminatory action and how since and obviously through the date of their decision," February 20, 2020, Complainant suffered mental and physical symptoms. Therefore, the Agency awarded Complainant \$2,000 in non-pecuniary compensatory damages. The instant appeal follows.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review "requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker," and that EEOC "review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission's own assessment of the record and its interpretation of the law").

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See EEO MD-110 at Chapter 11, § VII (citing Carey v. Phipps 435 U.S. 247, 254 (1978) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights"). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and non-pecuniary loss (emotional harm). See EEO MD-110 at Chapter 11, § VII.B; and Goetze v. Dep't. of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

#### *Pecuniary Compensatory Damages*

Complainant does not articulate any argument tending to establish that the Agency's award of pecuniary damages was incorrect, and we see no reason to disturb the award.

#### *Non-Pecuniary Compensatory Damages*

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 Guidance on Damages at 10. 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.

While Complainant did not submit arguments tending to controvert the Agency's decision as to non-pecuniary damages, we believe the Agency's award of \$2,000 is insufficient. We are not persuaded by the Agency's argument that our previous decision encompassed non-pecuniary compensatory damages for harm suffered through to the date of our decision, thus negating harm suffered by Complainant. The amount of non-pecuniary damages awarded at that time was based on the evidence submitted at that time, not at the time of our decision. In another case, we tangentially addressed a question of the temporal scope of an award of pecuniary damages. Kloock v. U.S. Postal Serv., EEOC Appeal Nos. 01972840, 01974955 (June 16, 2004). There, we explained that our order of compensatory damages in Kloock v. United States Postal Service, EEOC Appeal No. 01A31159 (Feb. 5, 2004) addressed compensatory damages for harm suffered between 1994 and 2002 – not as of the date of the second decision.

Accordingly, Scott K. awarded \$85,000 in pecuniary damages to address evidence Complainant submitted demonstrating harm as a result of the Agency's discriminatory action. In the supplemental investigation leading up to Scott K., Complainant submitted evidence on March 3, 2018. Here, Complainant is entitled to pecuniary damages as a result of actions taking place between May 15, 2017, and December 18, 2018. We recognize this period overlaps slightly with the previous decision and take that into consideration. However, Complainant specifically asserts that his symptoms were exacerbated as a result of actions alleged in the instant complaint. The Agency does not provide sufficient argument or evidence to refute Complainant's testimony.

The Agency's suggestion that Complainant's claim for non-pecuniary damages consisted of little more than speculation is offensive in light of Scott K. Although Complainant did not submit medical documentation supporting his diagnosis during the current supplemental investigation, we take administrative notice that our prior decision accepted that Complainant experiences complications from Major Depressive Disorder. The Agency presents no evidence or argument for us to find otherwise.

Complainant and his wife submitted highly detailed affidavits. As more fully detailed above, Complainant averred, and his wife confirmed, that he continued to suffer from severe gastrointestinal issues, suicidal thoughts, and a loss of consortium.

We are cognizant of the potential that an award potentially compensates Complainant twice for pain and suffering resulting from the same or similar acts. However, there are significant differences between Complainant's previous complaint and the instant complaint. Scott K. awarded \$85,000 in non-pecuniary damages on a single claim – that the Agency denied Complainant light duty on April 28, 2016. In this matter, we found discrimination on 10 separate incidents between May 15, 2017 and December 18, 2018, all stemming from the Agency's continued failure to accommodate Complainant during that time period. Thus, Complainant is eligible for a non-pecuniary compensatory damages award for different acts separate from Scott K. Further, Complainant avers that his symptoms continued at least until March 30, 2020, when he submitted his compensatory damages affidavit in the current complaint. The record in Scott K. only contains evidence until Complainant submitted his affidavit in that investigation, on March 3, 2018

Considering the Agency's sustained discrimination against Complainant and the brief overlap in emotional and physical distress between Complainant's first compensatory damages affidavit and his current one, we believe \$35,000 is a more appropriate amount of non-pecuniary damages to compensate Complainant for the exacerbation and continuation of his medical condition and symptoms beyond the period encompassed by our earlier decision. This award is not monstrously excessive and adequately compensates Complainant for his pain and suffering. See Dallas D. v. U.S. Postal Serv., EEOC Appeal No. 0120150319 (Mar. 24, 2017) (\$30,000 awarded where Complainant experienced extreme stress and marital problems, exacerbation of pre-existing conditions, constant abdominal pain attributable to stress, isolation from family and friends, and attempted suicide on at least one occasion as a result of the agency's discriminatory actions); Tyree L. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019001222 (Apr. 29, 2020)

(\$30,000 awarded where testimony from complainant and spouse demonstrated anxiety, withdrawal, loss of friendships and time with child); Melodee M. v. Dep't of Homeland Sec., EEOC Appeal No. 0120180064 (June 14, 2011) (\$40,000 awarded where complainant experienced increase in intensity and frequency of emotional and physical distress following discrimination); Harris K. v. Dep't of Homeland Sec., EEOC Appeal No. 0120180595 (Apr. 24, 2018) (complainant was awarded \$40,000 in nonpecuniary damages for harassment that caused him depression, anxiety, difficulty sleeping, fatigue, changes in appetite, and to often lock himself in his room at home and to lose his trust in his colleagues); Delfina Y. v. Dep't of Def., EEOC Appeal No. 0120160902 (Jan. 17, 2018) (\$35,000 awarded where harassment and agency's failure to timely act promptly resulted in complainant experiencing emotional distress and mental strain).

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final decision.

### ORDER

Within sixty (60) calendar days of the date this decision is issued, and to the extent it has not done so already, the Agency shall pay Complainant \$35,000.00 in non-pecuniary compensatory damages and \$1,422.76 in pecuniary compensatory damages.

### 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 (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. 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 on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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

June 3, 2021  
Date