



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

Don T.,¹
Complainant,

v.

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

Appeal No. 2020003494

Agency No. 4E-800-0020-18

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 March 31, 2020 final decision addressing compensatory damages on an equal employment opportunity (EEO) complaint claiming employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

During the period at issue, Complainant worked as a Full Time City Carrier at the Agency's Cheyenne Mountain Station in Colorado Springs, Colorado.

On March 27, 2018, Complainant filed a formal EEO complaint claiming that the Agency discriminated against him based on religion (Jewish) when he was forced to use Leave Without Pay (LWOP) to observe the Sabbath from August 2015 through March 2018.

After an investigation, the Agency provided Complainant a copy of the report of investigation and notice of right to request a hearing before an EEOC Administrative Judge (AJ). Complainant requested a final decision.

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.

On September 12, 2018, the Agency issued a final decision, pursuant to 29 C.F.R. § 1614.110(b), finding no discrimination. Complainant appealed.

On appeal, the Commission reversed the Agency's decision. The Commission determined that Complainant had established a *prima facie* case of a denial of religious accommodation. The Commission further determined that Complainant requested a religious accommodation in August 2015 to work a schedule that included the Sabbath as his day off. However, Complainant's request was denied in September 2015, and he was advised to submit LWOP requests for the days he was scheduled to work on Saturdays. The Commission found that the Agency failed to make a good faith effort to accommodate Complainant and failed to demonstrate that the religious accommodation imposed an undue hardship on Agency operations. For remedies, the Commission ordered the Agency to, among other remedies, restore or compensate Complainant for any leave Complainant was forced to use from August 2015 to his requirement date of March 31, 2018, to avoid working Saturdays. The Commission also ordered the Agency to conduct a separate investigation regarding Complainant's entitlement to compensatory damages as a result from the Agency's discriminatory act. See Don T. v. U.S. Postal Service, EEOC Appeal No. 2019001176 (Jan. 30, 2020).

On March 31, 2020, following its supplemental investigation, the Agency issued a decision on compensatory damages. The Agency rejected Complainant's request for \$193,000 in compensatory damages. Specifically, the Agency determined that Complainant had not provided documentation to support pecuniary damages of \$20,000, regarding lost retirement funds and \$8,000 interest. For non-pecuniary compensatory damages, the Agency awarded \$2,000.

The instant appeal followed.

On appeal, Complainant argues, through counsel, that his retirement suffered an adverse impact, due to the Agency's discriminatory act. Complainant explains that he suffered general anxiety, panic, and fear related to finances. Complainant further explains that his retirement is based on his last few years of working at USPS, and his use of vacation and LWOP leave to observe the Sabbath lowered his salary. Complainant acknowledges that he is unaware of the amount his retirement has been impacted. However, he asserts that the Agency failed to determine this amount but argues that the amount is more than \$20,000. Complainant requests again a total of \$193,000 in compensatory damages.

ANALYSIS AND FINDINGS

Past Pecuniary Damages

Pecuniary damages are quantifiable out-of-pocket expenses incurred as a result of the Agency's discriminatory actions. Damages for past pecuniary damages will not normally be granted without documentation such as receipts, records, bills, cancelled checks, or confirmation by other individuals of actual loss and expenses.

We acknowledge Complainant's supplemental statement indicating that he "was never given the opportunity to make up the shortfall of working 32 hours a week" as opposed to forty hours a week. We further acknowledge Complainant's argument on appeal that working fewer hours impacted his overall retirement, which he approximates as \$20,000 and \$8,000 in interest although conceding he did not have the necessary information to determine the exact amount his retirement was impacted. We note, however, that lost wages are statutorily excluded from compensatory damage awards. See 42 U.S.C. U.S.C. § 1981a(b)(2), 1991. Thus, we find the Agency properly denied Complainant's request for lost wages.

Non-Pecuniary Damages

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). 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)).

The Agency awarded Complainant \$2,000 in nonpecuniary damages.

We first acknowledge Complainant's assertion that he had intended to work until he was 66 years old, but that he retired at age 62 after the Agency continually denied his religious accommodation. However, our prior January 30, 2020 decision is silent on whether Complainant involuntarily retired because of the Agency's failure to provide a religious accommodation. Consequently, any requests for compensatory damages related to a determination on involuntary retirement are outside the scope of our prior decision and are denied.

Second, we acknowledge Complainant's arguments on appeal that he was subjected to discriminatory harassment by co-workers because of his religious accommodation requests. We clarify that our prior January 30, 2020 decision only determined that the Agency failed to accommodate Complainant's request for religious accommodation and did *not* include a claim of discriminatory harassment. Therefore, our award of compensatory damages is limited to the discriminatory act (denial of reasonable accommodation) at issue.

Third, we acknowledge Complainant's argument that he suffered emotional harm from the Agency's discriminatory actions. Complainant identifies the emotional harm and associated monetary cost he endured when the Agency denied him a religious accommodation from August 2015 to March 31, 2018 as the following: difficulty sleeping for five years (\$25,000), anxiety

and panic for three years (\$30,000), emotional distress (\$30,000), embarrassment (\$20,000), humiliation (\$20,000), and fear for his family's safety (\$40,000) which resulted in a total request of \$165,000 in non-pecuniary compensatory damages.

Complainant stated that he had anxiety and stress and attended six free Employee Assistance Program (EAP) counseling sessions (the maximum number of sessions offered), but he did not continue with counseling because he could not afford private counseling. Complainant further explained that he learned in September 2015, that a co-worker was filming his house on a Saturday to prove whether he was observing the Sabbath. In June 2015, Complainant stated that co-workers made comments like, "I'll fix you for breaking the contract" or "You think you're so special" after Complainant had requested a religious accommodation. Additionally, in August 2016, Complainant stated that his work situation had not changed, and he had difficulty regulating his body temperature which resulted in him going into the emergency room. Consequently, Complainant stated that every morning he would say a prayer for strength to "deal with" what was happening to him at work. Finally, Complainant provided copies of excerpts from his diary documenting his difficulty with taking Saturdays off and the response he received from co-workers during the three-year period he was without accommodation.

Beyond his personal statement, Complainant provided no other objective evidence of his emotional distress. However, 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 Service, EEOC Appeal No. 01952288 (Apr. 18, 1996) (citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). The statement from Complainant identifies the type of harm he suffered and adequately ties that harm directly to the Agency's actions. Based on Complainant's representations of harm, we find that the weight of our prior decisions supports an award of \$20,000 in non-pecuniary compensatory damages. See Hyde v. Dep't, EEOC Appeal No. 0720110003 (Jan. 6, 2012) (awarded \$7,000 in non-pecuniary compensatory damages where agency denied a religious accommodation and complainant suffered mental anguish from having to work on Sundays, preventing him from worshiping that day over an eight month period); see also, White v. Dep't of Defense, EEOC Appeal No. 0120103295 (Feb. 27, 2012) (awarded \$25,000 in non-pecuniary compensatory damages where agency denied a religious accommodation and complainant suffered emotional distress including difficulty sleeping, fatigue, and hair loss as a result of not being allowed to participate in Sunday worship for a 13-month period).

CONCLUSION

The Agency's March 31, 2020 final decision concerning compensatory damages is hereby MODIFIED. The matter is REMANDED to the Agency for compliance with the following ORDER.

ORDER

To the extent it has not already done so, the Agency is ORDERED, within sixty (60) calendar days from the date this decision is issued, to pay Complainant \$20,000 in nonpecuniary compensatory damages.

The Agency is further directed to submit a report of compliance, as provided, in the statement entitled "Implementation of the Commission's Decision."

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he 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 (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

July 27, 2021
Date