



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Office of Federal Operations

P.O. Box 77960

Washington, DC 20013

[REDACTED]
Ebony M.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
U.S. Postal Service
(Southern Division),
Agency.

Appeal No. 2020004813

Agency No. 4G320002418

DECISION

On June 26, 2020, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), from the Agency's May 28, 2020 final decision concerning Complainant's entitlement to compensatory damages for a 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 Agency's final decision.

BACKGROUND

At the time of events giving rise to this compliance action, Complainant worked as an EAS-17 Supervisor, Customer Service, at the Agency's Post Office in Thomson, Georgia.

On February 28, 2018, Complainant filed an EEO complaint alleging that the Agency subjected her to discrimination and a hostile work environment on the bases of race (African-American), sex (female), disability (ankle, shoulders) and her genetic information (daughter's Attention Deficit/Hyperactivity Disorder (ADHD)) as evidenced by multiple incidents. Following an investigation, the Agency issued a decision finding that Complainant was not subjected to discrimination or a hostile work environment as alleged.

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.

In Ebony M. v. U.S. Postal Serv., EEOC Appeal 2019001771 (Mar. 12, 2020), we affirmed the Agency's decision in part concluding that Complainant was not subjected to discrimination or a hostile work environment; however, we found that the Agency had violated the Rehabilitation Act when Complainant's supervisor impermissibly disclosed information about Complainant's medical condition to unauthorized persons. We remanded the matter to the Agency and ordered the Agency, among other things, to conduct a supplemental investigation to determine whether Complainant was entitled to compensatory damages as a result of the unauthorized medical disclosure.

In compliance with our order, the Agency issued a compensatory damages final decision on May 28, 2020. In the decision, the Agency initially noted that Complainant failed to provide any relevant information in support of her claim for compensatory damages. Further, the Agency determined that Complainant was not entitled to pecuniary compensatory damages. Next, the Agency reasoned that "in your situation, no medical information was disclosed, and you offered no plausible evidence of harm." As a result, the Agency awarded Complainant \$500.00 in non-pecuniary compensatory damages. The instant appeal followed.

ANALYSIS AND FINDINGS

Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under the Rehabilitation Act 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).

To receive an award of compensatory damages, a complainant must demonstrate he or she has been harmed as a result of the agency's discriminatory action; the extent, nature, and severity of the harm; and the duration of, or expected duration of, the harm. Ashlea P. v. U.S. Postal Service, EEOC Appeal No. 0120141369 (Apr. 19, 2016).

Regarding pecuniary damages, Complainant failed to provide any evidence of out-of-pocket expenses connected to the confidential medical disclosures at issue. Thus, we agree with the Agency that Complainant did not establish that she was entitled to pecuniary damages because she has not shown that any such damages were caused by the discrimination at issue.

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, and loss of health. See EEOC Notice No. 915.302 at 10 (July 14, 1992). There is no precise formula for determining the amount of damages for non-pecuniary losses except that the award should reflect the nature and severity of the harm and the duration or expected duration of the harm. See Loving v. Dep't of the Treasury, EEOC Appeal No. 01955789 (Aug. 29, 1997). The Commission notes that non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than punish the Agency for the discriminatory action.

Furthermore, compensatory damages should not be motivated by passion or prejudice or “monstrously excessive” standing alone but should be consistent with the amounts awarded in similar cases. See Ward-Jenkins v. Dep't of the Interior, EEOC Appeal No. 01961483 (Mar. 4, 1999).

Evidence from a health care provider or other expert is not a mandatory prerequisite for recovery of compensatory damages for emotional harm. See Lawrence v. U.S. Postal Serv., EEOC Appeal No. 01952288 (Apr 18, 1996) citing Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Objective evidence of compensatory damages can include statements from Complainant concerning his emotional pain or suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character or reputation, injury to credit standing, loss of health, and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct. Id. Statements from others including family members, friends, health care providers, other counselors (including clergy) could address the outward manifestations or physical consequences of emotional distress, including sleeplessness, anxiety, stress, depression, marital strain, humiliation, emotional distress, loss of self-esteem, excessive fatigue, or a nervous breakdown. Id. Complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his burden in this regard. Id. The more inherently degrading or humiliating the defendant's action is, the more reasonable it is to infer that a person would suffer humiliation or distress from that action. Id. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. Id.

Complainant stated that she was seeking \$150,000 in compensatory damages. In her affidavit submitted on May 5, 2020, Complainant stated she is seeking the maximum amount of compensatory damages. Although the Agency stated that Complainant did not submit documentation, our reading of the record shows that she submitted an EEO Investigative Affidavit for Compensatory Damages on May 5, 2020. Complaint file, Volume 1, pp. 45-48. She attached 39 pages.

In this case, the record establishes that the disclosures first occurred in April 2017 and continued up to and including at least December 4, 2017. See Exhibit 9 (witness stated that the supervisor said Complainant had a foot injury). Complaint File, Volume 1, p. 152. In support of her claim for damages, Complainant attested that she developed anxiety. She also stated she experienced insomnia where she could not sleep, but she acknowledged this was a pre-existing condition. Additionally, Complainant stated that her self-esteem was altered. She included testimonial evidence in support of her claim that she was harmed by the supervisor's actions, which she alleged continued even after the supervisor retired. Complainant's evidence included a notation that she was told that nothing could be done since the supervisor had retired.

We find that Complainant has shown she experienced embarrassment, humiliation, anxiety, loss of self-esteem, and loss of sleep, for a period that began in April 2017, but continued to the end of 2017, due to the disclosures. Complainant stated that her self-esteem has been altered, because everyone looked at her as “trouble.”

She referenced the embarrassing statement she made to the people supervised by Complainant to “destroy my character and so they will not respect my leadership.” Complaint File, Vol. 1, p. 71. We find she has shown harm that was related to the supervisor’s disclosures.

We find, therefore, that the Agency’s award of \$500.00 in non-pecuniary damages was inappropriate in light of the amounts awarded in similar cases, the severity of harm, and the duration of harm. Considering the evidence of non-pecuniary damages, the Commission finds that Complainant is entitled to non-pecuniary damages in the amount of \$2,000.00.² An award of \$2,000.00 takes into account the nature, severity, and duration of Complainant’s suffering, as well as her pre-existing medical conditions. This amount is also consistent with other non-pecuniary compensatory damages awards given in similar cases and is not “monstrously excessive” standing alone, nor derived from passion or prejudice. See e.g. Michael M. v. U.S. Postal Serv., EEOC Appeal No. 2020001464 (Aug. 3, 2021) (\$2,000 awarded for single instance of unauthorized confidential medical information); Becki P. v. Dep’t. of Transp., EEOC Appeal No. 072018004 (Nov. 15, 2018) (complainant presented evidence that her pre-existing condition had worsened as a result of confidential medical disclosure and she suffered from depression, emotional distress and embarrassment); Foster M. v. Dep’t of Energy, EEOC Appeal No. 0120182008 (Dec. 13, 2019) (\$2,000 awarded where evidence that complainant experienced worsening sleep issues, anxiety, and adjustment disorder as a result of the Agency’s violation of the Rehabilitation Act).

CONCLUSION

We MODIFY the Agency’s final decision on compensatory damages and REMAND the matter to the Agency for further action in accordance with this decision and the ORDER herein.

ORDER (C0618)

Within 60 days of the date this decision is issued, to the extent it has not already done so, the Agency shall pay Complainant \$2,000 in non-pecuniary, compensatory damages.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled “Implementation of the Commission’s Decision.” The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency’s calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

² We note that the Agency has provided evidence that it has paid Complainant the amount of \$500.00.

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).

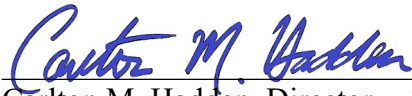
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

January 12, 2022

Date