



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

[REDACTED]  
Michael G.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2021002218

Agency No. 200H-0518-2016103787

**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 January 25, 2021, final decision concerning his equal employment opportunity (EEO) complaint alleging 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. For the following reasons, the Commission MODIFIES the Agency's final decision.

In Rusty C. v. Dep't of Veterans Affairs, EEOC Appeal No. 2019005662 (Sept. 30, 2020), the Commission found that Complainant was subjected to a hostile work environment on the basis of race (Asian) in connection with multiple incidents of harassment by a coworker (CW) and the Agency's failure to take immediate and appropriate remedial action following reports of the harassment. In its ensuing order for relief, the Commission ordered the Agency to conduct a supplemental investigation into Complainant's entitlement to compensatory damages, provide training for and consider disciplining the responsible management officials, pay appropriate attorney's fees, and to post a notice.

Following a supplemental investigation, the Agency issued a final decision awarding Complainant \$2,761.00 in pecuniary compensatory damages, \$30,000.000 in non-pecuniary compensatory damages, and restoration of two days of leave incurred as a result of the discriminatory harassment.

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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.

On appeal, Complainant contends that the award was inadequate and requested that the award be increased to “\$100,000 or such other amount as the Commission shall decide is necessary and appropriate to make him whole for the emotional distress he suffered as a consequence of a hostile environment.” Complainant’s appeal did not address any element of relief other than non-pecuniary compensatory damages.

### 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, 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”).

#### *Non-Pecuniary Compensatory Damages*

Non-pecuniary compensatory damages cover 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 Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302 at 10 (July 14, 1992). There are no specific guidelines 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 averred that he was harassed by CW between December 2015 and July 2016, and again between February 2017 and March 2018, for a total of 18 months. Complainant's Affidavit (CA), pp. 4, 6. He stated that he experienced stress, moodiness, loss of appetite, weight loss, and strained relationships with his wife and daughter. He also stated that on December 29, 2015, he slipped on a patch of ice and suffered a broken finger because CW failed to clear and salt the entrance ramp to the boiler plant. CA, pp. 4-6. At the same time, however, Complainant acknowledged that he had since gained back the weight he had lost and that he was no longer experiencing emotional distress. CA, pp. 4, 7. Complainant's wife stated that while CW was present at the boiler plant, Complainant became moody, quiet and withdrawn, and would often wake up during the night and sit alone in the living room for a long time. She also stated that Complainant's behavior and demeanor returned to normal when CW was not present at the boiler plant and that Complainant had experienced renewed mental stress when CW returned in 2017. Spouse's Affidavit, ¶¶ 5-7, 9. Complainant's daughter affirmed that her father had lost his appetite and that he had become so withdrawn that he stopped taking her to dinner on his day off. Daughter's Affidavit, ¶¶ 3-5, 7.

The record on damages includes three progress reports prepared by a nurse practitioner setting forth Complainant's diagnoses and treatment history. The first report, dated January 28, 2016, made no mention of any symptoms of stress, anxiety or depression related to his job. This report did mention that Complainant weighed 144 pounds. Complainant's Medical Records (CMR), pp. 8-16. The second progress report dated February 25, 2016, states: "General: Seen today for routine physical exam. Feels well, denies any complaints. \*\*\* Weight: 143 pounds." CMR, pp. 5-7. The third progress report, dated September 21, 2017 states: "Depression Screening: Q: In the last 2 weeks have you been bothered by little interested or pleasuring in doing things? A: No. Q: Feeling down, depressed or hopeless? A: No. General: Doing well overall. Feels good. Some stress at work due to lawsuit of some kind. \*\*\* Weight: 138 pounds." CMR, pp. 1-4. Based upon the foregoing, we find that Complainant has presented enough evidence to establish that the harm he suffered was caused by the discriminatory conduct of CW.

The size of a compensatory damages award will be governed by the severity and duration of the harm suffered and the documentation of both the harm and the causal connection to the Agency's acts of discrimination.

In general, the more severe the harm, the longer its duration, the stronger its connection to the Agency's discriminatory acts, and the more thorough its documentation, the higher the award will be. Miquel G. v. Dep't of Transportation, EEOC Appeal No. 2019002129 (Sept. 23, 2021).

Ultimately, we find that an award of \$35,000 would be appropriate in this case. This amount is consistent with amounts awarded in similar cases and is neither motivated by passion or prejudice nor monstrously excessive. Ward-Jenkins, *supra*. See Bill A. v. U.S. Postal Serv., EEOC Appeal No. 2020003332 (June 3, 2021) (\$35,000 in non-pecuniary compensatory damages found appropriate based on the complainant's testimony that as a result of discriminatory actions that took place between May 2017 and December 2018, his preexisting gastrointestinal issues, major depressive disorder, and moderate to severe anxiety had been exacerbated); Nannie D. v. Dep't of the Army, EEOC Appeal No. 0720150021 (Apr. 28, 2016) (\$35,000 in non-pecuniary compensatory damages found appropriate where the complainant showed that for a period of 14 months, she suffered stress, anxiety, fear of losing her job, became easily frustrated and angry, had trouble sleeping, and that the harassment negatively affected her relationship with her daughter).

#### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, we MODIFY the Agency's final decision regarding non-pecuniary compensatory damages and REMAND the matter for further action in accordance with this decision and the ORDER below.

#### ORDER (C0618)

To the extent that it has not already done so, within 60 days of the date this decision is issued, the Agency shall pay Complainant \$35,000.00 in non-pecuniary compensatory damages and \$2,761.00 in 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.

#### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/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 receipt of this decision. 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).

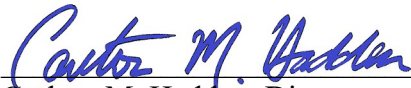
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

June 29, 2022

Date