



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

[REDACTED]  
Natalie S.,<sup>1</sup>  
Complainant,

v.

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

Appeal No. 2021003486

Hearing No. 471-2015-00058X

Agency No. 4J-481-0155-14

**DECISION**

On May 3, 2021, 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 8, 2021, final order concerning her 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. and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, we AFFIRM the Agency's final order.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a City Carrier Assistant, Q-01, at the Clinton Macomb Annex in Macomb, Michigan.

On November 10, 2014, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African American), color (black), disability (physical), and reprisal for prior protected EEO activity under Title VII and the Rehabilitation Act 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. On dates to be specified, Complainant was sent home when the outside temperature exceeded her medical restrictions;
2. On August 7, 2014, Complainant was required to attend a District Reasonable Accommodation meeting at her facility; and
3. On a date(s) to be specified, management discussed her medical condition with her coworkers.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. The AJ assigned to the matter ultimately held a hearing on March 7-8, 2016.

On February 15, 2021, the AJ issued an interim decision on the merits of the complaint, which was partially in Complainant's favor. In the decision, the AJ found that Complainant failed to prove her allegations of discrimination on claims 1 and 2. Specifically, with regard to claim 1, the AJ found that the probative evidence showed that Complainant had in fact been accommodated. As for claim 2, the AJ found that Complainant's "mere attendance" at the meeting "was not an adverse action for disparate treatment purposes." Furthermore, the AJ found that the Agency had legitimate, nondiscriminatory reasons for holding the meeting, namely that the meeting was held because Complainant had requested a reasonable accommodation. The AJ concluded that there was no evidence in the record to establish pretext.

With regard to claim 3, however, the AJ determined that testimonial evidence from Complainant and her representative during the hearing more likely than not established that Complainant's second level supervisor admitted that the 204B supervisor at the Annex had disclosed Complainant's protected medical information to Complainant's coworkers. Based on this admission, as well as the totality of the record, the AJ concluded that "Complainant was subjected to disability discrimination when the Agency impermissibly disclosed her medical restrictions to her coworkers" in violation of the Rehabilitation Act.

To remedy the finding of discrimination, the AJ awarded Complainant \$3,500.00 in nonpecuniary compensatory damages to compensate her for the emotional distress that she suffered as a result of the Agency's action. In assessing the award, the AJ relied on the following Commission cases: Wilda v. Dep't of Homeland Sec., EEOC Appeal No. 0120142660 (Dec. 2, 2016); Daley v. Dep't of Vet. Affs., EEOC Appeal No. 0120091580 (Jan. 27, 2012); and Patterson v. Dep't of the Air Force, EEOC Appeal No. 07A20128 (Dec. 22, 2003). Additionally, the AJ ordered the Agency to provide EEO training to the responsible management official (*i.e.*, the 204B supervisor) and post a notice of the discrimination at the facility.

The AJ also determined that Complainant was entitled to attorney's fees, as she was the prevailing party in the matter. To determine the amount of attorney's fees owed to Complainant, the Agency ordered Complainant to submit a fee petition detailing her fees.

Complainant submitted the ordered fee petition on February 23, 2021. In her petition, Complainant initially sought a total of \$22,295.50 in attorney's fees, reflecting 71.3 hours of work at \$305.00 per hour. The Agency, however, vehemently objected to Complainant's fee petition and argued that based on its calculations, Complainant was only entitled to attorney's fees in the amount of \$5,294.19, reflecting a 66% reduction from the lodestar value of \$16,043.00, due to Complainant's limited success on her complaint. After considering the Agency's response, Complainant conceded that the Agency's calculation of \$16,043.00 reflected the true lodestar value; however, she requested that the lodestar value be reduced by 33% rather than 66% because claims 1 and 3 were inextricably intertwined.

On March 4, 2021, the AJ issued a final decision, formalizing the findings in the interim decision and addressing the parties' contentions regarding attorney's fees. In assessing attorney's fees, the AJ ultimately determined that claims 1 and 3 were distinct from each other, as they each had different standards of proof. However, the AJ conceded that "there is a point at the beginning of the attorney's relationship with his client that all of the claims are intertwined while the [attorney] learns of his client's allegations, researches those allegations, considers the allegations, and then decides which allegations to pursue." As such, the AJ determined that all of the work up to the last date prior to the attorney drafting the complaint was compensable. In all, the AJ awarded Complainant a total of \$7,419.43 in attorney's fees.

On April 8, 2021, the Agency issued a final order fully implementing the AJ's March 4, 2021, decision. This appeal followed.

### CONTENTIONS ON APPEAL

Through her attorney, Complainant "requests that the Commission reduce the [lodestar] calculation of attorney fees of \$16,043.00 by 33% rather than by the 66% ordered by the [AJ], leaving a \$10,588.38 reasonable attorney fee." In so arguing, Complainant reiterates that the AJ's reduction was too excessive given that claims 1 and 3 were inextricably intertwined. Furthermore, Complainant implies that since the hearing phase is an adjudicatory proceeding that is intended to provide complainants with the opportunity to develop the record, she is entitled to recoup fees related to the hearing.

The Agency opposes the appeal and requests that the Agency affirm its final order, which, in relevant part, implemented the AJ's award of \$7,419.43 in attorney's fees.

## ANALYSIS AND FINDINGS

### *Preliminary Matters*

Initially, we note that neither party has, on appeal, challenged the AJ's assessment of the claims or the award of \$3,500.00 in nonpecuniary compensatory damages. As Complainant's appeal solely centers on the AJ's decision to reduce the award of attorney's fees, we shall exercise our discretion to limit our review to that issue only. See Mario G. v. U.S. Postal Serv., EEOC Appeal 0120170779 (Aug. 30, 2017) ("The Commission exercises its discretion to review only the issues specifically raised in Complainant's appeal and declines to review uncontested aspects of the Agency's final order."), citing EEOC Management Directive for 29 C.F.R. Part 1614, Chap. 9, at § IV.A (Aug. 5, 2015) ("Although the Commission has the right to review all of the issues in a complaint on appeal, it also has the discretion not to do so and may focus only on the issues specifically raised on appeal").

### *Attorney's Fees*

The Commission's regulations require federal agencies to award attorney's fees and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(ii).

Attorney's fees are calculated by determining the lodestar, which consists of the number of hours reasonably expended multiplied by a reasonable hourly rate. All hours reasonably spent to process the complaint are compensable; however, the number of hours should not include excessive, redundant, or otherwise expenditures of time. Attorney's fees are also not recoverable for work on unsuccessful claims. Blum v. Stenson, 465 U.S. 886 (1984); and Hensley v. Eckerhart, 461 U.S. 424 (1983). Claims are fractionable or unrelated when they involve distinctly different claims for relief that are based on different facts and legal theories. Hensley, 461 U.S. at 434-35. In cases where a claim for relief involves "a common core of facts or will be based on related legal theories," however, a fee award should not be reduced simply because the plaintiff failed to prevail on every contention raised in the lawsuit. Id. at 435. "The hours spent on unsuccessful claims should be excluded in considering the amount of a reasonable fee only where the unsuccessful claims are distinct in all respects from the successful claims." EEO MD-110, at Chap. 11 § VI.F (citing Hensley, 461 U.S. at 440).

There is a strong presumption that the number of hours reasonably expended multiplied by a reasonable hourly rate, the lodestar, represents a reasonable fee, but this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency. 29 C.F.R. § 1614.501(e)(2)(ii)(B).

The circumstances under which the lodestar may be adjusted are extremely limited, and are set forth in EEO MD-110, Chap. 11 § VI.F.

A fee award may be reduced: in cases of limited success; where the quality of representation was poor; the attorney's conduct resulted in undue delay or obstruction of the process; or where settlement likely could have been reached much earlier, but for the attorney's conduct. Id. The party seeking to adjust the lodestar, either up or down, has the burden of justifying the deviation. Id.

The First Circuit in Coutin v. Young & Rubicam, 124 F.3d 331, 337 (1st Cir. 1997), provides guidance as to the appropriate standard of review for an AJ's determination of attorney's fees:

We review fee awards deferentially, according substantial respect to the trial court's informed discretion. See Brewster v. Dukakis, 3 F.3d 488, 492 (1st Cir. 1993). We will disturb such an award only for mistake of law or abuse of discretion. See United States v. Metropolitan Dist. Comm'n, 847 F.2d 12, 14 (1st Cir. 1988). In this regard, an abuse of discretion occurs "when a material factor deserving significant weight is ignored, when an improper factor is relied upon, or when all proper and no improper factors are assessed, but the court makes a serious mistake in weighing them." Foster v. Mydas Assocs., Inc., 943 F.2d 139, 143 (1st Cir. 1991) [internal quotation marks and citations omitted], 124 F.3d at 336.

Therefore, in this appeal, we will determine if the AJ erred as a matter of law or abused his discretion.

Having reviewed the record, we find that the AJ did not abuse his discretion in reducing Complainant's claimed hours, as we find Complainant's successful claim to be fractionable from the remaining two claims. In this regard, we note that the AJ found that the 204B supervisor's disclosure of Complainant's protected medical information, by its very nature, constituted a violation of the Rehabilitation Act on its face. The AJ, however, found no merit to Complainant's allegations regarding the alleged denial of her request for reasonable accommodation or her claim of discrimination when she was directed to attend a meeting. As the finding of discrimination on claim 3 was based on a materially different legal standard than her unsuccessful claims, we concur with the AJ's decision to reduce Complainant's claimed hours to reflect Complainant's limited success. See Mario G. v. Dep't of the Air Force, EEOC Appeal No. 0120180942 (June 11, 2019) (affirming the agency's decision to reduce the claimed hours, where complainant prevailed one claim involving a single instance of a per se violation); see also Colene M. v. Dep't of Vet. Affs., EEOC Appeal No. 2019005810 (July 19, 2021). We also note that Complainant received attorney's fees for work performed during the hearing subject to the above noted reduction. As we find no abuse of discretion, we must affirm the AJ's award of \$7,419.43 in attorney's fees.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we AFFIRM the Agency's final order and REMAND the matter in accordance with the ORDER below.

### ORDER

To the extent the Agency has not done so already, the Agency shall take the following actions:

1. Within **ninety (90) calendar days** from the date this decision is issued, the Agency shall pay Complainant:
  - a. \$3,500.00 in nonpecuniary compensatory damages; and
  - b. \$7,419.43 in attorney's fees.
2. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall provide four hours of interactive EEO training to the 204B supervisor.<sup>2</sup> The required training shall address management's responsibilities with regard to eliminating discrimination and reprisal in the workplace.
3. Within **ninety (90) calendar days** of the date this decision is issued, the Agency shall consider taking disciplinary action against the 204B supervisor. The Commission does not consider training to be a disciplinary action. The Agency shall report its decision to the Commission and specify what, if any, action was taken. If the Agency decides not to take disciplinary action, then it shall set forth the reasons for its decision not to impose discipline.
4. The Agency shall post a notice in accordance with the paragraph entitled, "Posting Order."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

### POSTING ORDER (G0617)

The Agency is ordered to post at the Clinton Macomb Annex in Macomb, Michigan, copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily

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<sup>2</sup> The 204B supervisor is identified on page 00104 of the ROI.

posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

#### 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, 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.

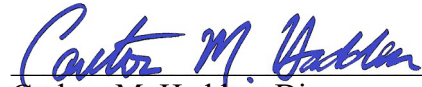


Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the 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:

  
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Carlton M. Hadden, Director  
Office of Federal Operations

July 7, 2022  
Date