



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

[REDACTED]
Isaiah R.,¹
Complainant,

v.

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

Appeal No. 2021001506

Hearing No. 471-2015-00149X

Agency No. 4J-481-0134-14

DECISION

On November 23, 2020, 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 October 28, 2020 final order concerning an 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., Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq., and the Age Discrimination in Employment Act of 1967 (ADEA), as amended, 29 U.S.C. § 621 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Letter Carrier Technician, Position Level Q-02, at the Agency's Highland Park/Hamtramck Carrier Annex and the Agency's Grand Shelby Station in Detroit, Michigan.

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 October 6, 2014, Complainant filed an formal EEO complaint alleging that the Agency discriminated against him on the bases of sex (male), religion (Christian), color (reddish hue/reddish hair), disability (left ACL tear, irritable bowel syndrome, peptic ulcers), age (56), and in reprisal for prior protected EEO activity when:

1. On December 10, 2014 and other dates, management allowed loud, violent, and profane music to be played in the office.
2. He was denied acting supervisor details.
3. On December 26-27, 2014, and other dates, he was denied overtime opportunities.
4. On January 10, 2014, the union and management would not announce Complainant's birthday, and his co-workers harassed and mocked him by making derogatory remarks to him and about him, and by writing inappropriate remarks on a piece of paper that was given to him, and management did nothing.
5. On April 7, 2015, he was told that mail was found in his car, and that he would be written up.
6. On April 17, 2015, his supervisor threatened that he would be written up after someone complained about him talking to them about turning up the radio.
7. On May 22, 2015, his co-workers harassed him; and his supervisor called him in the office and told him that he will receive a letter if another complaint against him come in.
8. On June 21, 2016, he was sent home.
9. On June 22, 2016, he was issued a Letter of Warning.
10. On June 28, 2016, he requested Department of Labor forms, and the supervisor said, "Get the hell out of my office before I beat your ass."
11. On June 29, 2016, the supervisor touched him and said she was going to hurt him.
12. On July 5, 2016, he was accused of bringing mail back, not working within his restrictions, and was instructed to get off the clock.
13. On July 6, 2016, the supervisor threatened to write him up.
14. On July 8, 2016, the supervisor tried to provoke him by saying, "He look nice. But he is so trifling. Yes he's cute. He won one, but I'm going to win the rest."
15. Co-workers lied to management about things he did.

16. Co-workers cursed at him and management did nothing.
17. A co-worker parked next to him to intimidate him.
18. On January 27, 2016, the supervisor threatened to write him up.
19. On December 3, 2015, a co-worker said, "Your religion turns people off."
20. During March, May and July 2016, the supervisor sexually harassed him and touched him inappropriately.
21. On June 9, 2016, the supervisor came out on his route and harassed him in front of the public.
22. From May through June 2016, he was not permitted to work 8 hours.
23. From May through September 2016, he was denied overtime opportunities.

After an investigation, the Agency provided Complainant with a copy of the report of investigation and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). Complainant timely requested a hearing and the initially assigned AJ (AJ1) held a hearing on November 14 - 17, 2017.

On February 25, 2020, in the interest of efficiency and as an inventory control measure, EEOC transferred this case to from its Detroit Field Office to the Houston Field Office, which then assigned another AJ (AJ2) to render a decision. On September 29, 2020, AJ2 issued a decision finding Complainant failed to prove discrimination twenty-two of his claims. However, on Claim 4 alone, AJ2 found that Complainant proved that the Agency subjected him to discrimination as alleged. The Agency subsequently issued a final order adopting AJ2's findings.

The instant appeal followed. On appeal, Complainant argues that AJ2 had improperly found no discrimination for most of his claims because she had erroneously relied on a testimony from acting supervisor that Complainant accused of sexually harassing him. Complainant argues that that acting supervisor's testimony was not credible. Complainant specifically makes reference to a local news article, published in late 2017, which reported that the acting supervisor had been arrested for theft. Complainant asserts further that, if he had been a female, his sexual harassment claims would have been substantiated based on the evidence he presented. Complainant also contested AJ2's finding that Complainant had impeached himself while testifying during the hearing. Instead, Complainant attributed inconsistencies in his testimony to AJ1's denying his requests for breaks during the hearing. Complainant maintained that AJ2 should have increased the non-pecuniary compensatory damages awarded to \$200,000 for the emotional harm he suffered as a result of daily workplace bullying between 2014 and 2017.

ANALYSIS AND FINDINGS

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." See Univ. Camera Corp. v. Nat'l Labor Rel. Bd., 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

EEOC AJs have full responsibility for the adjudication of the complaints, including overseeing the development of the record, and have broad discretion in the conduct of hearings. 29 C.F.R. § 1614.109(a) and § 1614.109(e). Given the AJ1's broad authority to regulate the conduct of a hearing, Complainant faced a very high bar to prove that AJ1 somehow abused her discretion. Trina C. v. U.S. Postal Serv., EEOC Appeal No. 0120142617 (Sept. 13, 2016), (affirming that EEOC Regulation 29 C.F.R. § 1614.109(e) gives AJs wide latitude in directing terms, conduct, and course of EEOC administrative hearings). In this instance, we considered Complainant's challenges and reviewed AJ1's conduct within the hearing transcript. Nevertheless, we find that AJ1 acted well within her authority and did not show bias against Complainant. The hearing transcript revealed that AJ1 had ruled favorably on some objections from Complainant's attorney. We fail to see impropriety in the AJ1's decision to limit both parties to only three official breaks during the hearing.

We now turn to the merits of the decision on appeal. AJ2's credibility determinations that were based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact-finder would not credit it. EEOC Management Directive 110, Ch. 9 at § VI.B. (Aug. 5, 2015). We observed that the hearing transcript included testimony from fifteen individual witnesses, not including Complainant or the acting supervisor at Grand Shelby Station who he accused of sexual harassment.

Furthermore, we find that, beyond his own assertions, Complainant lacked corroborating evidence to prove that he was subjected to sexual harassment.

Findings on Discrimination Claims

Complainant's remaining other discrimination claims were also considered in the context of a hostile working environment or harassment. Complainant failed to establish that those actions at issue were based on his protected classes. To establish a claim of harassment, Complainant must show that: (1) he belongs to a statutorily protected class; (2) he was subjected to harassment in the form of unwelcome verbal or physical conduct involving the protected class; (3) the harassment complained of was based on his statutorily protected class; (4) the harassment had the purpose or effect of unreasonably interfering with his work environment or creating an intimidating, hostile, or offensive work environment; and (5) there is a basis for imputing liability to the employer. See Henson v. City of Dundee, 682 F.2d 897 (11th Cir. 1982). Further, the incidents must have been sufficiently severe or pervasive to alter the conditions of a complainant's employment and create an abusive working environment. See Harris v. Forklift Sys., Inc., 510 U.S. 17, 21 (1993). The harasser's conduct is evaluated from the objective viewpoint of a reasonable person in the complainant's circumstances. Enforcement Guidance on Harris v. Forklift Systems Inc., EEOC Notice No. 915.002 at 6 (Mar. 8, 1994).

In the instant matter, there is no evident connection between the events that Complainant has alleged to be discriminatory and his protected classes. For example, regarding overtime, the union steward who had assisted Complainant with some of his grievances, explained that overtime was distributed equitably among the facility's letter carriers. However, when letter carriers did not answer the Agency's calls soliciting them to work overtime, then management would instead call the next letter carrier on the overtime desired list. To the extent that Complainant missed out on overtime, it was because management could not reach him on his off-days to offer overtime.

Given Complainant's own conduct, moreover, AJ2 appropriately found that Complainant had diminished credibility concerning all but one of Complainant's harassment accusations. The evidence shows that Complainant had developed a reputation for antagonizing co-workers. Complainant openly declared his political party affiliation and engaged in political debates with co-workers which they found disruptive and unpleasant. When asked to cease discussing his political and religious opinions, Complainant came to work with his mouth taped and a sign indicating that he was recording everything that others said.

Evidence showed the many of the employees in his workplace had nicknames at work and Complainant gained the nickname "preacher," which he embraced at times, because he gratuitously shared his religious views with co-workers. Complainant generated complaints from his peers because he would make inflammatory statements to them, such as telling them they were "going to hell." Complainant told co-workers that women should be more submissive to their husbands. During the hearing, Complainant admitted antagonizing a Muslim co-worker by stating that Islam was a violent religion.

A witness testified that Complainant had disparaged South Asians by saying that his supervisor should be back in India instead of living and working in the United States. Complainant asked another letter carrier to write a false statement against that supervisor. When managers gave Complainant verbal counselling, he would respond with threats to file grievances and “EEOCs.” Apparently, Complainant had boasted to his colleagues about his plan to retire after acquiring money by filing a discrimination complaint. In sum, we find that Complainant, rather than Agency management, frequently provoked hostility within his own work environment. As such, we conclude that the AJ did not err in determining Complainant failed to prove discrimination or unlawful retaliation with regard to the vast majority of his claims.

However, with respect to claim (4), it was noted that previously, after other letter carriers had complained to supervisors about Complainant’s provocative or disrespectful behavior, management had conducted inquiries and counseled Complainant. In contrast, when Complainant reported to his supervisor that he found the birthday card incident hurtful, a manager gave a floor talk conveying a brief general message on respect and dignity. As such, we see no reason to disturb the AJ’s conclusion that the Agency should have taken stronger corrective action and its failure to do so was the result of unlawful retaliatory animus towards Complainant.

Award of Damages: Claim 4

With respect to non-pecuniary compensatory damages, these are equitable losses that are not subject to precise quantification, including emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, harm to reputation, diminished credit, or impaired health. Enforcement Guidance: Compensatory and Punitive Damages Available under § 102 of the Civil Rights Act of 1991 (EEOC Damages Guidance), EEOC Notice No. 915.002 (July 14, 1992). Objective evidence in support of a claim for non-pecuniary compensatory damages claims includes statements from Complainant and others including co-workers, and medical professionals. Carle v. Dep’t of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). Non-pecuniary compensatory damages must be limited to compensation for the actual harm that a complainant has 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 Damages Guidance at 13. Additionally, the amount awarded should not be “monstrously excessive,” should not be the product of passion or prejudice. Non-pecuniary compensatory damages should be consistent with amounts awarded in similar cases. Jackson v. U.S. Postal Serv., EEOC Appeal No. 01972555 (Apr. 15, 1999) (citing Cygnar v. City of Chicago, 865 F. 2d 827, 848 (7th Cir. 1989)).

Complainant bore the burden of proving the existence, nature and severity of his emotional harm. Additionally, Complainant must establish a causal relationship between the alleged harm and the discrimination. Man H. v. Dep’t. of Homeland Sec., EEOC Appeal No. 0120161218 (May 2, 2017). Absent proof of harm and causation, Complainant is not entitled to non-pecuniary compensatory damages, even if where unlawful discrimination has been found. Wilda M. v. U.S. Postal Serv., EEOC Appeal No. 0120141087 (Jan. 12, 2017).

We note that AJ2, in that Complainant has only prevailed on Claim 4. The Agency has not contested the finding on this claim. In Claim 4, AJ2 found that that, on January 10, 2014, other letter carriers had called Complainant “red-headed” and a “jack-legged preacher.” These other letter carriers also gave Complainant an ersatz birthday card on the back of a manila envelope which several coworkers had signed. Some had also written insults including “bastard” and “to hell with you.” Complainant stated that he was shocked, embarrassed and sickened by the way his coworkers and supervisors had treated him. Complainant stated that he felt isolated and persecuted because the Agency took his complaint less seriously than those from his coworkers. We note that, however subjectively hurtful, “devil” and the other insults raised in this case are not the type of highly-charged epithets that dredge-up entire histories of oppression and bigotry. Glenn E. v. Dep’t of Def., EEOC Appeal No. 0120162412 (Feb. 2, 2018). Here, Complainant presented no evidence that he sought any medical attention as a result of the Agency’s handling of the birthday card incident. Although some witnesses during the hearing attested that Complainant had experienced more harsh treatment, there were no statements from care providers, family members or friends that supported Complainant’s justifications for an increased award.

On appeal, Complainant has demanded his compensatory damages increased to \$200,000, an amount that we find monstrously excessive. We determine, however, that the available evidence supports AJ2’s award of \$1,000. Taking into consideration the level of harm from the birthday-card incident as described in Complainant’s hearing testimony, we determine that an award of \$1,000 in non-pecuniary compensatory damages is adequate and consistent with awards from similar cases. In Teresa B. v. Dep’t of Def., EEOC Appeal No. 2020003557 (May 19, 2021), this Commission upheld an Agency award of \$2,300 in non-pecuniary compensatory damages where a majority of the claims were found non-discriminatory excepting the per se reprisal claims wherein a supervisor had made two statements that discouraged a complainant from engaging in further EEO activity. Natalie S. v. Dep’t of Veterans Affairs, EEOC Appeal No. 2021000139 (April 27, 2021) (affirming a final agency decision awarding \$1,500 in non-pecuniary compensatory damages for preventing union representation while a complainant pursued EEO claims). Marcel M. v. U.S. Postal Serv., EEOC Appeal No. 0120151062 (May 17, 2017) (upholding an AJ’s non-pecuniary compensatory damages award of \$1,500 following a five-year failure to remove a letter of warning from a complainant’s personnel file despite the agency’s affirmative obligation to do so). This amount sufficiently is adequate to compensate Complainant for the harm suffered as a result of the Agency’s actions and omissions.

CONCLUSION

Accordingly, we MODIFY the Agency's award of non-pecuniary compensatory damages and we REMAND this matter to the Agency to comply with the ORDER below.

ORDER

Within sixty calendar days from the date this decision is issued, the Agency shall pay Complainant \$1,000.00 in non-pecuniary compensatory damages.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement “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).

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 (S0610)

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. 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, 2022

Date