



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

[REDACTED]
Cecille W.,¹
Complainant,

v.

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

Appeal No. 2021001542

Hearing No. 410-2016-00216X

Agency No. 4K-300-0257-15

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 October 22, 2020 final action addressing compensatory damages, and a November 2, 2020 decision regarding attorneys' fees, for 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., and Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq.

BACKGROUND

During the period at issue, Complainant worked as a Rural Carrier, RCS-00/12, at the Agency's Douglasville Post Office in Douglasville, Georgia.

On October 20, 2015, Complainant filed a formal complaint, claiming discrimination based on race (African American), color (Black), and disability (on-duty injury), as well as unlawful retaliation for prior protected activity, when a requested reasonable accommodation was denied.

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.

Following an investigation, Complainant requested a hearing before an EEOC Administrative Judge. Hearings were held in November and December 2016, and in January 2017. Thereafter, the AJ issued a decision concluding no discrimination or unlawful retaliation had been established. The Agency thereafter issued a final order implementing the AJ's decision.

Complainant appealed. In EEOC Appeal No. 0120181915 (August 6, 2020), the Commission reversed the Agency's final order, concluding the evidence showed the Agency had violated the Rehabilitation Act by failing to reasonably accommodate Complainant's disabilities. The matter was remanded to the Agency to provide remedial relief, including providing an effective reasonable accommodation, determining the appropriate amount of back pay, a supplemental investigation regarding compensatory damages, training to responsible management officials, and attorneys' fees.

On October 22, 2020, the Agency issued a final decision on compensatory damages. On or about November 2, 2020, the Agency also issued a final decision regarding attorneys' fees. The Agency's specific findings on these matters will be delineated below.

Complainant filed the instant appeal challenging the amount of compensatory damages and attorney's fees awarded to her by the Agency.

ANALYSIS AND FINDINGS

Compensatory Damages

On October 22, 2020, the Agency a final decision on the amount of compensatory damages Complainant should be awarded. Regarding pecuniary damages, Complainant claimed that she suffered out-of-pocket expenses and that she would incur future expenses corresponding to medical care necessary to treat injuries allegedly caused by the discriminatory actions. The Agency found, however, that Complainant provided no documentation regarding medical attention necessary to merits such an award. Regarding non-pecuniary damages, the Agency found that \$22,500.00 in pain and suffering was appropriate in this case.

Pecuniary Damages

In her brief in support of her claim for compensatory damages, Complainant proffered that she suffered out-of-pocket medical expenses and would incur future medical expenses to treat injuries caused by the Agency's discriminatory actions. However, Complainant did not submit any evidence of these asserted out-of-pocket expenses associated with the discrimination involved in this case. Therefore, we concur with the Agency that the record does not support an award of any amount of pecuniary or future pecuniary damages.

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). Objective evidence in support of a claim for non-pecuniary damages claims includes statements from Complainant and others, including family members, co-workers, and medical professionals. See id.; see also Carle v. Dep't of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993). 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 \$22,500 in non-pecuniary damages. We find, however, that that an award of \$30,000 is more consistent with the amounts awarded by this Commission in similar cases. Complainant testified in her supplemental affidavit that the discrimination she experienced caused her stress, depression, sleepless nights, nightmares, sleepless nights, fear, and weight gain. Complainant further testified that when she was denied reasonable accommodation and no longer had income, it had a devastating impact on her and her family. As a result, Complainant realized that she was going to lose her house and had to move into her parent's basement.

Complainant's friend provided a statement indicating he has known Complainant for 15 years and having watched Complainant go through the discrimination, he noted that her “spirit” was negatively altered. He also noted that Complainant was more reclusive, introverted and short-tempered. In addition, Complainant's two sons stated that prior to the discrimination, their mother was outgoing, strong-willed, upbeat, and supportive toward her friends and family. They stated, however, that Complainant is now stressed, downtrodden and has started to drink alcohol. Moreover, Complainant's mother noted that Complainant has been paranoid, worried and no longer wants to socialize.

Regarding the Agency's argument that Complainant provided insufficient evidence to support her emotional distress, we note that 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. Department of the Navy, EEOC Appeal No. 01922369 (Jan. 5, 1993)). Objective evidence of compensatory damages can include statements from a complainant concerning 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.

As previously discussed, Complainant's testimony identifies the type of harm she suffered and adequately ties that harm directly to the Agency's actions. Based on Complainant's evidence of harm, we find that many of our prior decisions in similar circumstances support an award of \$30,000 in non-pecuniary compensatory damages. See Complainant v. Dept. of Agriculture, EEOC Appeal No. 0120131896 (May 22, 2014), request for reconsideration denied, EEOC Request No. 0520140443 (Feb. 6, 2015) (award of \$30,000 where the employee's own statements, together with statements from his treating physician, found sufficient to establish that the employee suffered exacerbation of existing physical conditions, including lumbar disc disease, osteoarthritis, and elevated cholesterol); Morgan v. Dept. of Agriculture, EEOC Appeal No. 0120101559 (Sept. 13, 2012) (award of \$30,000 where Complainant was diagnosed with hypertension and high blood pressure and he testified that his conditions worsened as a result of the Agency's discrimination. Complainant additionally testified that the discrimination caused harm to his career, status at the Agency, reputation, personal friendships, and relationship with his wife and family); Moore v. Dept. of Justice, EEOC Appeal No. 07A60017 (Oct. 17, 2006) (\$32,500 award for nonpecuniary, compensatory damages where complainant suffered from mental anguish, loss of enjoyment of life, humiliation, injury to reputation, loss of self-esteem, a pronounced lack of energy, and damage to familial relationships due to the Agency's actions).

Attorneys' Fees

When, as here, the Commission determines an agency has violated the Rehabilitation Act, an award of reasonable attorney's fees and costs is authorized. 29 C.F.R. § 1614.501(e). The fee award is ordinarily determined by multiplying a reasonable number of hours expended on the case by a reasonable hourly rate, also known as a "lodestar." See 29 C.F.R. § 1614.501(e)(2)(ii)(B); Bernard v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998).

Legal counsel for Complainant submitted a fee petition for \$37,459.00 in attorneys' fees and \$393.95 in costs for a total of \$37,852.95. On November 3, 2020 the Agency issued its final decision awarding Complainant \$30,814.40 in fees and expenses. In reaching this total, the Agency granted the requested \$393.95 in costs.

Complainant was represented by two attorneys, both requesting a rate of \$400 per hour in the fee petition. The Agency found adequate support for the \$400 rate for one of the attorneys ("Attorney 1"). However, the Agency reduced the hourly rate for the other attorney ("Attorney 2") to \$250 per hour for a total fee reduction of \$3,658.50.

In Blum v. Stenson, 465 U.S. 886 (1984), the U.S. Supreme Court held that reasonable hourly rates are to be measured by the prevailing market rates in the relevant community for attorneys of similar experience in similar cases. Counsel must submit evidence of their customary hourly rates for the same or similar work to substantiate his claim. Evidence of the prevailing community rate for the type of work for which counsel seeks compensation must be provided, such as affidavits from attorneys with similar qualifications describing what they have received

from fee-paying clients in compensable cases, recent fees awarded by the courts or through settlements to attorneys of comparable reputation and experience, and specific evidence of his or her billing practices during the relevant period. *Id.* See also, Brown v. Dep't of Justice, EEOC Appeal No. 0120072877 (Feb. 25, 2009) (citing MD-110, Chapter 11, Section VI). The burden is on the fee applicant to produce satisfactory evidence that the rate requested is comparable to those prevailing in the relevant community.

In her affidavit in the fee petition, Attorney 2 averred that at the time she performed the work she billed for the instant matter, she had only been practicing employment law for two years or less. Attorney 2 also did not provide a fee agreement or other evidence that she has been awarded \$400 an hour in a similar case or that the prevailing rate for attorneys with qualifications similar to hers was \$400 per hour. As such, we conclude that the Agency correctly reduced the rate awarded for work performed by Attorney 2 to \$250 per hour.

The Agency also concluded, that based on a review of the hours expended request, it should reduce the hours by an across-the-board 10% to reflect its conclusion that there were a number of duplicative and excessive charges. Specifically, the Agency found examples of billing entries reflecting excessive charges for reviewing brief emails and documents, and of separate billing entries for the same work. The Agency noted, for example, that Attorney 2 had two March 18, 2016 charges for separate billings for reviewing the date of the initial conference and the Acknowledgement and Order. The Agency correctly found, however, that the initial conference date was on the Acknowledgement Order and, therefore, did not require separate review. The Agency also noted a billing entry of one hour for attendance at an initial conference on April 26, 2016, but the initial conference took place, instead, on July 1, 2016. In another example regarding Attorney 1, the Agency found two separate and consecutive billing entries on November 16, 2016, for the same amount of time for "consultation with client." The Agency also determined further that there was an excessive charge on April 10, 2018, for review of the AJ's decision entering judgment, which consisted of one sentence. After careful review of the record, we find no reason to disturb the Agency's decision to apply the 10% reduction to the hours requested.

CONCLUSION

In summary, we MODIFY the Agency's final decision regarding compensatory damages by increasing the amount to \$30,000.00. We also AFFIRM the Agency's final decision regarding the award of attorneys' fees and expenses in the amount of \$30,814.40. The Agency shall comply with the following Order.

ORDER

To the extent that it has not already done so, the Agency is ordered to take the following remedial action within sixty (60) calendar days of the date this decision is issued:

1. Regarding compensatory damages, the Agency shall tender to Complainant \$30,000 in non-pecuniary compensatory damages.
2. Regarding attorney's fees, the Agency shall award \$30,420.45 in attorneys' fees, and \$393.95 in recoverable costs for a total of \$30,814.40.

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 (H0610)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he/she 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 this decision becoming final. 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 (M0617)

The Commission may, in its discretion, reconsider the decision in this case if the Complainant or the Agency submits a written request containing arguments or evidence which 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 to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in 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). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

Failure to file within the time period will result in dismissal of your request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. Any supporting documentation must be submitted with your 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)

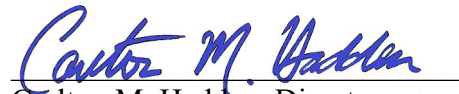
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from 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

September 28, 2022

Date