



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

[REDACTED]  
Lisa C.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service,  
Agency.

Appeal No. 2021002674

Agency No. 4G-720-0052-18

**DECISION**

On March 15, 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 February 11, 2021, final decision (FAD) concerning an award of compensatory damages which was awarded after a finding of employment discrimination. For the following reasons, the Commission MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Letter Carrier at the Agency's Downtown Station in Fort Smith, Arkansas. On September 7, 2016, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of race (African-American), sex (female), and disability when:

1. On or around March 1, 2018 and continuing through September 2018, Complainant was denied a reasonable accommodation when she was not permitted to work;
2. On or around April 19, 2018, she was taken off of her assignment;

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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.

3. On October 5, 2018, she was charged Absent Without Leave (AWOL) for her absence; and
4. She has not received a response to her appeal of her denial of her reasonable accommodation request.

At the conclusion of the investigation, the Agency provided Complainant with a copy of the report of investigation and notice of her right to request a hearing before an Equal Employment Opportunity Commission Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. § 1614.108(f), the Agency issued a FAD (FAD 1) pursuant to 29 C.F.R. § 1614.110(b). In FAD 1, the Agency determined that Complainant failed to show that management's reasons for its actions were pretextual and determined that the incidents at issue were not severe or pervasive enough to constitute a hostile work environment. Complainant appealed this decision to the Commission.

In Lisa C. v. U.S. Postal Serv., EEOC Appeal No. 2019005689 (Nov. 16, 2020), the Commission affirmed the Agency's determination that Complainant was not subject to a hostile work environment. However, our decision reversed the Agency's decision and held that management violated the Rehabilitation Act when from, around March 1, 2018 through September 2018, Complainant was denied a reasonable accommodation and was not permitted to work. Among other remedies, the Commission ordered the Agency to provide Complainant an opportunity to submit evidence in support of an award of compensatory damages.

Thereafter, on February 11, 2021, the Agency provided its final decision on damages (FAD 2) which concluded that Complainant should be awarded \$576.57 in pecuniary damages, and \$1,500.00 in nonpecuniary damages. The instant appeal followed.

### CONTENTIONS ON APPEAL

On appeal, Complainant argues that the award of compensatory damages is inadequate. In regard to pecuniary damages, Complainant argues that the decision considered the incorrect time period for completing the interest damages awarded. Specifically, she argues that interest later than the date ranges discussed in FAD 2 should be awarded. Complainant argues that future losses in the form of interest expenses after the date of FAD 1 were also incurred and should be awarded. However, she notes that FAD 2 did not award damages after September 13, 2018.

In regard to nonpecuniary damages, Complainant argues that the award is similarly inadequate. She provides that apart from her statements concerning her own feelings considered in FAD 2, as a result of her discrimination, she began and continues to take anti-depression and anti-anxiety medication. She contends that she was seeing a counselor, but discontinued counseling due to her stress and depression. She also contends that her coworkers judged her for her disability, adding to her mental stress and anguish. Complainant notes that she had disturbed sleeping habits and began relying on sleep aids in order to rest.

The Agency has not presented arguments on appeal.

### 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 (EEO MD-110), at Chap. 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”).

#### *Compensatory Damages*

To receive an award of compensatory damages, Complainant must demonstrate that she has been harmed as a result of the Agency’s discriminatory action; the extent, nature, and severity of the harm; and the duration or expected duration of the harm. Rivera v. Dep’t of the Navy, EEOC Appeal No. 01934157 (July 22, 1994), req. for recon. den’d, EEOC Request No. 05940927 (Dec. 11, 1995); Compensatory and Punitive Damages available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.002 (EEOC Notice No. 915.002) (July 14, 1992), at 11-12, 14. Compensatory damages may be awarded for past and future pecuniary losses (i.e., out-of-pocket expenses) and non-pecuniary losses (e.g., pain and suffering, mental anguish) which are directly or proximately caused by the agency’s discriminatory conduct. EEOC Notice No. 915.002 at 8. The amount awarded should reflect the extent to which the agency’s discriminatory action directly or proximately caused harm to the complainant and the extent to which other factors may have played a part. Id. at 11-12. The amount of non-pecuniary damages should also reflect the nature and severity of the harm to the complainant, and the duration or expected duration of the harm. Id. at 14, see Goetze v. Dep’t of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001)

#### *a. Pecuniary Damages*

The Agency awarded \$576.57 in pecuniary damages. In support of this award, the Agency considered credit card statements provided by Complainant and determined that Complainant should be compensated for portions of interest on expenses related to her discrimination through September 13, 2018, and payments for select expenses and medications. The Agency paid \$25.42 in interest for Complainant’s Simplicity Card, \$2.80 in interest for her Preferred Card, \$7.35 in interest for her Dividend Card, and \$1.24 in interest for her Target Red Card. Complainant argues that the Agency should have awarded damages for additional interest incurred through 2020 on her credit cards.

In a claim for pecuniary, compensatory damages, a complainant must demonstrate, through appropriate evidence and documentation, the harm suffered because of the agency's discriminatory action. Objective evidence in support of a claim for pecuniary damages includes documentation showing actual out-of-pocket expenses with an explanation of the expenditure. The agency is only responsible for those damages that are clearly shown to be caused by the agency's discriminatory conduct. To recover damages, a complainant must prove that the employer's discriminatory actions were the cause of the pecuniary loss. EEO MD-110 at Chap. 11, VII.B.2.

Pecuniary losses are out-of-pocket expenses incurred because of the Agency's unlawful action, including job-hunting expenses, moving expenses, medical expenses, psychiatric expenses, physical therapy expenses, and other quantifiable out-of-pocket expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement. EEO MD-110 at Chap. 11, VII.B.2 (Aug. 5, 2015) (internal citations omitted).

We note that compensatory damages are recoverable in the administrative process. West v. Gibson, 119 S.Ct. 1996 (1999); see Jackson v. U.S. Postal Serv., EEOC Appeal No. 0192339 (Nov. 12, 1992), req. to recon. den'd, EEOC Request No. 05930306 (Feb. 1, 1993). Compensatory damages may be awarded for losses and suffering due to the discriminatory acts or conduct of the agency and include past pecuniary losses, future pecuniary losses, and non-pecuniary losses that are directly or proximately caused by the agency's discriminatory conduct. See Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. N 915.002 (July 14, 1992) (Notice) at p. 8.

We also note that courts frequently award interest on claims of compensatory damages to make the wronged party whole by compensating the wronged person for being deprived of the money and the use of the money. See April v. Dep't of Agric., EEOC Appeal No. 01963775 (June 5, 1997).

We find that Complainant should be awarded additional pecuniary damages, namely the interest incurred on her credit cards due to her discrimination, through November 29, 2019. In the present circumstances, the Agency awarded Complainant pecuniary damages, to include accrued interest on costs endured, through September 13, 2018, the date she continued her employment at the Agency. However, while Complainant regained employment on September 13, 2018, as she argues on appeal, this fact alone did not cause her debt to cease to exist, nor did it halt the associated accruing interest. Complainant's debt did not disappear when Complainant began working.

We note that the Agency has already agreed that Complainant is entitled to interest on her credit cards for periods of time she was not employed due to the Agency's failure to reasonably accommodate her. As such, there is no dispute that there is a nexus between Complainant's indebtedness and accruing interest and her discrimination.

In support of this determination, Complainant provided a statement which indicated that she continued to suffer from her debt due to her discrimination through this date. However, Complainant has not provided the Commission with receipts of the interest she continued to pay. Therefore, although we find that the Agency should have provided additional pecuniary damages, on appeal and in her November 2019 statement, Complainant failed to provide receipts or other evidence establishing actual interest she paid. Therefore, we affirm the Agency's award of \$576.57 in pecuniary damages.

*a. Non-Pecuniary Damages*

The Agency awarded \$1,500.00 in nonpecuniary damages. The Agency found that other than Complainant's own very brief statement, she offered no other evidence of emotional harm, and there were no other statements of record indicating emotional harm nor proof that she experienced any medical problems.

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 her 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, and other counselors 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 her 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.

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). Non-pecuniary compensatory damages are designed to remedy the harm caused by the discriminatory event rather than to punish the agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or be "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).

The Agency cited to four cases, Elliot v. Dep't of Veterans Aff's., EEOC Appeal No. 0720080046, Glaude v. Dep't of Def., EEOC Appeal No. 0120064851 (Mar. 6, 2016), Complainant v. U.S. Postal Serv., Appeal No. 0120140221 (April 8, 2014), and Mapoy v. U.S. Postal Serv., EEOC Appeal No. 01995433, as comparable cases to determine the award of nonpecuniary damages.

As noted in her appeal, Complainant indicated that as a result of the denial of reasonable accommodation from March 1, 2018 through September 2018, she began and continues to take anti-depression and anti-anxiety medication. She contends that she was seeing a counselor, but discontinued counseling due to her stress and depression. She also provided that she struggles with sleep and requires the use of sleep aids.

Based on Commission precedent, we find that the Agency's award of \$1,500.00 is insufficient. Instead, we conclude that the award of \$7,500.00 would better compensate Complainant based on the period of time Complainant was not accommodated for her disability, her feelings of judgment at work, sleep disturbances, as well as the need for medication for depression and anxiety. We find that this award is consistent with similar awards provided by the Commission. See Darla W. v. Dep't of Vet. Aff., EEOC Appeal No. 0120160042, (Dec. 12, 2017) (awarding \$7500 to complainant who submitted her own affidavit in support of mental anguish following finding of discrimination with respect to the denial of reasonable accommodation); Fidelia F. v. Dep't of Agric., EEOC Appeal No. 0120150584 (Apr. 11, 2017) (granting \$7,500.00 in non-pecuniary compensatory damages award based on mental anguish and humiliation, diminished self-esteem and self-worth, and health issues); Robinson v. Dep't of the Army, EEOC Appeal No. 01A31123 (May 26, 2004) (awarding \$7,500.00 in non-pecuniary compensatory damages based on complainant's testimony about mental anguish, emotional stress, lowered professional status, a reduction in his ability to advance his career, humiliation, embarrassment, and intimidation); Butler v. Dep't of Agric., EEOC Appeal No. 01971729 (Apr. 15, 1999) (determining \$7,500.00 in non-pecuniary damages based on complainant's testimony regarding his emotional distress).

Even considering that Complainant has not provided medical documentation or additional statements from family, we find that the amount of time that Complainant was not accommodated for months, as well as her ongoing symptoms of mental anguish are sufficient to support such an award. Complainant's difficulty sleeping, anxiety, and depression can each be correlated to the Agency's discrimination.

We therefore find that the \$7,500.00 award of nonpecuniary compensatory damages is appropriate. The Commission finds that this amount takes into account the severity and the duration of the harm suffered and is consistent with prior Commission precedent. By failing to accommodate Complainant, the Agency's actions had an accrual effect. We note that this award is not "monstrously excessive" standing alone, is not the product of passion or prejudice, and is consistent with the amount awarded in similar cases. See 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)).

### CONCLUSION

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

### ORDER

The Agency is ORDERED, to the extent it has not already done so, to take the following action:

1. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall pay Complainant \$ \$576.57 in pecuniary damages.
2. Within **sixty (60) calendar days** of the date this decision is issued, the Agency shall pay Complainant \$7,500.00 in nonpecuniary 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).

### 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

July 28, 2022  
Date