



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

[REDACTED]
Carlton T.,¹
Complainant,

v.

Louis DeJoy,
Postmaster General,
U.S. Postal Service,
Agency.

Appeal No. 2021002194

Agency No. 4G-780-0184-18

DECISION

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's January 20, 2021 final decision concerning his award of compensatory damages pertaining to his equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

BACKGROUND

Complainant worked as a City Letter Carrier at the Harlingen Post Office in Harlingen, Texas. Complainant filed (and subsequently amended) an EEO complaint alleging that the Agency discriminated against him in reprisal for prior protected EEO activity when:

1. On June 19, 2018, the supervisor conducted a street observation, in which he attempted to intimidate Complainant by standing close to him;
2. On or about June 1, 2018, the supervisor sent Complainant inappropriate text messages;
3. On June 21, 2018, the supervisor denied him a copy of the street observation and stood next to him making laughing noises;

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.

4. On June 21, 2018, the supervisor made an inappropriate remark, calling Complainant a “fucking wimp;”
5. On October 29, 2018, Complainant was issued a letter of warning; and
6. On unspecified dates, Complainant’s supervisor sent Complainant text messages and pictures about his involvement with cartels in Mexico in an attempt to intimidate him.

Following an investigation, the Agency issued a final decision finding that Complainant was not subjected to reprisal as alleged. In Carlton T. v U.S. Postal Service, EEOC Appeal 2019005495 (Nov. 16, 2020), the Commission found in favor of the Agency on claims 1, 3, 4, 5 and 6. The Commission, however, reversed the Agency’s decision as to claim 2. Specifically, the Commission found that Complainant proved that he was subjected to reprisal for his prior protected EEO activity when, on June 1, 2018, Complainant’s supervisor criticized his EEO activity and sent Complainant text messages characterizing Complainant as “stupid” and “a few other things.” We found that the supervisor’s criticism of Complainant’s EEO activity, which accused Complainant of making up stories about people and making pathetic complaints, would likely deter a reasonable person from engaging in protected activity. The record included four screenshots that we found “unequivocally show that S1 intentionally sent the alleged messages disparaging Complainant’s protected activity.”

To remedy the discrimination, the Commission ordered the Agency to conduct a supplemental investigation into Complainant’s entitlement to compensatory damages, provide training and consider disciplining the supervisor, and to post a notice.

After conducting the investigation, the Agency issued a final decision regarding compensatory damages. In the decision, the Agency initially determined that Complainant had not established an entitlement to pecuniary compensatory damages. The Agency reasoned that Complainant’s request for restored leave would be considered an equitable remedy, not included in compensatory damages. The Agency disallowed the cost of the medical visits and blood pressure medicines because Complainant provided no evidence that either was connected to the discriminatory incident. As a result, the Agency did not award pecuniary compensatory damages. The Agency did find that Complainant demonstrated that he was entitled to \$600.00 in non-pecuniary compensatory damages. The Agency noted that Complainant was claiming damages for injuries he claimed he suffered for “over a full year.” The Agency found that the evidence indicated the retaliation happened over the span of a few hours on one day, June 1, 2018. The Agency found “it was in no way pervasive or long lasting.” Thus, the Agency awarded Complainant \$600.00 in non-pecuniary compensatory damages. This appeal followed.

CONTENTIONS ON APPEAL

On appeal, Complainant’s attorney argues that Complainant is entitled to \$75,000.00 and asserts that his losses were connected to the Agency’s found retaliation. Complainant highlights the disturbing pictures of dead bodies that had been sent to him. Complainant argues the award of \$600.00 is severely inadequate to address the harm and sends the wrong message - that claims of retaliation are not taken seriously.

ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614, at Chapter 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

Compensatory Damages

When discrimination is found, an agency must provide a complainant with a remedy that constitutes full, make-whole relief to restore the complainant as nearly as possible to the position she would have occupied absent the discrimination. See, e.g., Franks v. Bowman Transp. Co., 424 U.S. 747, 764 (1976); Albemarle Paper Co. v. Moody, 422 U.S. 405, 418-19 (1975); Lazaro G. v. Dep’t of Commerce, EEOC Appeal No. 0120170802 (May 17, 2019), req. for recon. den. EEOC Request No. 2019004115 (Sept. 17, 2019); Adesanya v. U.S. Postal Serv., EEOC Appeal No. 01933395 (July 21, 1994). Pursuant to section 102(a) of the Civil Rights Act of 1991, a complainant who establishes unlawful intentional discrimination under Title VII may receive, in addition to equitable remedies, compensatory damages for out of pocket expenses and non-pecuniary losses (e.g., pain and suffering, mental anguish) as part of “make whole” relief. 42 U.S.C. § 1981a(b)(3). In West v. Gibson, 527 U.S. 212 (1999), the Supreme Court held that Congress afforded the Commission the authority to award compensatory damages in the administrative process.

Pecuniary Compensatory Damages

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 Complainant did not specifically challenge the Agency’s determination that he failed to establish an entitlement to pecuniary compensatory damages. Even so, while the record included evidence documenting a visit to a doctor and the cost of medication, Complainant failed to provide an explanation for the claimed expenses or show a nexus between the expenses and the retaliatory incident. As a result, we agree with the Agency that Complainant is not entitled to pecuniary compensatory damages.

Non-Pecuniary Compensatory Damages

Non-pecuniary losses 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 on Compensatory and Punitive Damages Available Under Section 102 of the Civil Rights Act of 1991, EEOC Notice No. 915.302 at 10 (July 14, 1992). There 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). The Commission notes that 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).

Evidence from a health care provider or other expert is not a mandatory prerequisite for the recovery of compensatory damages for emotional harm. A complainant's own testimony, along with the circumstances of a particular case, can suffice to sustain his or her burden in this regard. 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. The absence of supporting evidence, however, may affect the amount of damages appropriate in specific cases. See Lawrence v. U.S. Postal Service, EEOC Appeal No. 01952288 (April 18, 1996).

In this case, we note that his supervisor criticized Complainant's EEO activity and accused him of making up stories and sent Complainant text messages characterizing him as “stupid” and his actions as “pathetic.” Complainant provided limited evidence during the investigation but indicated that the retaliation resulted in uncontrolled high blood pressure, sleeplessness, loss of focus, intimidation, and constant worrying.

Complainant requested \$75,000.00 in damages. His submission primarily focused on the harm caused by the pictures of bodies that were sent to Complainant and actions unrelated to June 1, 2018. As discussed above, the Commission did not find in Complainant's favor on claim (6), which referenced the pictures and other incidents that occurred after June 1, 2018. Therefore, we limit our attention to the date of June 1, 2018, and management actions on that date for which discrimination was found.

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we find that the amount should be increased from \$600.00 to \$3,000.00. An award of \$3,000.00 takes into account the nature, severity, and duration of Complainant's suffering, as well as his pre-existing medical conditions. This amount is also consistent with other non-pecuniary compensatory damages awards given in similar cases and is not “monstrously excessive” standing alone, nor derived from passion or prejudice.

See Brendon L. v. Dep't of Veterans Affairs, EEOC Appeal No. 0120160256 (Apr. 20, 2018) (\$3,000 awarded where complainant submitted scant evidence supporting exacerbation of physical and emotional conditions due to agency's retaliatory acts); Barbie W. v. Dep't of the Army, EEOC Appeal No. 0120171302 (Apr. 9, 2019) (\$2,000 awarded where complainant experienced physical and psychological distress as a result of retaliation but submitted minimal medical documentation in support); Pamila R. v. U.S. Postal Serv., EEOC Appeal No. 0120182822 (Nov. 6, 2019) (complainant awarded \$2,000 for stress and sleeplessness supported only by complainant's affidavit); Onie R. v. Dep't of Def., EEOC Appeal No. 0120141870 (June 16, 2016) (compensatory damages increased to \$3,000 from \$500, after Commission found that an Agency management official's comments were reasonably likely to deter Complainant and other managers from engaging in the EEO process).

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.

ORDER (C0618)

Within 60 days of the date this decision is issued, to the extent it has not already done so, the Agency shall pay Complainant \$3,000.00 in non-pecuniary compensatory damages.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of receipt of this decision. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the

compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that tend to establish that:

1. The appellate decision involved a clearly erroneous interpretation of material fact or law; or
2. The appellate decision will have a substantial impact on the policies, practices, or operations of the agency.

Requests for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.** A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within which to submit a brief or statement in opposition.

See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at <https://publicportal.eeoc.gov/Portal/Login.aspx>. Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the request for reconsideration.** The Commission will consider requests for reconsideration filed after the deadline only in very limited circumstances. See 29 C.F.R. § 1614.604(c).

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

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

If you want to file a civil action but cannot pay the fees, costs, or security to do so, you may request permission from the court to proceed with the civil action without paying these fees or costs. Similarly, if you cannot afford an attorney to represent you in the civil action, you may request the court to appoint an attorney for you. **You must submit the requests for waiver of court costs or appointment of an attorney directly to the court, not the Commission.** The court has the sole discretion to grant or deny these types of requests. Such requests do not alter the time limits for filing a civil action (please read the paragraph titled Complainant's Right to File a Civil Action for the specific time limits).

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

August 24, 2022
Date