



**U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION**

**Office of Federal Operations**

**P.O. Box 77960**

**Washington, DC 20013**

[REDACTED]  
Mirta Z.,<sup>1</sup>  
Complainant,

v.

Louis DeJoy,  
Postmaster General,  
United States Postal Service  
(Field Areas and Regions),  
Agency.

Appeal No. 2021003272

Agency No. 4K-210-0023-18

**DECISION**

On May 18, 2021, Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's April 20, 2021, final decision concerning her equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. 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 Postal Support Employee/Sales, Service Distribution Associate (PSE/SSDA) at the Agency's Berlin Post Office in Berlin, Maryland.

On February 28, 2018, Complainant filed an EEO complaint alleging that the Agency discriminated against her on the bases of disability (epilepsy) and in reprisal for prior protected EEO activity under the Age Discrimination in Employment Act of 1967 when:

1. Starting on or about November 16, 2017, she was not provided a reasonable accommodation;

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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.

2. On November 22, 2017, she was notified that she was not listed as scheduled for work and instructed not to report to work; and
3. On February 7, 2018, she was issued a Notice of Separation for Unable to Perform Duties of the Position for which she was hired.

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). Complainant timely requested a hearing but subsequently withdrew her request. Subsequently, the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The Agency concluded that Complainant failed to prove that the Agency subjected her to discrimination as alleged.

Complainant timely appealed the Agency's final decision to the Commission. In Mirta Z. v. U.S. Postal Serv., EEOC Appeal No. 2020000383 (Jan. 28, 2021), we affirmed the Agency's final decision, in part, and found that the Agency did not discriminate against Complainant when they instructed her not to report to work. The previous decision found, however, that the Agency violated the Rehabilitation Act when they did not provide Complainant a reasonable accommodation and when they issued her a Notice of Separation; consequently, we reversed the Agency's final decision concerning those two claims. As remedy, the decision ordered the Agency to determine appropriate compensatory damages.

On April 20, 2021, the Agency issued a final decision on the issue of compensatory damages. The Agency awarded Complainant \$17,500 in compensatory damages. The instant appeal followed.

### ANALYSIS AND FINDINGS

#### *Standard of Review*

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 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*

### *Non-Pecuniary 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). Non-pecuniary losses are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. Id.

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).

In the instant case, the Commission finds that the Agency’s decision to award \$17,500.00 in compensatory damages is not supported by the evidence of record. The Agency relied upon several cases, including Vonville v. U.S. Postal Serv., EEOC Appeal No. 120080116 (Aug. 2, 2010); Koudry v. Dep’t of Educ., EEOC Appeal No. 0120103545 (July 18, 2012); and Warch v. Dep’t of the Navy, EEOC Appeal No. 0120102421 (Nov. 17, 2010) as comparable cases to determine the award of non-pecuniary damages. However, we find that the cases cited by the Agency do not reflect the same nature or severity comparable to the case at hand.

In this case, Complainant’s daughter (Daughter) offered that Complainant was very happy when she began employment with the Agency. ROI at 18. Shortly after Complainant began work for the Agency, she was reportedly notified by the Agency that she would be required to work hours dangerous for her health. ROI at 18. The Agency was made aware, by Complainant’s physician (Physician 1) in November 2017 that early morning work and sleep deprivation were dangerous for Complainant’s epilepsy. ROI at 22. At that time, Physician 1 assessed that they were not a fan of Complainant’s seizure medication but that “she is very stressed out right now, so I am doubtful this is a good time to change.” ROI at 22. The Agency declined to change Complainant’s hours, despite this documentation, and Complainant suffered a grand mal seizure on November 17, 2017. Despite repeated notification, and documentation, of the need for a daytime schedule, the Agency did not provide such an accommodation. Complainant was separated for being unable to work the Agency’s preferred schedule.

Daughter offered that her mother changed markedly after her termination. ROI at 18. As opposed to being happy at the time of hire, she stated Complainant was “devastated.” ROI at 18. Daughter noted that Complainant’s seizures increased in severity, including multiple falls with injuries to her head. ROI at 18. Daughter stated that she looks different, she became tired, and she could not “stand at the sink to do dishes.” ROI at 18-19. Daughter went on to assert that, prior to employment with the Agency, Complainant rarely cried. Since being terminated from the Agency, Complainant cried extensively. ROI at 19. Daughter noted that Complainant’s physical appearance also declined subsequent to her firing—she looked tired, her neck now hung right below her chin, and her teeth looked different as a result of falls from increased seizures. ROI at 18-19.

Daughter also averred that Complainant’s living conditions were affected by her termination. Complainant was required to drive an older car with bad wiring that she could not afford to repair. She lived in an old house that she could be evicted from “at any time,” and her utilities have been cut off from time to time because they could not pay their bills on time. ROI at 19.

While the Commission notes that Complainant has suffered from seizures since childhood, as outlined above, Daughter reports that they are worsening in severity and number since her separation from the Agency. Physician 1 reported that, in December 2017, approximately one month after the seizure and fall at work, Complainant complained of increased sinus pressure, decreased energy, decreased memory, increased myoclonic activity, and increase in dropping objects. ROI at 20. Physician 1 opined that Complainant had “worsening seizure control since concussion” and that, while her current treatment was not optimal, she was “petrified of changing.” ROI at 25.

Physician 2 noted in November 2019 that Complainant had fatigue, confusion, memory loss, dizziness, headaches, seizures, speech difficulty, and tremors. ROI at 28. Medical documentation reported that Complainant had greater than two seizures today marked with myoclonic jerks and staring spells during the day and generalized tonic-clonic seizures during sleep. ROI at 26. Physician 2 stressed to her that her current seizures were very dangerous. ROI at 30.<sup>2</sup> In January 2020, Physician 2 noted that Complainant was suffering with an “array of seizures...not typical of the entity that she had been diagnosed with,” and in March 2020, 34 years after her first epilepsy episode, Complainant’s diagnosis was changed to Lennox-Gastaut Syndrome because of the intractable nature of her seizure disorder. ROI at 36. We note that the Agency challenged this; however, the Agency consulted a dictionary in arriving at its conclusion that her Lennox-Gastaut Syndrome was not attributable to Complainant’s “short postal employment, and instead is a life-long obstacle that you unfortunately have battled since birth.” The Commission is not persuaded by the Agency’s impression based on a non-physician’s interpretation of a dictionary as medical evidence of causation and duration of a disease process. Rather, we note evidence of record. In this case, we determine that the evidence indicates that Complainant had worsening symptoms and the inability to treat these symptoms, which evidence suggests occurred after the Agency failed to accommodate her, led to her diagnosis.

Therefore, based on the record and the Commission precedent, we find the Agency’s award of \$17,500 to be woefully insufficient. Instead, we conclude that an award of \$100,000.00 would better compensate Complainant based on the loss of her position and the physical and emotional harm she suffered as a result of the Agency’s actions.

We find that this award is consistent with similar awards provided by the Commission. See e.g., Nia G. v. Dep’t of Homeland Sec., EEOC Appeal No. 0120160716 (Feb. 6, 2018). (awarding \$110,000 in non-pecuniary compensatory damages where Complainant stated that she experienced mental health issues but could not afford professional help; Complainant stated that

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<sup>2</sup> Despite the Agency’s final decision stating that the November 2019 note by Physician 2 “disclosed the onset/pattern as gradual worsening of [Complainant’s] JME (Juvenile Myoclonic Epilepsy) which you have had since you were [five] years old,” the Commission has read the entirety of this note and finds no such statement by the physician. Rather, Physician 2 described the onset and pattern to be gradual and worsening with nocturnal seizures and separately noted that the quality of seizure was myoclonic and that Complainant had JME.

she had to live on her savings and retirement withdrawals; Complainant noted that she was humiliated, and continued to be impacted by her discriminatory termination; and Complainant's sister and mother corroborated her contentions, stating that Complainant changed following her termination and was "a completely different person,"); Billy B. v. Dep't of Vet. Aff., EEOC Appeal No. 0120132680 (Nov. 19, 2015) (awarding \$85,000, noting Complainant experienced pain and suffering including the exacerbation of his pre-existing conditions, specifically his posttraumatic stress disorder from which he suffered prior to this time); Emmett W. v. Dep't of Agric., EEOC Appeal No. 0120143098 (May 3, 2016) (awarding \$85,000 when, after termination, Complainant's PTSD worsened and he experienced depression, sleeplessness, anger, stress, weight loss, familial strain, humiliation and injuries to his credit, financial circumstances, and standing).

Therefore, upon review of the record as a whole, we find that Complainant is entitled to \$100,000.00 in non-pecuniary compensatory damages. 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. 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)).

### *Pecuniary 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 such quantifiable expenses. Past pecuniary losses are losses incurred prior to the resolution of a complaint through a finding of discrimination, or a voluntary settlement, whereas future pecuniary damages are those likely to occur after the resolution of the complaint. See EEO-MD110 at Chap. 11, § VII.B (Aug. 5, 2015).

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 agency's discriminatory actions were the cause of the pecuniary loss. Id.

We find that the record does not establish pecuniary damages. Specifically, the evidence of record does not establish that the Agency's actions were the cause of her motor vehicle accident and subsequent related expenses. Therefore, we find that the Agency was proper in denying Complainant pecuniary damages.

### 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 decision and REMAND the matter to the Agency in order to comply with the ORDER below.

### ORDER

To the extent it has not already done so, the Agency shall, within 60 days from the date this decision is issued, pay Complainant \$100,000.00 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

August 31, 2022

Date