



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

[REDACTED]
Judy D.,¹
Complainant,

v.

Denis R. McDonough,
Secretary,
Department of Veterans Affairs,
Agency.

Appeal No. 2022002202

Agency No. 2003-0520-2018102292

DECISION

On March 4, 2022, 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 4, 2022, final decision concerning Complainant's entitlement to compensatory damages for a 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

At the time of events giving rise to this complaint, Petitioner worked as a Program Support Assistant at the Agency's Gulf Coast Veterans Healthcare System in Biloxi, Mississippi.

On February 3, 2018, Complainant initiated EEO Counselor contact. Informal efforts to resolve her concerns were unsuccessful. On March 12, 2018, Complainant filed a formal complaint, which was later amended, alleging that the Agency subjected her to a hostile work environment and discriminated against her in reprisal for her protected EEO activity when:

1. on February 1, 2016, the Assistant Chief of Environmental Management Service (EMS), the responsible management official (RMO1, prior EEO activity),

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.

threatened Complainant when he accused her of leaving her work area without notification and began shouting in the hallway, “that you are not to leave the office without me specifically...did you hear what I said...you will hear when I put it in black and white;”

2. on June 19, 2017, RMO1 asked Complainant if she had on leather pants and accused her of failing to update the cascade callback roster;
3. on January 23, 2018, RMO1 intimidated and threatened Complainant when he ordered her to input another employee’s request for leave into the time log;
4. on January 23, 2018, RMO1 intimidated and threatened Complainant when he waved his hand in her face and yelled in an aggressive tone of voice, “You just do like I told you...I am not asking you...I need this done now...If you don’t put this request in you will be written up;”
5. on April 2, 2018, Complainant became fearful when RMO1 entered her work area twice inquiring and asking employees, “Has [Complainant] been over here all day?”;
6. on May 17, 2018 to the present, Complainant has felt threatened when RMO1 continually violated the stay-away notice by entering her work area and staring at her through the door window;
7. on July 20, 2018, RMO1 charged Complainant 15 minutes of Annual Leave for being tardy, but did not charge another program support employee for being late one hour;
8. on August 15, 2018, RMO1 threatened Complainant with disciplinary action and falsely accused her, in an EMS staff meeting, of being responsible for EMS having too many “delinquents” in credit card funds and causing him to be late on approvals; and
9. on August 28, 2018, RMO1 refused to sign Complainant’s request for overtime and yelled at her during his phone call, “I tell you what, come get them,” and slammed the phone down.

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 initially requested a hearing and then withdrew her request. In accordance with Complainant’s request, 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 a hostile work environment or retaliation as alleged. Complainant appealed the final decision to the Commission.

On appeal, the Commission determined that Complainant established that the Agency violated Title VII, when it subjected her to a hostile work environment and discrimination based on her protected EEO activity. As a result of this determination, the Commission ordered that Complainant be provided with the following equitable relief: 1) removal of RMO1 from Complainant's line of supervision; 2) compensatory damages; 3) eight hours of related EEO training for RMO1; 4) consideration of disciplinary action against RMO1; 5) posting a notice; and 6) attorney's fees if applicable. Judie D. v. Dep't of Vet. Aff., EEOC Appeal No. 2020002526 (Sept. 7, 2021).

Upon the finding, Complainant submitted documentation asserting entitlement to \$300,000.00 in non-pecuniary compensatory damages, and an unspecified amount for pecuniary damages. In support of her request for pecuniary damages, Complainant noted that she had general expenses for copying documents. In support of her non-pecuniary compensatory damages request, Complainant submitted leave records from January 24, 2016, to June 8, 2019; detailed medical documentation; and affidavits from her supervisor, counselor, spouse, children, and herself. Complainant detailed that due to the discriminatory actions, she suffered, and continues to suffer, weight gain, hair loss, mental anguish, depression, anxiety, and insomnia. Complainant also argues that the events caused her to lose professional standing and face extreme humiliation in the workplace. Complainant acknowledged that she had suffered from minor depression prior but argued that the situation far exacerbated her condition. Complainant asserted that the situation more than warranted an award of \$300,000.00, or more. Additionally, Complainant requests the restoration of 251 hours of sick leave time based on her review of the amount of time that she took off during the relevant time.

On February 4, 2022, the Agency issued its determination on compensatory damages. The Agency noted that Complainant failed to provide any documentation regarding her pecuniary damages, accordingly it denied those claims. The Agency acknowledged Complainant's request for 251 hours of leave restoration as equitable relief. However, because this was not specifically ordered by the Commission, the Agency asserted that it was outside the scope of what it would award Complainant. Concerning her request for \$300,000.00, the Agency determined that based on the nature and severity of the emotional and mental harm to Complainant, as well as the duration of harm, an award of \$60,000.00 was appropriate.

CONTENTIONS ON APPEAL

On appeal, Complainant asserts that \$60,000.00 is insufficient to compensate her for her severe emotional distress. Complainant asserts that her compensation should not be limited to the statutory cap, and that her supporting documents demonstrate that she should be awarded \$300,000.00 or more, due to the discriminatory actions. Complainant asserts that she had previously overcome mental health issues and was a well-adjusted individual until RMO1 began his campaign of harassment. Complainant asserts that this resulted in extensive mental health counseling and a regimen of drugs that continues to the present day.

In response, the Agency asserts that it appropriately considered all documentation and that \$60,000.00 was a fair and reasonable amount for compensatory damages. The Agency requests that the Commission uphold its determination.

ANALYSIS AND FINDINGS

As an initial matter, we note that the Commission has the discretion to review only those issues specifically raised in an appeal. Id. at Chap. 9, § IV.A.3. Complainant has not challenged the Agency's decision regarding pecuniary compensatory damages or the denial of restoration of sick leave. Accordingly, we will only address the Agency's award of 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. denied, 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, i.e. emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, injury to professional standing, injury to character and reputation, and loss of health. See 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 punish the Agency for the discriminatory action. Furthermore, compensatory damages should not be motivated by passion or prejudice or "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).

Here, Complainant requested non-pecuniary compensatory damages of \$300,000.00, or more, for the harm caused by the Agency's discriminatory actions. In support of her damages request, Complainant provided numerous medical documents demonstrating her counseling sessions and medication regimen.

Complainant also provided detailed affidavits from her spouse, herself, her two daughters, her supervisor, and her counselor detailing the long impacting effects of the discriminatory actions on her life.

In awarding Complainant \$60,000.00, the Agency determined that Complainant provided objective evidence to support her claim that she suffered harm as a result of the Agency's discriminatory conduct. However, the Agency also noted that it also took into consideration her prior mental health treatments and other factors such as having close friends pass from COVID-19 during the relevant time. Ultimately, based on the record, and comparable cases, the Agency determined that \$60,000.00 was sufficient to compensate Complainant for her non-pecuniary compensatory damages. However, we disagree with the Agency's assessment, and we find the award of \$60,000 to be insufficient.

We find that an award of \$75,000.00 would better compensate Complainant for the emotional and mental harm she suffered as a result of the discriminatory actions. We find that this updated award is consistent with similar awards approved by the Commission. See e.g., Hames v. U.S. Postal Serv., EEOC Appeal No. 07A20042 (June 11, 2003) (providing \$75,000.00 where complainant experienced severe emotional harm, mental anguish, loss of enjoyment of life, anxiety, depression, and relationship strains with his family and friends); Kathleen P. v. Dep't of Homeland Sec., EEOC Appeal No. 0720150036 (Sept. 26, 2016) (determining that complainant was entitled to \$75,000.00 where complainant experienced emotional distress, stress, and emotional disturbance over losing her livelihood); Ileana H. v. Dep't of Justice, EEOC Appeal No. 0720170016 (Apr. 21, 2017) (awarding \$75,000.00 after complainant was subjected to a hostile work environment based on race and reprisal and experienced fear of economic security, mental anguish, physical disorders, and emotional distress).

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. Finally, the Commission finds 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 to the Agency for further processing in accordance with the ORDER below.

ORDER

Within sixty (60) calendar days of the date this decision is issued, the Agency shall, to the extent it has not done so already, pay Complainant \$75,000.00 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).

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).

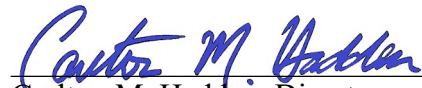
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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.
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

January 5, 2023
Date