



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

[REDACTED]
Leota F.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Eastern Area),
Agency.

Appeal No. 0120180717

Hearing Nos. 470-2015-00089X and 470-2015-00171X

Agency Nos. 4C450009515 and 4C450001515

DECISION

On December 11, 2017, 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 November 13, 2017, final order 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.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Supervisor, Customer Services, EAS-17, at the Agency's Harrison Post Office facility in Harrison, Ohio.

On July 17, 2014 and March 26, 2015, Complainant filed EEO complaints alleging that, since February 12, 2014, the Agency subjected her to a hostile work environment on the bases of disability and reprisal for prior protected EEO activity, citing numerous instances of alleged harassment.² Her allegations included that her manager yelled at, bullied, and threatened her;

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.

² Complainant initially alleged the bases of sex (female) and age, but withdrew these allegations. She also withdrew several claims which are not included here.

changed her hours on Saturday instructing her to close; instructed her to do route inspections despite her physical limitations; instructed a 204B supervisor to clean out her desk, throwing out her personal and work files; and shared her medical condition with others.

She alleged that, on May 2, 2014, she was subjected to a Pre-Disciplinary Interview; on May 29, 2014, she was issued a Letter of Warning, in lieu of a time off suspension; upper management did not intervene when she reported the harassment; and on July 28, 2014, her manager told one of Complainant's employees that everything was Complainant's fault.

She alleged that, on September 10, 2014, her manager told her to submit medical documentation and a light duty request to the Post Office Operations Manager (POOM) with regards to her request for a reasonable accommodation, and told her not to return to work until this was done; from September 11 through October 4, 2014, she was forced to use sick leave, as her manager would not allow her to return to work, pending approval of her request for a reasonable accommodation and/or light duty; and her manager solicited statements from Complainant's subordinates to support his defense to Complainant's discrimination claim.

Complainant also alleged instances of discrimination with respect to the denial of her request for a reasonable accommodation when she was instructed to conduct route inspections despite her limitations; the issuance of the Proposed Letter of Warning; and the events occurring between September and October 2014. The Agency accepted these claims and conducted an investigation.

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 and the AJ held a hearing on May 10 through 12, 2016, and issued a decision on September 15, 2017. The Agency subsequently issued a final order adopting the AJ's finding that Complainant proved that the Agency subjected her to discrimination and a hostile work environment as alleged.

The Agency adopted the AJ's decision that provided, as relief, that the Agency: (1) restore all of Complainant's pay lost as a result of the discrimination; (2) restore 32 hours of sick leave and 48 hours of annual leave to Complainant; (3) remove any and all negative documents management placed in Complainant's personnel file; (4) provide notice to the Agency's employees as provided; (5) direct the responsible management officials to attend sensitivity training; (6) reimburse Complainant \$232 for out-of-pocket medical expenses; (7) pay Complainant \$10,400 in non-pecuniary compensatory damages; and (8) pay attorney's fees of \$80,000 and \$2,033.87 for expenses, as provided for in the settlement agreement regarding attorney's fees.

The instant appeal followed. On appeal, Complainant asserts that her appeal is limited to the appropriate amount of compensatory damages for her pain and suffering, and the notice order. Regarding compensatory damages, Complainant notes that she prevailed on all of the claims discussed above and asserts that her award for pain and suffering should be increased to \$65,000 - \$70,000, based on the harm she suffered as a result of the discrimination and harassment that

she endured over seven months, the objective evidence of record, and the Commission's awards in similar cases. She also asserts that the AJ's requirement to notify employees, as opposed to posting the finding of discrimination was inadequate under EEO case law and requests that the finding be ordered posted and hung in the Agency's facility.

The Agency has not submitted a brief or statement in response.

ANALYSIS AND FINDINGS

Standard of Review

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

We find that the AJ's finding of discrimination and harassment is supported by the record and has been accepted by the Agency.

Compensatory Damages

Compensatory damages are awarded to compensate a complaining party for losses or suffering inflicted due to the discriminatory act or conduct. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII (citing Carey v. Piphus 435 U.S. 247, 254 (1978) (purpose of damages is to "compensate persons for injuries caused by the deprivation of constitutional rights"). Types of compensatory damages include damages for past pecuniary loss (out-of-pocket loss), future pecuniary loss, and nonpecuniary loss (emotional harm). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII.B; and Goetze v. Dep't. of the Navy, EEOC Appeal No. 01991530 (Aug. 23, 2001).

In the instant case, Complainant is appealing the award for her non-pecuniary losses caused by the discrimination. Non-pecuniary losses are losses that are not subject to precise quantification, including emotional pain and injury to character, professional standing, and reputation. See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 at Chapter 11, § VII.B (Aug. 5, 2015) (internal citations omitted). 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).

The AJ awarded Complainant a total of \$10,400 in non-pecuniary compensatory damages. We find this amount to underrepresent the severity of Complainant’s harm. Complainant was subjected to numerous instances of harassment and discrimination over a protracted period of time. The record shows that the resultant mental anguish was manifested by symptoms due to stress and anxiety caused by the discrimination, including anxiety attacks, crying spells, diarrhea, neck pain, headaches. She received treatment from a doctor for stress and anxiety and was prescribed medication for treatment. She sought treatment from a chiropractor for the neck pain caused by the stress and anxiety. Complainant described feelings of humiliation and embarrassment because of her experience and was concerned for the loss of her job. In similar cases, the Commission has awarded sums of \$65,000 for non-pecuniary compensation damages. See, e.g., Jackqueline G. v. Dep’t of Justice, EEOC Appeal No. 0720160022 (January 11, 2017) (\$65,000 in nonpecuniary compensatory damages awarded for symptoms including stress, anxiety, nervousness, fear for her economic security through loss of employment, increased intensity and frequency of migraines, loss of enjoyment of life, withdrawal from friends and family, lost motivation, and lost social connections); Banks v. Social Sec. Admin., EEOC Appeal No. 0720100014 (April 27, 2012) (\$65,000.00 in nonpecuniary, compensatory damages awarded for symptoms including sleeplessness, concern for job safety, and muscular pain and anxiety/depression); and Viers v. U.S. Postal Serv., EEOC Appeal No. 01A14246 (June 20, 2002) (\$65,000.00 in nonpecuniary compensatory damages awarded for symptoms including fatigue, insomnia, loss of marital harmony, apprehension, excessive anxiety, loss of self-esteem, disinterest, feelings of isolation and fear, depression, worry, humiliation, embarrassment, and a general loss of enjoyment of life, friends and family). Therefore, in consideration of the nature, duration, and severity of Complainant’s harm, we find \$65,000 in total for non-pecuniary compensatory damages to be appropriate and consistent with our awards in similar cases.

Posting Notice

The AJ ordered that the Agency to provide notification to employees of the Agency’s facility that: (a) all employees are notified of their right to be free from unlawful retaliation, as well as discrimination and the assurance that the particular types of discrimination and relation found here in this matter will not reoccur again; and (b) all employees are notified of the Agency’s commitment that corrective, cooperative, and preemptive action will be taken or measures adopted to be shown, that the violation of the law similar to the one found here will not reoccur.

Complainant asserts that such a generic notice remedy is insufficient and inconsistent with the Commission with prior cases. We find such notice to be vague and agree with Complainant that a posting notice for 60 days would be appropriate.

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 this decision and the **ORDER** below.

ORDER

Within forty-five (45) calendar days of the date this decision was issued, the Agency shall:

- (1) Pay Complainant \$65,000 in non-pecuniary compensatory damages, minus any amounts already paid.
- (2) To the extent the Agency has not already done so, the Agency shall implement the following remedies as directed by the AJ:
 - a. Restore all Complainant's wages or salary lost as a result of the discrimination.
 - b. Restore 32 hours of sick leave and 48 hours of annual leave to Complainant.
 - c. Remove any and all negative documents/references management placed in Complainant's personnel file as a result of the discrimination.
 - d. Direct the responsible management officials to attend sensitivity training.
 - e. Reimburse Complainant \$232 for out-of-pocket medical expenses.
 - f. Pay attorney's fees of \$80,000 and \$2,033.87 for expenses, as provided for in the settlement agreement regarding attorney's fees.
- (3) Post a notice as directed below in the "Posting Order (G0617)."

The Agency is further directed to submit a report of compliance, as provided in the statement entitled, "Implementation of the Commission's Decision." The report shall include supporting documentation that the corrective action has been implemented.

POSTING ORDER (G0617)

The Agency is ordered to post at its Harrison Post Office facility copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. 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 CFR § 1614.503(f) for enforcement by that agency.

STATEMENT OF RIGHTS - ON APPEAL
RECONSIDERATION (M0617)

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

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

Requests to reconsider, with supporting statement or brief, must be filed with the Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. A party shall have **twenty (20) calendar days** of receipt of another party's timely request for reconsideration in which to submit a brief or statement in opposition. See 29 C.F.R. § 1614.405; Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9 § VII.B (Aug. 5, 2015). All requests and arguments must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission. Complainant's request may be submitted via regular mail to P.O. Box 77960, Washington, DC 20013, or by certified mail to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, the request to reconsider shall be deemed timely filed if it is received by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604. The agency's request must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The request or opposition must also include proof of service on the other party.

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

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

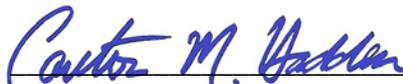
This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or your appeal with the Commission, until such time as the Agency issues its final decision on your complaint.

If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. If you file a request to reconsider and also file a civil action, **filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:



Carlton M. Hadden, Director
Office of Federal Operations

August 22, 2019
Date