

BEFORE THE
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
ATLANTA DISTRICT OFFICE

2/2/11 rec'd

In the matter of:

[REDACTED]

Complainant,

versus

[REDACTED]
DEPARTMENT OF [REDACTED]
[REDACTED]

Responding Agency

EEO CASE NUMBER

[REDACTED]

AGENCY CASE NO.

[REDACTED]

DAMAGES DECISION

Pursuant to notice, the above-styled matter came
for hearing, before the Equal Employment
Opportunity Commission, Atlanta District Office,
on September 15th, 2010, LANA LAYTON, Administrative
Judge, presiding.

APPEARANCES:

For the Complainant:

[REDACTED]

For the Agency:

[REDACTED]

This is the damages portion of the decision in the case of [REDACTED] versus the Department of [REDACTED]. Pursuant to EEO Regulations, the Rehabilitation Act is remedial in nature. The object of the statute is to put the victim of discrimination where she would have been put but for the prohibited discrimination or to state it another way, to make the victim of discrimination whole.

Trader V Defense Logistics Agency,
01852871,1599/B2(1987), Section A of 29 CFR, Section 1614.501 sets out the basic elements of remedial relief when there is a finding of discrimination. When an Agency or the Commission in an individual case of discrimination finds that an employee or applicant has been discriminated against, the Agency shall provide full relief which shall include the following elements in appropriate circumstance: 1) Notification to all employees of the Agency and the affected facility have the right to be free of unlawful discrimination and assurance that the

particular types of discrimination found will not reoccur.

2) Commitment that the corrective, curative or preventive action will be taken or measures adopted to ensure the violations of the law similar to those found will not reoccur. 3) Commitment that the Agency shall cease from engaging in a specific unlawful inclement practice found in this case.

The first relief that I am granting in this case is that the Agency post a notice of violation. The commission's regulations require that upon a finding of discrimination, an Agency shall post in the affected facility a notice of violation. Appendix A of 29 CFR, Section 1613 specifies what the notice of violation should contain and how it should be posted.

I find that the Agency shall post the notice using the specific language and that the notice should include the following information that a claim of unlawful discrimination in the form of failure to accommodate was made by an employee at the facility. That there has been an adjudication of the complaint and the employee has been

found to be the victim of that failure to accommodate, retaliated against for complaining of it and subjected to a hostile work environment based on requested accommodation, that the employee has been made whole and that the Agency commits to corrective and curative action with respect to its duty and obligation under Federal EEO Law. And that the Agency will not retaliate against any employee who has filed a complaint or participated in EEO proceedings or who opposes practices made unlawful under the Rehabilitation Act. And that this notice should be posted for 90 days.

I also find that the Agency should amend its regulations to comply with the Rehabilitation Act. The commission has the authority to order the Agency to amend its regulations to provide corrective action where an Agency's EEO program violates regulations, policies or rules of the EEOC. This requirement that the Agency's policies adopt and are in compliance with the EEOC's regulations as well as Section 501 of the Rehabilitation Act has not meant to be punitive in nature but is tailored

to cure or correct a particular source of the identified discrimination and to minimize the chances of its recurrence in this case.

The Complainant has also requested compensatory damages in this case. Section 102A of the Civil Rights Act of 1991 authorizes an award of compensatory damages as part of the make whole relief for the intentional discrimination violation of the Title VII of the 1964 Civil Rights Act. The same provisions allow for the award of compensatory damages under the Rehabilitation Act. To secure an award of compensatory damages, the Complainant must demonstrate that they have been harmed as a result of the Agency's discriminatory conduct and the extent and nature and severity of that harm, Carpenter V Department of Agriculture, EEO Appeal Number 01945652 (July 17th, 1995).

The EEOC considers the nature, severity and duration of the harm in determining an appropriate award of compensatory damages. It is the duration of the harm and not the duration of the conduct that is considered in

determining an award of damages.

In regard to the Complainant's request for non-pecuniary losses, damages are available for the intangible injuries of emotional harm such as emotional pain, suffering, inconvenience, mental anguish and loss of enjoyment of life. Other non-pecuniary losses can include injury to professional standing, injury to character and reputation, injury to credit standing, loss of health and any other non-pecuniary losses that are incurred as a result of the discriminatory conduct.

In this case the Complainant has provided several sources for her request for compensatory damages. The Complainant's own testimony today that because of the lack of accommodation and retaliatory and hostile work environment that she was subjected in regard to her repeated request for accommodation, she suffered from depression and anxiety that her children noticed it. She sought mental counseling. As I stated she was diagnosed with anxiety and depression which continues to today. That prior to the incident that began and her returning to

work in [REDACTED] of [REDACTED] prior to that she had not been diagnosed with anxiety or depression. And that her doctor stated that to her that even if she were to leave work today that it could continue for years, that the anxiety and depression could continue. She also stated that she was in tears at work sometimes on a daily basis.

Sometimes she would go out to her car to cry or cry at home. She was humiliated at work. She suffered from physical pain from the lack of her accommodation in regard to her left wrist and that because of the failure to accommodate and for over compensating with her left arm to compensate for her disabled right arm she may need to seek additional medical treatment in the future for that left arm.

She stated that the longer she is there, the more hostile she feels they are towards her. That her second line supervisor was angry at work and hostile towards her. She felt isolated at work and felt that people would not talk to her because she was taboo for having requested an accommodation and participated in filing an EEO case.

That she had had a co-worker tell her that it was not good to be seen associating with her.

She is on medication including Xanax, Prestic and Restoril. That she has had nightmares and sleeplessness also because of the actions of the Agency. A treating psychiatrist states that [REDACTED] [REDACTED] from [REDACTED] of [REDACTED] up until this document was written on [REDACTED] [REDACTED]^h, [REDACTED] experienced those nightmares during the week regarding the fear of returning to work the following day. She has peer isolation which contributes to depression anxiety, insomnia and a lack of self worth. And that she is diagnosed with generalized anxiety and depressive disorder.

The doctor from this base states that it is his medical opinion that [REDACTED] [REDACTED] emotional distress stems directly from her daily work environment since returning from her surgery in [REDACTED] of [REDACTED] and that her symptoms and treatment will be ongoing.

She also has a statement from Dr. [REDACTED] that states that her left elbow is, and this was [REDACTED] [REDACTED], [REDACTED] has

increased symptoms due to overuse. A letter dated from Dr. [REDACTED] [REDACTED] [REDACTED], that's where the Complainant stated to him that the Agency was failing to abide by her work restrictions. An affidavit from the Complainant's oldest daughter, dated [REDACTED] [REDACTED], that the Complainant had been a person that was on the go, however after returning to work in [REDACTED] she watched her mother try and handle the constant harassment and ridicule from her co-workers and supervisors and personally had to come to her mother's aid because of panic attacks from the work related emotional trauma.

That she had seen her mother come home from work tearful and her work life was being carried over into home life. And that she has gone from being an enthusiastic person to a person who would hide from the world and her children and would no longer smile.

A statement from [REDACTED] [REDACTED] also noted a change in the Complainant's demeanor after the Complainant was subjected to a hostile work environment at the facility and about how the Complainant would cry hysterically when

discussing what was going on at work. That statement is dated [REDACTED], [REDACTED]. A statement dated, [REDACTED] [REDACTED] [REDACTED] from a former co-worker of the Complainant which discusses how [REDACTED] [REDACTED] ignored the Complainant in the environment and the work place became difficult for her and that it extended into the Complainant's private life. The Complainant became less social, depressed and extremely stressed by the way that management was treating her. And that management was ignoring her.

Statement from the Report of Investigation, [REDACTED] [REDACTED] which noted the fact that the Complainant had missed a meeting because she didn't have a computer. Another statement from [REDACTED] [REDACTED] that is from the Report of Investigation about the Complainant leaving her office crying because she was so embarrassed about the removal of her computer from the worksite. An affidavit from [REDACTED] [REDACTED] who is also one of the Complainant's daughters said that she watched her mother morph into a person who is completely different than the person that she was prior to returning to work in [REDACTED] of [REDACTED]

and how it has affected the Complainant's ability to sleep, how she has watched her mother be subjected to stress and harassment from her supervisors, that her mother has become more withdrawn, would not go out regularly. And that it was her daughter's belief that the failure to accommodate caused the dramatic personality change that she has observed since [REDACTED]. And that her mother had shifted from being a positive upbeat and high energy person to someone with anxiety attacks, depression, lethargy and pain from her injuries on a daily basis.

Another statement dated September [REDACTED], [REDACTED] from [REDACTED] [REDACTED] who also worked at [REDACTED] [REDACTED] said she watched the Complainant's demeanor change after [REDACTED] [REDACTED] took [REDACTED] [REDACTED] computer and stored it in [REDACTED] [REDACTED] office. She saw [REDACTED] [REDACTED] crying and the Complainant was embarrassed in front of her co-workers. That she witnessed the Complainant struggling with opening the wrought iron doors in the front of the facility, the Complainant crying and going back to her car in tears and the Complainant making comments to her about being placed

in a corner and being ignored in the workplace. She stated that the Complainant felt that in her eyes her career was over and she watched other co-workers being promoted. And that the Complainant could do nothing about her poor appraisal because she couldn't go anywhere but sit in her corner and do nothing all day.

Therefore, I find an award of \$125,000 in non-pecuniary damages is fair and appropriate. I find this case is similar to the following cases: Santiago V Department of the Army, EEOC Appeal Number 01955684 (October 14, 1998), where the Commission awarded the Complainant \$125,000 for supervisory harassment that resulted in depression, social withdrawal, recurring nightmares and memories of harassment, anxiety, confusion, as well as physical problems including chest pains and stomach pains. Hughes V Department of Veterans Affairs, EEOC Appeal Number 07A10095 (August 30, 2002), where there is an award of \$125,000 to the Complainant who suffered post traumatic stress disorder, nightmares, depression and sexual dysfunction as a result of illegal Agency

discrimination. Teal V United States Postal Service, EEOC Appeal Number 01991097 (July 26th, 2000), award of \$95,000 to the Complainant who endured 11 months of intimidation, disparaging and demeaning treatment and verbal abuse from her supervisors. An award of \$95,000 by an administrative judge was upheld by the Commission in Truell V Secretary of Army, 07830056 (2003), where the Complainant suffered lack of self-esteem, depression, grief and anguish, embarrassment, anger, weight loss, stress, sleeplessness, withdrawal from friends, co-workers, and a general loss of enjoyment.

Commission upheld an award of \$150,000 in damages where the Complainant's daughter and co-workers corroborate the Complainant's testimony about the effects of discrimination. Furch V Secretary of Agriculture, 07840094 (2005), where the Complainant experienced stomach problems and was diagnosed with general anxiety disorder. In that case the administrative judge made the specific claim that the Complainant suffered from depression, loss of enjoyment of life, interference with family

relationships and a permanent diminishment of her quality of life.

I also find that the testimony of the Complainant credible that the Agency officials were both degrading and humiliating to her. The more inherently degrading or humiliating the Agency's action is, the more reasonable it is to infer that a person suffered humiliation or distress from that action. Langley V Social Security Administration, EEOC Request Number 05A50413, September 28th, 2006.

Therefore, based on the aforementioned cases I find as I stated an award of \$125,000 in non-pecuniary compensatory damages is appropriate in this case. In regard to the other relief requested by the Complainant, I find it subsequent to documentation from the Agency showing otherwise that the Complainant is to be restored 210 hours of sick leave, 400 hours of leave without pay, which equates to 420 hours of restoration of service hours as back pay relief to the Complainant. The Complainant also stated that because of the leave that she had to take

by the Agency's failure to accommodate that it interfered with her step increase, therefore, I find the Complainant should be increased to the next step grade, immediately. And immediately upon the decision being closed in this case, subject to the Agency showing that the Complainant was not entitled to a step increase during that time. I also find that the Complainant's rating should be changed from a 58 to a 76. I am also granting the Complainant \$4000 in out of pocket expenses for her retaining a representative to assist her in the case. I also find that the Agency shall either accommodate the Complainant so that she can perform the essential functions of her position with or without accommodation or find a vacant funded position for which the Complainant is qualified and reassign her into that position. Complainant during her testimony cited to several positions that she was aware of that were available.


I also find that the Agency shall conduct EEO training for all of the members of its human resource department and anyone else in human resources or in any

other department that deals with employees that are requesting accommodations as well as all of the management supervisors as to what their requirements are once an employee requests an accommodation under the ADA. And as I stated, this training should focus on the Rehabilitation Act and the employer's obligation to make reasonable accommodations. I state that the training should go beyond just the supervisors involved in this case because of the testimony during the course of the hearing from both people in HR and the supervisors that they weren't aware of any training that they had received in regards to the Rehabilitation Act. That concludes the damages portion of the hearing and my decision for today, thank you.

Last, Complainant testified that she was required to take leave due to the Agency's failure to accommodate her and the harassment based on her accommodation request. Complainant shall be restored 100 hours of sick leave as interim relief due to her taking of leave as a result of her non-accommodation. If Complainant can establish she

is entitled to additional leave, the decision will be amended to reflect the additional leave to be restored.

1/10/11
Date


Lana Layton
Administrative Judge