

# *The Federal Employee Advocate*

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## **EEOC Awards of Emotional Distress Damages Exceeding \$100,000**

By Josh Bowers<sup>1</sup>

This is the first of two articles discussing awards of over \$100,000 for emotional distress injuries suffered because of wrongful discrimination. Today's article will discuss emotional distress awards by the Equal Employment Opportunity Commission in cases filed by employees of the Federal government. The second article will discuss court decisions awarding more than \$100,000.

In 1991, the Civil Rights Act was amended to provide victims of discrimination with compensation for emotional distress. Since that time, Federal employees and Federal Agencies struggled in settlement negotiations trying to determine what is reasonable compensation for the emotional distress. When the parties can not agree, either an Administrative Judge of the EEOC or a jury will solve the dispute with an award for emotional distress compensation. We now have a body of EEOC and court decisions awarding emotional distress compensation that allows us to predict better the emotional distress award if a case is not settled and goes to trial.<sup>2</sup>

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<sup>2</sup> These resources may help you update the cases in this article:

- a. The EEOC posts on its website a quarterly report of new cases including compensatory damages awards at <http://eeoc.gov/federal/digest.html>.
- b. There are two publications updated each year with the EEOC decisions on compensatory damages awards in the federal sector. Both publications are available from Dewey publications <http://www.deweypub.com>.
  1. *Compensatory Damages and Other Remedies in Federal Sector Employment Discrimination Cases*, by Gary Gilbert, 2<sup>nd</sup> Edition 2003 plus 2005 Supplement (Dewey Publications)
  2. *A Guide to Federal Sector Equal Employment Law and Practice*, by Ernest Hadley, 2007 (Dewey Publications).

The EEOC instructs that “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.” **Moore v. U.S. Postal Service**, Appeal No. 0720050084 (March 6, 2007) *citing* **Loving v. Department of the Treasury**, EEOC Appeal No. 01955789 (August 29, 1997). The Commission’s approach to determining emotional distress compensation is understood by carefully reading the many EEOC decisions applying this formula to the facts of individual cases.

In **Munno v. Department of Agriculture**, EEOC Appeal No. 01A01734 (February 8, 2001) (**\$250,000** in emotional distress compensation<sup>3</sup>). The Commission increased an award of \$150,000 in emotional distress damages to \$250,000 based on the Complainant’s serious psychological and emotional injuries that required treatment for an indefinite period. The Complainant was a manager whose ongoing emotional injury was extreme, but who was capable of performing her duties and qualified for promotion to a senior management position.

**Glockner v. Department of Veteran’s Affairs**, EEOC Appeal No. 07A30105 (Sept. 23, 2004)(**\$200,000** in emotional distress damages.) The Complainant was harassed at work for nearly five years and diagnosed as suffering depression, anxiety, exhaustion, migraine headaches, irritable bowel syndrome and other gastrointestinal disorder. Complainant did not take medication for depression, but demonstrated depression through testimony.

**Sebek v. Attorney General**, 07A00005 (March 8, 2001)(**\$200,000** emotional distress damages) The Administrative Judge’s award of **\$200,000** was upheld by the Commission because the agency failed to provide the Commission the evidentiary record that was before the EEOC Administrative Judge.

**Stiehl v. Postmaster General.**, EEOC Case No. 150-2004-00433X (Administrative Judge Decision, Miami District Office, Sept. 12, 2008). The Administrative Judge awarded **\$200,000** for emotional pain, suffering, mental anguish, loss of enjoyment of life and loss of health. The complainant suffered PTSD, major depression, anxiety, inability to work, anger, hypertension, nightmares, sexual dysfunction, changed his relationships with his family and suffered loss of self worth. The complainant was unable to function in the same manner as he could before the harassment and despite medication and counseling, he had not been cured or significantly improved.

In **Looney v. Department of Homeland Security**, EEOC Appeal No. 07A40124, 01A53252 (May 19, 2005), (**\$195,000** emotional distress damages.) Length of hostile work environment not stated in EEOC decision, but appears to have been less than two years. Administrative Judge concluded Complainant suffered permanent emotional injury based only on Complainant and her husband’s testimony. The complainant suffered from:

bouts of crying; humiliation; depression; destruction of her spirit and confidence; feelings as if she had no purpose in life; fluctuating weight problems; rashes; anxiety; nightmares relating to her supervisor; difficulty

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<sup>3</sup> The term “non-pecuniary damages” is used by the EEOC when referring to emotional distress damages.

coping with life; being tense and unable to sleep when she lays next to her husband in bed; and was disinterested in sexual intercourse. As a result of medication taken for the emotional distress, complainant felt clumsy, shaky, considered herself to be unsafe operating a motor vehicle, and a nervous wreck. Complainant's husband testified that complainant was extremely stressed, experienced mood swings, became sick more often, kicked the bed while sleeping, and was exhausted to the point where she remained in bed for twenty hours during the day. He testified that complainant is unable to deal with any negativity and is extremely self-conscious about her communication skills, interaction with others, and loss of professional reputation and standing in the community. Complainant's friends testified to complainant's change in appearance, including significant aging in short amount of time, facial appearance being swollen and sunken, and complainant becoming withdrawn. Complainant's psychologist testified that complainant suffered from a significant amount of depression.

**Mack v. Department of Veterans Affairs** EEOC Appeal No. 01983217 (June 23, 2000) RTR denied, EEOC Request No. 05A01058 (October 26, 2000)(\$**185,000** in Emotional distress damages). Complainant “*unable to work for years to come.*” Complainant left homeless after being fired based on his development of AIDS. The emotional distress evidence in the Commission’s decision is not especially severe, but the consequences of being left homeless were quite severe. The Commission’s decision may indicate the employee failed to submit significant evidence of emotional distress at the hearing. Otherwise, it is difficult to understand why being left homeless with a terminal illness did not result in an emotional distress award at the statutory ceiling of \$300,000.

**Cahn v. United States Postal Services**, EEOC Appeal No. 0720060029 (September 5, 2008). The Commission awarded **\$175,000** where the Agency’s disability discrimination exacerbated the Complainant’s PTSD and he suffered significant emotional distress over a three year period. Complainant had insomnia, migraines, decrease in his ability to concentrate, think, focus or recall information, extreme stress and inability to complete projects or organize. He became secluded due to heightened anxiety and was separated from his wife. The damages were supported by the Complainant’s testimony, written documentation from his wife, co-worker’s testimony and medical documentation.

**Solomon v. Department of the Navy**, EEOC Appeal No. 0720070071 (March 3, 2008) The Commission awarded **\$150,000** in compensatory damages to the Complainant for disability discrimination and retaliation. The Complainant’s disposition changed, she lost her self-confidence, withdrew from friends and felt her reputation had been soiled. She returned from work crying, upset and appearing depressed. She had migraines and sleeplessness. Complainant’s Psychiatrist testified that she had depression and anxiety. The discriminatory harassment occurred over approximately one year.

**Tyner v. Dept. of Veterans Affairs**, EEOC Appeal No. 0720060032 (October 23, 2007)(\$**150,000** in emotional distress damages). Sexual harassment over seven months

with crude sexual language by a co-worker and supervisor. Complainant suffered difficulty sleeping, nightmares and panic attacks; aggravation of pre-existing psychological injury due to observing sexual abuse of a sibling by a family member; diagnosis of a major depressive disorder, post-traumatic stress disorder and agoraphobia (fear of leaving home), panic attacks, problems with her appetite, feeling sad and tearful, problems with memory comprehension and thinking clearly, and problems with self-esteem and self-confidence. Complainant became withdrawn and was spending most of the day in bed during her visits to her parent's home. Complainant awarded restoration of 273 hours of sick leave, 31.75 hours of annual leave and three hours of compensatory time.

**Furch v. Department of Agriculture**, 2005 WL 1936149, Appeal No. 07A40094 (EEOC 2005)( **\$150,000** for emotional distress). The employee saw a psychologist for 6-8 months, and continued to see a Licensed Social Worker through the agency's Employee Assistance Program. At the hearing, the employee testified she suffered from weekly crying spells, saw no relief in sight and was withdrawn socially from friends and family. The employee's daughter and co-workers corroborated complainant's testimony and reported complainant suffered from stomach problems, anxiety, and is no longer the outgoing person she once was. The employee submitted medical records from her physician, psychologist, and psychiatrist, stating a diagnosis of Generalized Anxiety Disorder.

**Kloock v. Postmaster General**, 01A31159 (2004), (**\$150,000** awarded for emotional distress). An agency's discriminatory removal of complainant resulted in him having to withdraw support of his son's ambitions to become a professional hockey player and the complainant ultimately told his son to leave home. Complainant submitted evidence of non-pecuniary damages through his affidavit, as well as affidavits from a friend and his son. Complainant provided several psychological reports. Prior to May 1994, complainant was a stable, well-adjusted and relatively happy individual. Complainant described his relationship with his son before May 1994 as exceptional and had good friendships and a rewarding life. Just prior to May 1994, complainant was in the process of buying a new home and had been pre-approved for a mortgage. Prior to May 1994, complainant had been very active with his union and the local youth hockey community....)

**Estate of Nason v. Postmaster General**, 01A01563 (2001)(**\$150,000** in emotional distress damages). Complainant, after two suicide attempts, successfully committed suicide and left behind a note that blamed the Post Office for "all the stress that they have caused me leading to this action." The Commission explained its decision in *Estate of Nason*, stating: "a tortfeasor takes its victims as it finds them." Citing *Wallis v. United States Postal Service*, EEOC Appeal No. 01950510 (November 13, 1995) (quoting *Williamson v. Handy Button Machine Co.*, 817 F.2d 1290, 1295 (7th Cir. 1987).

**Franklin v. United States Postal Service**, EEOC Appeal No. 07A00025; 01A03882 (January 19, 2001)(**\$150,000** in emotional distress damages). Complainant's "whole world had been built around this job." Once complainant forced into disability retirement, he became withdrawn, gloomy, purposeless and depressed. He was unable to find comparable work and became estranged from his wife and children and moved into a different part of the house.

**Booker v. Department of Defense**, EEOC Appeal No. 07A00023 (August 10, 2000)(\$150,000 in emotional distress damages) Complainant suffered severe depression, the duration of emotional distress was not put into evidence so the Administrative Judge's award of \$195,000 was reduced to \$150,000 based on the complainant's three suicide attempts and voluntary hospitalization.

**Terban v. Department of Energy**, EEOC Appeal No. 0720040117 (April 3, 2008). (\$130,000 awarded for harassment and constructive discharge.) Complainant experienced a serious deterioration of his relationship with his young children, and became withdrawn, moody, and depressed. He was hospitalized, considered suicide, subjected to electroshock treatment, and continued to take medication and saw a psychiatrist.

**Fellows-Gilder v. Department of Homeland Security**, EEOC Appeal No. 0720070046 (January 31, 2008). (\$130,000 in compensatory damages.) Complainant began to cut herself, and was hospitalized for suicidal behavior. Complainant was forced to seek public assistance for food and housing because of financial problems precipitated by the discrimination, and felt shame and embarrassment. She also had to move to a remote location because it was all she could afford. A friend described complainant, who had an active social life and hobbies prior to the termination, as a "hermit." The record supported a finding that complainant's pre-existing anxiety and depression were significantly exacerbated by the discrimination.

**Burton v. Department of Interior**, Appeal No. 0720050066 (March 6, 2007)(\$130,000 in emotional distress damages). Complainant was out of work for three years. Complainant suffered from depression, loss of enjoyment of life, interference with family relationships, permanent diminishment in quality of life, and physical symptoms. She suffered anxiety, depression, humiliation, sleep deprivation and began a medication regimen, which included Prozac and Paxil. Complainant "saw no relief in sight, thought about suicide, and had withdrawn socially from friends and family." Complainant's husband testified the complainant suffered from anxiety, depression, and was no longer the outgoing person she had been. Complainant submitted medical records from her physicians, and noted that she had been diagnosed with post traumatic stress disorder, major depression disorder, non-epileptic seizures, panic attacks and memory loss. Complainant suffered migraines, stomach problems, nervousness, trembling, emotional issues and contemplated suicide.

**Cook v. Postmaster General**, 01950027 (1998)(\$130,000 awarded in emotional distress damages) Complainant disabled from future employment. The Commission awarded \$80,000 in damages for daily harassment that lasted about 14 months and sporadic incidents of harassment that occurred over the next 14 months. The Commission also awarded \$50,000 in emotional distress damages caused by the complainant's future inability to work. The Commission considered that the complainant prolonged her recovery by failing to take prescribed medication. The award was tempered by the fact that more than half of the total period of harassment—33 months—occurred before the effective date of the 1991 Civil Rights Act.

**Davis v. Department of Homeland Security**, EEOC Appeal No. 0720060003 (June 18, 2007), request for reconsideration denied, EEOC Request No. 0520070778 (September 25, 2007). The Commission found complainant was subjected to sexual harassment by her supervisor's attempt to solicit sexual favors in exchange for employment advancement and his inappropriate comments. Complainant suffered severe emotional harm, stress, fear, depression and loss of self-esteem, as well as physical harm in the form of insomnia, headaches, weight fluctuations, and a stress-induced jaw disorder. The Commission awarded complainant **\$125,000** in emotional distress compensatory damages, based upon evidence that complainant suffered severe emotional harm, stress, fear, depression, and loss of self-esteem as a result of the harassment.

**Cleland v. Department of Veteran Affairs**, EEOC Appeal No. 01970546 (August 9, 2000)(**\$125,000** award in emotional distress damages based on physical and emotional harm for 5 years and expected continuation into the indefinite future.)

**Hendley v. Attorney General**, 01A20977 (2003)(**\$125,000** in emotional distress) Complainant's psychological harm was severe and psychological treatment required for at least two years. The Commission noted:

. . . Complainant in her affidavit statements credibly recounted that she had an initial severe reaction to the agency's decision to discipline her for the incidents of sexual harassment that she reported to the agency in October 1994. Prior to that time she had been seeing a psychiatrist for the emotional harm from the sexual assault just months before, but was improving and was ready to return to work. She stated she shook with anger and pain became extremely distraught and filled with anxiety. Complainant stated she cried uncontrollably for long periods of time and she was filled with despair and depression. This continued for the next six years. Complainant stated that she became fearful and paranoid that prison officials would come to her house and attack her, she became anti-social, developed an eating disorder, experienced sleeplessness and nightmares. Her professional life suffered because she stated she was unable to return to work in her chosen field of law enforcement. She felt "deeply humiliated and embarrassed" because the agency concluded that she was responsible for the behavior about which she complained. Complainant also described deterioration in family relationships which her husband corroborated in his affidavit.

**VanDesande v. Postmaster General**, 07A40037 (2004) (**EEOC Awarded \$65,979.00 for negative tax consequences.**)(Complainant harassed and terminated. The Commission reduced an administrative judges award of \$200,000 in emotional distress damages to **\$150,000** because the judge had not accounted for the fact that despite his mental condition, the complainant was able to train successfully as a firefighter/EMS and complete his probationary period. The complainant presented evidence that he would continue to need psychiatric treatment and medication for depression, anxiety disorder and Post Traumatic Stress Disorder for at least five years after the close of the hearing. However, the Commission reduced the award because there was no evidence the psychological conditions interfered with his training or subsequent job performance.)

**Terban v. Department of Energy**, EEOC Appeal No. 0720040117 (2008). Awarding **\$130,000.00** in emotional distress compensatory damages. Complainant endured two years of harassment which resulted in complainant's hospitalization, his becoming suicidal, and his receiving electro-shock treatment. As a result of the harassment,

complainant became depressed and withdrawn and his relations with his children became severely strained.

**Jo Fellows-Gilder v. Department of Homeland Security**, EEOC Appeal No. 0720070046 (January 31, 2008). (Award of **\$130,000** in emotional distress damages and \$67,458.63 in pecuniary damages. The agency terminated complainant due to her non-epileptic seizures and anxiety disorder. The complainant suffered from a pre-existing condition, however, the record showed that complainant's anxiety and depression were significantly exacerbated by the discrimination. Complainant began to cut herself, which she had not done before, and was admitted to a psychiatric hospital under a suicide watch. After the discrimination, complainant sought public assistance for the first time in her life, and lost her health insurance, which had been her link to a support network that provided her with funding for prescription medication and therapy.

**George v. Dep't of Health & Human Serv.**, EEOC App. No. 07A30079 (July 21, 2004). The Commission awarded **\$125,000** in emotional distress damages because complainant's rheumatologist testified that as a result of the agency's discriminatory conduct "complainant's rheumatoid arthritis and lupus worsened substantially," which also resulted in depression and anxiety, and the need for aggressive treatment (i.e., chemotherapy) to address these concerns. Complainant would "not be able to have children with her husband;" "there was a marked differed in complainant's life;" "complainant became emotionally destroyed;" "she did not want to go anywhere;" "her self-confidence was undermined;" and "her relationship with her stepson was affected." The duration of the harassment appears to have lasted approximately one year.

**Santiago v. Department of the Army**, EEOC Appeal No. 01955684 (October 14, 1998) (**\$125,000** in emotional distress damages). Complainant harassed and then terminated. Complainant suffered depression and other emotional and mental disorders, and severe chest and stomach pains, digestive problems and incidents of shortness of breath for approximately 1½ years due to three years of verbal abuse by her supervisor.

**Aponte v. Department of Homeland Security**, EEOC Appeal No. 0120063532 (June 11, 2008), request for reconsideration denied, EEOC Request No. 0520080673 (September 10, 2008)(**\$120,000** for emotional distress.) Two discriminatory nonselections. Complainant endured at least eight years of depression, anxiety, anger, shame, humiliation, marital strain, spiritual turmoil, sleep disturbances, and headaches. The Commission considered complainant's failure to respond to the agency's requests for medical documentation to support his claim in making the award. The Commission indicated that complainant's failure to provide supporting documentation weakened the credibility of a psychologist's diagnosis of Post Traumatic Stress and Adjustment Disorder. Nevertheless, testimony of complainant, his wife and co-workers showed that he experienced substantial emotional distress as a result of the discrimination.

**Moore v. U.S. Postal Service**, Appeal No. 0720050084 (March 6, 2007)( **\$120,000** in emotional distress damages). The complainant was unemployed for over four years and suffered ongoing significant physical pain, loss of health, emotional pain, mental anguish,

loss of career opportunities, and loss of enjoyment of life as a result of retaliatory and discriminatory conduct by the agency. His pain was chronic, and he was not been helped by multiple surgeries or steroid injections. He became so depressed and nervous that he sought treatment by a psychiatrist. Complainant's orthopedist testified the complainant's shoulder injury did not improve despite surgery and injections of steroids and painkillers designed to reduce inflammation and stiffness. The complainant's shoulder injury resulted in significant burning pain and discomfort as well as tightness. The physical pain interrupted his sleep. He essentially could not use the arm for anything, but very small activities. Complainant's psychiatrist testified the complainant is in a vicious cycle of anxiety and depression caused by his ongoing orthopedic pain.

**Durinzi v. U.S. Postal Service**, Appeal No. 01A41946 (July 28, 2005) reconsideration denied 05A51158 (October 10, 2005)(\$120,000 in emotional distress damages) The complainant and family members submitted affidavits:

Since August 1997, for over six years, as a result of the U.S. Postal Service denying me reasonable accommodations and no job, to say that my life has been turned upside down would be a gross understatement. The anxiety and pain that I have experienced as a result of the agency's actions has had a severe negative impact on my physical, emotional, mental, spiritual, and financial well-being. I have gone from being a person who was secure, organized, well adjusted, focused, happy with a bright future to a person who is irritable, agitated, worried, tired, anxiety-ridden, unable to stay focused, difficulty concentrating, angry, distressed and depressed feeling a sense of dread about life in general. The person that I once was is gone...The discriminatory action of the agency against me have caused me to even challenge my faith and religion, which has become a great source of pain, sorrow, and guilt for me. My faith has always carried me through life up until this time. However, the duration of time that this has gone on - six years - has caused me to become too overburdened and too overwhelmed for too long a period of time. . I used to be a highly motivated individual. I now feel motionless most of the time. . . I have also experienced significant amount of weight loss. . . Six years ago, when the agency denied me reasonable accommodation and denied me work because of my disabilities, they threatened everything that meant anything to me (my health, my marriage, my livelihood, my dignity, my intelligence, my faith, my very being!!!) Not only to me personally, but it took a significant toll and put a tremendous amount of strain on my relationship with my husband and on our marriage. Our intimate marital relations, as a result, have become virtually non-existent.

In **Sanford v. Postmaster General**, 01A31818 (2004)(\$115,000 in emotional distress compensation)Complainant had no time lost from work. Complainant was stalked and sexually harassed by a co-worker for several years, and the Agency failed to protect the Complainant. The Complainant was not absent from work as a result of the discriminatory actions, but reported nausea, a lump in the throat, sweating not brought on by heat, itching all over her body, intensifying of her asthma, clammy hands, dizziness, tingling in fingers and toes, difficulty catching her breath, diarrhea, pain in the stomach, a

pit in the stomach, jelly legs, hot and cold flashes, crying, disturbances in sleeping, nightmares/daydreams, shivers, and intrusive thoughts and images related to the violence she experienced. The Complainant's psychiatrist reported the complainant suffered from post-traumatic stress and would need 10 years of treatment to recover from the effects of the harassment.

**Rivers v. Secretary of Treasury**, 01992843 (2002)(\$115,000 in emotional distress damages). Complainant had a preexisting condition, but the harm extended over a significant period of time. Complainant's disability not accommodated, substantial time off work, employee granted disability retirement by OPM.

**Winkler v. Dep't of Agriculture**, EEOC App. No. 01975336 (June 7, 2000), the Commission awarded \$110,000 after complainant described experiencing feelings of "fright, shock, humiliation, embarrassment, loss of enjoyment of life, grief, anxiety, loss of self-esteem, isolation, loss of marital harmony, and depression as a result of the agency's discrimination." The Commission concluded that:

"... complainant is entitled to an award of non-pecuniary damages in the amount of \$ 110,000.00. We find this case analogous to the above-referenced cases, especially the *Brinkley* case, with respect to the nature, severity and duration of the harm. In reviewing the evidence, we find that complainant has suffered physical and emotional harm in the form of severe depression, humiliation, anxiety, crying, social withdrawal, loss of esteem, and interference with marital and social life. According to his last report, her psychiatrist believes that her condition will continue for at least two years."

**Sainz v. Department of the Treasury**, EEOC Appeal No. 0720030103 (September 19, 2008). (\$100,000 for emotional distress) Complainant suffered emotional harm that lasted for at least three years, including ongoing depression, low self-esteem, reduction in his quality of life; financial difficulties, feelings of rejection, humiliation and isolation, and weight gain. In addition to this harm, complainant was also forced to sell a life-time collection of rare coins and currency that complainant considered irreplaceable.

**Brinkley v. U.S. Postal Service**, EEOC Appeal No. 01953977 (1998) (\$110,000 in emotional distress damages) Complainant hospitalized and suffered feelings of hopelessness, loss of energy, agoraphobia, loss of interest in living, depressed mood, impaired memory and concentration, insomnia, agitation, and loss of interest in routine activities and personal self care.

**St. Louis v. U.S. Department of Agriculture**, EEOC Appeal No. 01985846 (2000)(\$105,000 in emotional distress damages). Complainant's psychiatrist's report stated recovery may take years for a partial recovery. Complainant unable to work and granted worker compensation benefits by the U.S. Department of Labor.

**Ellis-Balone v. Department of Energy, EEOC appeal No. 07A30125 (2004)(\$100,000** in emotional distress). For nine months, complainant suffered physical pain and depression, felt physically and emotionally drained.

**Gray v. Depart. of Interior**, EEOC Appeal No. 0120072136 (July 24, 2009). (Award of **\$100,000** for emotional distress/\$43,359.75 past & future medical expenses, and a \$6,100 tax enhancement.) Complainant's supervisor: "*rubbed her shoulders, called her into his office to pick up trash off the floor in front of his desk, put a bottle of oil on her desk for her hair; told her that there was 'nothing he did not know about a woman's body.'*" When Ms. Gray was going out of town, her supervisor said, "*I hope you don't give up nothing,*" and told her that her outfit was "*risqué.*" The supervisor asked another employee what kind of bra she had on. The supervisor looked at a co-worker's breasts and said, "*Oh, I see the girls this morning*" on more than one occasion. Complainant had a massive weight gain to make herself less attractive to the sexual harasser. Complaint suffered hypertension, headaches, sleep disorder, depression, anxiety, nightmares, low self-esteem, increased alcohol usages and withdrew from relationships with her daughter, grandchildren and friends.

**Kahn v. Dep't of the Interior**, EEOC App. No. 07A50039 (September 28, 2005), the Commission awarded **\$100,000** in nonpecuniary damages despite the lack of medical testimony, where the complainant described harm involving: "avoidance of people, crowds, and intense distrust of White males; social isolation and withdrawal, including loss of friends and colleagues; joylessness and loss of sense of humor; distraction and withdrawal from family; relationship with husband severely strained; high levels of stress and anxiety; exacerbation of previously existing migraine, bronchitis, and asthma conditions; menstrual irregularities; gastro-intestinal disorders; cracking of the teeth due to excessive clenching and grinding; heart palpitations; 30 to 40 pound weight gain; foot problems; heartburn; difficulty sleeping; diagnosed with moderately severe depression and generalized anxiety; loss of appetite; diminished energy; and loss of self-esteem and self-respect."

**Mika v. U.S. Department of the Air Force, 07A40113 (2005)(\$100,000** in emotional distress damages) Complainant was wrongfully terminated from employment and started drinking so he could stay drunk and "sleep through it, [so he would not] have to worry about [being terminated]," and psychotherapy after termination.)

**Green v. Potter, Postmaster General USPS, Appeal No. 01A44490 (July 19, 2005)** (**\$100,000** in emotional distress damages) Complainant diagnosed with Post Traumatic Stress Syndrome, his social and occupational functioning had been significantly impaired, and his prognosis was poor. A clinical psychologist's stated complainant continued to display the symptom configurations associated with PTSD and major depression at severe levels. Complainant's prognosis was poor and that a global functionality assessment indicated a functionality of 50, which indicated serious impairment in social and vocational functioning. He had been on various psychotropic medications to control his symptoms, including, but not limited to Gabapentin,

Citalopram Hydro bromide, Clonazepam, Quetiapine Fumarate, Trazodone, Nortriptyline, and Klonopin.

Despite extensive psychiatric treatment and evaluation, he continued to exhibit these symptoms between March 1996 and May 2004, and beyond. He reported that panic reactions would be triggered by such activities as attending church services where people would be behind him, and watching the rain. A doctor's note dated December 4, 2001, indicated that he had also been diagnosed with peripheral neuropathy, a degenerative nerve condition, which caused him to have to walk with a cane. The doctor stated that, although complainant was first diagnosed with peripheral neuropathy in 1985, the condition had been made worse by having been "coupled with his PTSD." The doctor characterized his neuropathy as, "more of a disability." The various statements from treating psychiatrists and psychologists indicate that complainant's condition is permanent. **Complainant was converted from full-time to part-time position but the amount of lost time due to discrimination is not stated in the EEOC decision.**

**Holland v. SSA**, Appeal No. 01A01372 (October 2, 2003)(\$100,000 in emotional distress damages) Complainant and psychiatrist showed that he experienced a severe emotional injury when he continued to experience feelings of worthlessness and low self-esteem for a period of five years, after he was denied a reasonable accommodation and constructively discharged. Complainant constructively discharged.

**Yasko V. Department of Army**, EEOC Appeal No. 01A32340 (April 21, 2004)(\$100,000 in emotional distress damages). Complainant started feeling depressed and anxious and was still in emotional distress when her psychologist wrote his statement four years later. It was expected the distress would last at least another four to eight months. Complainant feared for her life, and continued to do so at least until she stopped working. At times she was too anxious to go to work, and upon returning from work would frequently cry and vomit. The harassment broke the complainant's spirit, and she changed from a lively affectionate person to a depressed and angry person. For months she was so depressed she had trouble getting out of bed, and when she was awake, was barely capable of conversation. She suffered from debilitating anxiety attacks for years, and was so jumpy she no longer drove. The anxiety attacks isolated the complainant, at first preventing much social contact, but later usually preventing extended social contact. She had ongoing problems with suicidal ideation, nightmares about the harassment, and insomnia. As a result of the harassment, she is distracted, and has trouble focusing and accomplishing tasks. As a result of the emotional injuries caused by the harassment, she has been incapable of working for a period of time.

Complainant's weight gain and hypertension were aggravated by the effects of the harassment, but not completely caused by it. Prior to the harassment, the complainant had weight problems and hypertension, and had been treated for high blood pressure. These are ongoing conditions. While the complainant had prior situational and reactive depression, statements by the complainant's husband and daughter demonstrate that this had resolved prior to the harassment at issue.

**Hendley v. Department of Justice**, EEOC Appeal No. 01A20977 (May 15, 2003) request for reconsideration dismissed, EEOC Request No. 05A30962 (January 14, 2004)(\$100,000 awarded for emotional distress).Complainant suspended from October 4, 1994 through November 25, 1994.

**Janda V. Potter, Postmaster General, U.S.P.S.** No. 07A10018 (March 4, 2002)(\$100,000 emotional distress award upheld by Commission in default case against the Agency, but there is no description of the emotional harm suffered by Complainant.

**Patel v. Department of the Army**, EEOC Appeal No. 01980279 (Sept. 26, 2001)(\$100,000 awarded for emotional distress)(**The EEOC denied Complainant's claim of 882 hours of annual and sick leave.**)

**Leatherman v Department of the Navy**, EEOC Appeal No. 01A1222 (2001)(\$100,000 in emotional distress damages where complainant expressed suicidal ideations and was twice hospitalized – once for psychiatric treatment and once to treat physical ailments related to her emotional distress. Complainant's depression became so severe she stopped bathing, combing her hair or otherwise caring for herself and remained in bed.

In the first **Chow** decision, **Chow v. Department of the Army**, EEOC Appeal No. 01981308 (August 5, 1999) the Commission awarded **\$100,000** where complainant established that due to the agency's discriminatory actions she suffered from abdominal and chest pains, headaches, and hair loss, had difficulty sleeping and stopped socializing with friends. The Complainant had two years of psychotherapy and was projected to complete psychotherapy with a total of 42 months in therapy. (**The complainant made no claim for time off work.**) Subsequently, in a second **Chow** decision, in **Chow v. Department of the Army** Request No. 05991106 (February 13, 2001), the Commission granted reconsideration and modified the award based on an agreement by the parties placing a ceiling of \$93,031.01 on the amount of the compensatory damages. In modifying the award, the Commission did not otherwise change the finding that based on the injuries demonstrated that an award of \$100,000 in emotional distress compensation was appropriate.

**Kelly v. Department of Veterans Affairs**, EEOC Appeal No. 01951729 (July 29, 1998) (\$100,000 awarded where subjection of aggrieved individual to hostile work environment caused her to develop severe psychological injury, from which she was still suffering at the hearing); (**Complainant off work 17 months.**)

**Finlay v. U.S. Postal Service**, EEOC Appeal No. 01942985 (April 20, 1997)(\$100,000 awarded for severe psychological injury over four years with harm expected to continue for an indeterminate period of time. Post-traumatic stress disorder. Complainant's symptoms included ongoing depression, frequent crying, concern for physical safety, loss of charm, lethargy, social withdrawal, recurring nightmares and memories of harassment, a damaged marriage, stomach distress and headache.)(**Complainant off work for three years.**)

The author of this article will welcome your comments or questions. Please contact Attorney Josh Bowers at [JBdcLaw@aol.com](mailto:JBdcLaw@aol.com) or visit [www.JoshBowersLaw.com](http://www.JoshBowersLaw.com).