

**UNITED STATES DEPARTMENT OF LABOR**  
**OFFICE OF ADMINISTRATIVE LAW JUDGES**  
**Cherry Hill, New Jersey**

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**Issue Date: 24 March 2023**

Case No.: 2019-STA-00048

In the Matter of:

**ANGELO SCOTT,**  
Complainant

v.

**E.O. HABHEGGER COMPANY,**  
Respondent

**DECISION AND ORDER ON DAMAGES**

This matter arises from the complaint of retaliation by Angelo Scott (“Complainant”) against E.O. Habegger Company (“Respondent” or “EOH”) under the Surface Transportation Assistance Act of 1982 (“the Act” or “STAA”), 49 U.S.C. §§ 31105, and the regulations promulgated thereunder at 29 C.F.R. Part 1978. Section 405 of the Act provides protection from discrimination to employees who report violations of commercial motor vehicle safety rules or who refuse to operate a vehicle when such operation would be in violation of those rules.

**I. PROCEDURAL HISTORY**

On June 14, 2017, Complainant filed a complaint with the Occupational Safety and Health Administration (“OSHA”). In his complaint, he alleged that Respondent terminated his employment on June 12, 2017, in retaliation for his protected activity. Specifically, Complainant alleged that he had refused to complete paperwork needed to ship fire extinguishers in a manner that he believed to be unsafe and illegal. Complainant also claimed that he reported other safety-related concerns to his supervisors –namely, that alcohol was being stored in the workplace, that a fellow employee was involved in a workplace accident while intoxicated, and that the lighting in Respondent’s warehouse was inadequate.

The hearing in this matter took place in Philadelphia, Pennsylvania on January 6, 2020, and reconvened on December 16, 2020. The December 16, 2020 hearing took place over video teleconference. On April 11, 2022, the undersigned issued a Decision and Order finding that Complainant had established that Respondent terminated his employment in retaliation to his protected activity; the Decision and Order ordered reinstatement. However, neither party had submitted any evidence in the original hearing regarding damages, so the undersigned directed the parties to file any evidence regarding damages within thirty days of the decision. The parties filed evidence on damages, however, both parties also appealed the Decision and Order to the Administrative Review Board. On December 5, 2022, the Board remanded the matter to the undersigned so that this court could address damages and render a final decision.

## I. Arguments

### A. Complainant's Arguments

Complainant has requested \$654,000.00 as damages in front and back pay. See Complainant's Jan. 30, 2022, Closing Argument; see also Respondent's Brief on Damages in Ex. H, at 4 (.pdf pg. 35). Complainant argues that he "can't find work and will need to work the next twenty (20 years)," meaning he is entitled to \$29,000 per year for those twenty years, or \$580,000 total. See *id.* Additionally, Complainant argues that he is entitled to \$74,000 in back pay beginning with his termination in June 2017. *Id.* Specifically, Complainant alleges that he is entitled to full back pay because "he was retaliated against at every job he held" since being terminated. See Angelo Scott Answers to Interrogatories, at 3.

Complainant has also requested compensatory damages. Complainant argues that he has suffered reputational harm as his "reputation has been ruined" because of "the company and the government actin[g] as one;" alleging that he can no longer defend himself and that his permit to carry a concealed weapon was revoked because of "rogue federal investigators and city of Philadelphia officials." Angelo Scott Answers to Interrogatories, at 2. Complainant argues that he has experienced humiliation from "the company and the federal government" which has affected his "self-esteem and ability to focus" on his new career." *Id.* Complainant argues that his anxiety condition has worsened from the harm "caused to [him] from the company and the federal government." *Id.* He specifically alleges that he had to increase his medication dosage of paroxetine (Paxil) from 20 mg. daily to 40 mg. "around when OSHA was just giving [him] a hard time when they went rogue." Deposition Transcript at 114:5–14, Respondent's Brief on Damages at .pdf pg. 238. Complainant alleges that he suffers from anxiety and has had a "hard time sleeping at night suffering from insomnia." Angelo Scott Answers to Interrogatories at 3. Complainant argues that he is entitled to damages for loss of "love and sex", because his relationship with his wife of twenty-seven years "has really been strained" because of "this ordeal," including that his wife has had to borrow from her 401(k) plan to support him. *Id.* He also alleges that his wife has been "directly affected by the discrimination ... and it has worsened her anxiety condition." *Id.* Finally, Complainant argues that his damages should include compensation for his loss of enjoyment of activities "ever since being discriminated against by EOH and the OSHA investigators." *Id.* He alleges that he no longer "enjoy[s] anything" and that "the corruption from the federal government . . . is on [his] mind every day." *Id.*

Lastly, Complainant argues that he is entitled to "the max" amount of punitive damages. See Angelo Scott Answers to Interrogatories at 6. He alleges that he is entitled to these damages because "[t]he company and government both need to be punished for their treatment" of him. *Id.* As evidence of this mistreatment, Complainant argues that his case "is the oldest case still open at the Department of Labor," showing "how rotten this judge is." Deposition Transcript at 140:6–141:4.

### B. Respondent's Arguments

First, Respondent argues that Complainant is not entitled to back pay damages because he failed to mitigate damages by failing to exercise reasonable diligence to stay employed. See Respondent's Brief on Damages at 6 (.pdf pg. 7). Specifically, Respondent argues that at every

position since his termination from Respondent, Complainant’s “antagonistic, or at best irritating, workplace behavior continued, resulting in his termination.” *Id.* at 12 (.pdf pg. 13). Respondent argues that Complainant was fired from each subsequent position for this unreasonable behavior, rather than for raising safety concerns as he alleges, because there has been no “determination from any tribunal that he was subjected to any discrimination or wrongfully terminated” from any subsequent position. *Id.* at 7 (.pdf pg. 8).

Second, Respondent argues that if Complainant is awarded back pay damages at all, the award should be limited to solely the period between his termination from Respondent and the beginning of his employment with P.T.R. Baler. See Respondent’s Brief on Damages at 12 (.pdf pg. 13). Because Complainant earned higher wages at every position after his termination from Respondent, Respondent argues that the employer’s obligation to pay damages ended at the date where Complainant first found higher paying employment at P.T.R. Baler, about four or five months after his termination from Respondent. *Id.*

Respondent also argues that Complainant is not entitled to front pay, because Complainant refused the reinstatement ordered by the April 11, 2022 Decision. See Respondent’s Supplemental Damages Letter at 2 (Sept. 12, 2022). Respondent argues that this Court had previously found that reinstatement was possible and feasible, and Complainant has offered no evidence to contradict that finding by this Court in its April 11, 2022 decision. See Respondent’s Brief on Damages at 20 (.pdf pg. 21). Respondent argues that when a Complainant refuses reinstatement without “good reason,” they forfeit any prospective front pay. *Id.* (citing *Jernigan v. Dalton Mgmt. Co., LLC*, 819 F. Supp. 2d 282, 292 (2011)).

Additionally, Respondent argues that Complainant cannot establish that he is entitled to compensatory damages, because he has provided no evidence in support of the harm he suffered and has provided no evidence that Respondent—not the government—caused any alleged harm. See Respondent’s Brief on Damages at 16 (.pdf pg. 17).

Lastly, Respondent argues that Complainant is not entitled to punitive damages, because Respondent had merely instructed Complainant “to act in accordance with the law,” violating no law and creating no “risk of harm” to Complainant or to third parties justifying punishment. See Respondent’s Brief on Damages at 24 (.pdf pg. 25). Additionally, Respondent argues that Complainant’s claim for punitive damages is based on a speculative argument regarding a collusion scheme between Respondent and OSHA, for which Complainant has provided no evidence. *Id.* at 25 (.pdf pg. 26).

## II. Factual Background

### A. Reinstatement

In the April 11, 2022 Decision and Order, the undersigned ordered Respondent to reinstate Complainant to his previous position, because Complainant had presented no evidence to suggest that he would not be amenable to reinstatement. See Decision and Order at 21. Respondent alleges that “[t]he record shows that Complainant refused the reinstatement ordered by the April 11, 2022 Decision, deciding instead that he should receive damages in the form of back and forward pay to his

presumed retirement date.” See Respondent’s Supplemental Damages Letter at 2 (Sept. 12, 2022). Respondent does not point to any specific part of the record which establishes that Complainant refused reinstatement. Additionally, neither Respondent’s nor Complainant’s filings make clear that Respondent offered reinstatement. However, Complainant concedes that he did not accept reinstatement, alleging that he would be returning to a hostile work environment. See Complainant’s Supplemental Brief at 1 (“E.O. Habhegger Company would be a hostile work environment if I returned. I would never feel safe. Who would feel safe?”).

## B. Complainant’s Employment History

The parties do not dispute that while at E.O. Habhegger, Complainant was paid at a rate of \$14.00 an hour. Deposition Transcript at 101:2–5 (Respondent’s Brief on Damages, Ex. H., .pdf pg. 225). As such, Complainant estimates that he was making around \$29,000 per year. See Complainant’s Closing Argument (Jan. 30, 2020); see also Respondent’s Brief on Damages, Ex. H, Complainant’s 2018 Tax History Report (.pdf pg. 320) (identifying 2017 total income as \$29,920 in Complainant’s 1040 Form). Complainant testified that he did not receive benefits while employed by Respondent. Deposition Transcript at 101:20–102:3.

Respondent terminated Complainant on June 12, 2017. Decision and Order at 18. Complainant began working at P.T.R. Baler as an inventory coordinator within “about four or five months” after leaving Respondent. Deposition Transcript 73:16–74:2 (Respondent’s Brief on Damages, .pdf pgs. 197–98); 104:23–105:4 (Respondent’s Brief on Damages, .pdf pgs. 228-29). At P.T.R. Baler, Complainant made \$18.00 an hour and had full benefits: medical, dental, optical, and life insurance, participation in the company’s 401(k), and the availability of overtime. Deposition Transcript at 88:1–89:5 (Respondent’s Brief on Damages, .pdf pgs. 211-212). While he was working for P.T.R. Baler, Complainant filed an OSHA complaint against P.T.R. Baler, which OSHA dismissed. Deposition Transcript at 91:12–17 (Respondent’s Brief on Damages at .pdf pg. 215).

Complainant’s employment ended at P.T.R. Baler around November 2018, because the company “terminated [his] position,” telling Complainant they no longer needed an inventory coordinator. Deposition Transcript at 90:18–91:8 (Respondent’s Brief on Damages, .pdf pgs. 214–15). Complainant has provided neither an exact date of termination nor a termination letter.

Following P.T.R. Baler, Complainant worked for NVR/Ryan Homes, where he earned \$17.00 per hour and was offered full benefits. Deposition Transcript at 63:19–64:23 (Respondent’s Brief on Damages, .pdf pgs. 187–88). Complainant’s employment at Ryan Homes ended “after a couple of months.” Deposition Transcript at 65:12–17 (Respondent’s Brief on Damages, .pdf pg. 189). Ryan Homes terminated Complainant for misconduct—specifically, for “swinging a hammer at somebody.” Deposition Transcript at 57:4–9 (Respondent’s Brief on Damages at .pdf pg. 181). Complainant, however, points to the OSHA complaint that he filed while at Ryan Homes as the reason for his termination, claiming “[Ryan Homes] just wanted to get rid of me. And that was a good way to get rid of me because I was making safety concerns.” Deposition Transcript at 55:20–56:24; 58:6–14 (Respondent’s Brief on Damages at .pdf pgs. 179-80, 182). It is undisputed that OSHA dismissed Complainant’s complaint against Ryan Homes. Deposition Transcript at 58:15–17 (Respondent’s Brief on Damages at .pdf pg. 182).

Following Ryan Homes, Complainant worked for Selectron Solutions at a rate of \$21.00 per hour with full benefits. See Angelo Scott's Answers to Interrogatories at 4; Deposition Transcript at 35:2–23 (Respondent's Brief on Damages, .pdf pg. 159). In a termination letter dated September 17, 2021, Selectron informed Complainant they were terminating him for "sabotage and deliberate destruction of company and customer assets"—specifically, for packing a shipment to a customer with trash from his wastebasket. Termination Letter, Ex. H, Respondent's Brief at .pdf pg. 317. Complainant disagrees with this characterization, instead arguing that he used empty shipping labels "as a buffer" for the package; he did not use "trash per se." Deposition Transcript at 40:1–12 (Respondent's Brief on Damages, .pdf pg. 164). As with his termination from Ryan Homes, Complainant points to the complaints he raised while at Selectron (this time, about the company's alleged dishonesty) as the true basis for his termination. See Deposition Transcript at 44:13–24 (Respondent's Brief on Damages at .pdf pg. 168).

As of his deposition testimony on July 12, 2022, Complainant was employed with the Philadelphia Airport, where he earned \$18.00 per hour and is eligible for benefits and overtime. Deposition Transcript at 22:7–14 (.pdf pg. 146); 28:8–10 (.pdf pg. 152), 29:1–4 (.pdf pg. 153).

### III. Discussion

#### A. Back Pay

Generally, a wrongfully terminated employee is entitled to back pay under the Act. 49 U.S.C.A § 31105(b)(3)(A)(iii). This provision is designed to "return the wronged employee to the position he would have been in had his employer not retaliated against him." *Smith v. Lake City Enter., Inc.*, ARB No. 09-033,09-091, ALJ No. 2006-STA-032, 2010 WL 3910346, at \*8 (Sept. 24, 2010) (citing Assistant Sec'y & Bryant v. Mendenhall Acquisition Corp., ARB No. 04-014, ALJ No. 2003-STA-036, 2005 WL 1542547, at \*7 (ARB June 30, 2005)). Back pay damages are not calculated according to a "fixed method," but still must be "reasonable and supported by the record." *Assistant Sec'y & Bryant v. Mendenhall Acquisition Corp.*, ARB No. 04-014, ALJ No. 2003-STA-036, 2005 WL 1542547 at \*6 (ARB June 30, 2005).

The period for calculating back wages entitlement ends with a bona fide offer of reinstatement from the employer. *Assistant Sec'y & Bryant v. Mendenhall Acquisition Corp.*, ARB No. 04-014, ALJ No. 2003-STA-036, 2005 WL 1542547 at \*6 (ARB June 30, 2005). The ARB has also held that the period for which a wrongfully terminated employee is entitled to back pay damages ends when the complainant finds new, higher-paying employment. *Simpson v. Equity Transp. Co.*, ARB No. 2019-0010, ALJ No. 2017-STA-00076, 2020 WL 3146472, at \*10 (May 13, 2020). This limitation reflects the make-whole purpose of the availability of this form of relief—to return the wronged employee to the same position, not to improve his condition. See, e.g., *Smith v. Lake City Enter., Inc.*, ARB No. 09-033,09-091, ALJ No. 2006-STA-032 (ARB Sept. 28, 2010), 2010 WL 3910346, at \*10 (rejecting complainant's back pay request where it would put the employee "in a better position than he was when employed.").

Thus, here, Complainant is entitled only to back pay damages for the four to five months during which he was unemployed immediately following his termination from Respondent. The parties do not dispute that at each subsequent position Complainant received a higher wage than the

\$14.00/hour rate he received at E.O. Habhegger, with the same or better benefits. The parties also do not dispute that he earned \$18.00 per hour at P.T.R. Baler, \$17.00 per hour at NVR/Ryan Homes, and \$21.00 per hour at Selectron. Complainant has not provided any evidence showing that he received fewer benefits at any subsequent position after his termination, instead testifying to receiving better benefits at each subsequent job. As such, except for the period immediately following his termination in which he was unemployed, Complainant was not in a worse financial position than when employed with Respondent, meaning he is not due compensation for his periods of subsequent employment.

Because Complainant has not submitted exact dates of employment, determining the exact period of back pay damages to which he is entitled poses a challenge. In his deposition testimony, Complainant alleged that he began working at P.T.R. Baler as an inventory coordinator within “about four or five months” after leaving Respondent . Deposition Transcript at 73:16–74:2. At another instance in his deposition testimony, Complainant claimed that he began working at P.T.R. Baler within about “four months after leaving Habhegger.” Deposition Transcript at 104:23–105:4 (Respondent’s Brief on Damages, .pdf pgs. 228-29). Complainant’s submitted tax forms (Respondent’s Brief on Damages, .pdf pgs. 319-585) do not specifically indicate in which months he worked for which employers, and he has not submitted other documentation to verify this information (such as an offer letter from P.T.R. Baler). See Deposition Transcript at 89:22–90:3 (.pdf pgs. 89-90).

Because Complainant carries the burden of showing damages, the undersigned finds that a back pay period of four months is reasonable. This is the shortest layoff-duration of the estimates given in the record and Complainant is unable to establish that he experienced the longer five-month layoff-duration. For a period of four months of unemployment after his termination from Respondent, Complainant would be entitled to approximately \$9,973.32 in back pay damages. Complainant estimates that he was making around \$29,000 per year while working at E.O. Habhegger at an hourly rate of \$14.00/hour—a rate which remains uncontested. See Complainant’s Closing Argument (Jan. 30, 2020). In his 2018 Tax History Report (Respondent’s Brief on Damages, .pdf pg. 320), Complainant identified his 2017 total income as \$29,920. With \$29,920 as his annual wage, Complainant’s average monthly wages were \$2,493.33. Multiplied by four months, his total back pay damages would be \$9,973.32.

In addition to back pay awards, a successful STAA complainant is entitled to pre-judgment interest on the back pay awards “from the date of discharge to the date of reassignment,” which is to be compounded quarterly. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000). The ARB has held that the administrative law judge must calculate interest on that award according to the rate charged for underpayment of federal taxes. *Dale v. Step 1 Stairworks, Inc.*, ARB No. 04-003, 2002-STA-30, at 16 (ARB Mar. 31, 2005). This rate is set forth in 26 U.S.C.A. § 6621(a)(2) (West 2002) as “the Federal short-term rate determined under subsection (b)” plus “3 percentage points.” In *Doyle v. Hydro Nuclear Services*, the ARB laid out the process for calculating prejudgment interest which is compounded quarterly. ARB Nos. 99-041, 99-042, 00-012, ALJ No. 89-ERA-22, slip op. at 18-21 (ARB May 17, 2000). Additionally, a complainant is entitled to post-judgment interest paid until the date a back pay award is paid. *Johnson v. Roadway Express, Inc.*, ARB No. 99-011, ALJ No. 1999-STA-5, at 16 (ARB Mar. 29, 2000). As such,

Complainant—as of the date of this Decision and Order’s issuance—is entitled to \$2,265.12 in pre-judgment interest on his back pay award.

## B. Mitigation of Damages

A successful STAA complainant must “mitigate his damages through the exercise of reasonable diligence in seeking alternative employment.” *Cook v. Guardian Lubricants, Inc.*, ARB Case No. 97-055, ALJ Case No. 95-STA-43, at 5 (May 30, 1997). This duty generally requires not only that the wrongfully terminated employee “diligently seek substantially equivalent employment . . . but also that the employee act reasonably to maintain such employment” *Id.* (citing *Hufstetler v. Roadway Express, Inc.*, 85-STA-8 (Sec’y Aug. 21, 1986)). However, the employer has the burden to prove by a preponderance of evidence that the employee failed to mitigate his damages. *Abdur-Rahman v. DeKalb County*, ARB Nos. 12-064, -067, ALJ Nos. 2006-WPC-2, -3 (ARB Oct. 9, 2014) (citing *Johnson*, ARB No. 99-011, ALJ No. 1999-STA-5 (ARB Mar. 29, 2000)).

In *Johnson v. Roadway Express, Inc.*, the ARB adopted the Brady approach to determining whether back pay damages should be tolled for failure to mitigate. ARB No. 99-011, ALJ No. 1999-STA-5 at 11 (ARB Mar. 29, 2000). In *Brady v. Thurston Motor Lines, Inc.*, the U.S. Court of Appeals for the Fourth Circuit held that “periods of unemployment following justified discharges are to be completely excluded from the back pay period.” 753 F.2d 1269, 1280 (4th Cir. 1985). The Circuit Court reasoned that to hold employers accountable for periods where the employee has effectively taken themselves off the market would be unfair to employers. See *id.*

However, Brady also sets forth a limit to this rule: that “a voluntary quit does not toll the period when it is prompted by unreasonable working conditions or the earnest search for better paying employment.” *Id.* at 1278. For the purposes of establishing constructive discharge, the ARB has previously held that “intolerable working conditions” are “working conditions [that] were so difficult or unpleasant that a reasonable person in the employee’s shoes would have found continued employment intolerable and would have been compelled to resign.” *Jennings v. McLane Co., Inc.*, ARB No. 2017-0045, ALJ No. 2017-STA-00009 (ARB Jan. 7, 2020). Additionally, the ARB applied the standard from *Thurman v. Yellow Freight Systems, Inc.*, 90 F.3d 1160, 1169 (6th Cir. 1996) in *Johnson*, which requires that termination of interim employment is only tolled against a back pay award “if the employee’s misconduct is gross or egregious, or if it constitutes a willful violation of company rules.” *Johnson*, ARB No. 99-011, at 10.

Respondent argues that Complainant should be denied all front and back pay damages because Complainant failed to mitigate his damages by failing to remain employed at any position since his termination from Respondent. See Respondent’s Brief on Damages at 12 (.pdf pg. 13). Respondent attempts to prove failure to mitigate by pointing to Complainant’s terminations at Ryan Homes and Selectron. The purported reason for Complainant’s termination from Ryan Homes, for example, was for allegedly swinging a hammer at another individual, which Complainant stated the company considered constituted “misconduct.” Deposition Transcript at 57:4–19. Complainant disagreed with this characterization of the reason for his termination. Deposition Transcript at 55:20–56:24; 58:6–14 (Respondent’s Brief on Damages at .pdf pgs. 179-80, 182). Complainant’s termination from Selectron appears to have been based on his gross or egregious misconduct and violation of company

rules, since he was terminated for “sabotage and deliberate destruction of company and customer assets.” Termination Letter, Ex. H, Respondent’s Brief at .pdf pg. 317.

The undersigned need not address whether Respondent has met its burden to prove Complainant’s failure to mitigate damages because, as discussed in the previous section on back pay, the period for back pay ends at the beginning of Complainant’s employment at P.T.R. Baler. Thus, Complainant’s behavior after those four or five months after June 2017—however egregious or in violation of company rules—is irrelevant to the calculation of damages since his behavior at jobs after the P.T.R. Baler job do not determine the period for back pay.

### C. Front Pay

Under the STAA, reinstatement to the employee’s position is an automatic remedy, and this court ordered reinstatement of Complainant in the April 11, 2022 Decision and Order. *Dale v. Step 1 Stairworks, Inc.*, ARB No. 04-003, ALJ No. 02-STA-30, slip op. at 4 (Mar. 31, 2005). However, front pay may be appropriate instead where the parties have demonstrated “the impossibility of a productive and amicable working relationship.” *Creekmore v. ABB Power Sys. Energy Servs., Inc.*, 93-ERA-24, slip op. at 9 (Sec’y Feb. 14, 1996). The ARB has affirmed the availability of front pay in the STAA context, for example, affirming the award of front pay to an employee who refused reinstatement because he was suffering from depression, where he had provided evidence from his physician about his condition. *Michaud & Ass’t Sec’y v. BSP Transport, Inc.*, ARB No. 97-113, ALJ No. 1995-STA-29 (ARB Oct. 9, 1997).

Here, Complainant’s only evidence of the impossibility of his reinstatement is the bare assertion that there would be a “hostile work environment” if he returned to Respondent. Deposition Transcript at 155:6–9 (Respondent’s Brief on Damages, .pdf pg. 279); Complainant’s Supplemental Brief at 1 (“E.O. Habegger Company would be a hostile work environment if I returned. I would never feel safe. Who would feel safe?”). Without any other evidence, Complainant has not provided sufficient evidence that reinstatement was an impossible remedy, and as such, is not owed front pay damages. Complainant’s request for \$654,000 in front pay damages is denied.

### D. Punitive Damages

In addition to front and back pay, the STAA also provides for the possibility of punitive damages as a form of relief, in an amount not to exceed \$250,000, where “there has been ‘reckless or callous disregard for the plaintiff’s rights, as well as intentional violations of federal law.’” *Youngerman v. United Parcel Serv., Inc.*, ARB No. 11-056, ALJ No. 2010-STA047, slip op. at 5 & n.16 (ARB Feb. 27, 2013) (citing *Ferguson v. New Prime, Inc.*, ARB No. 10-075, ALJ No. 2009-STA-047 (ARB Aug. 31, 2011)). In *Ferguson*, the ARB vacated an award for punitive damages even where an ALJ found that the manager had intentionally violated a safety statute by pressuring a driver to drive in hazardous conditions. *Id.* at 8. The ARB vacated the award because the ALJ had failed to consider “whether [the manager]’s behavior reflected a corporate policy of STAA violations or whether punitive damages are necessary in this case to deter further violations.” Additionally, the Board in *Ferguson* pointed to the Restatement (Second) of Torts § 908(1) (1979) for the principle that the purpose of punitive damages is “to punish [the defendant] for his outrageous conduct and to deter him and others from similar conduct.” *Id.*



Here, Complainant has not provided sufficient evidence that punitive damages are warranted. For one, Respondent did not actually violate federal law through the behavior that Complainant observed and reported, as established in the April 11, 2022 Order, so there was no “intentional violation of federal law” or “outrageous conduct.” The April 11, 2022 Order recognized that the regulation which Complainant believed to be violated only applies when fire extinguishers are shipped by air, and here, Complainant has provided no evidence that Respondent shipped fire extinguishers by air. See Decision and Order at 12-13. As such, Complainant has provided no evidence that Respondent had a policy of violating any commercial motor vehicle regulation. Complainant has also presented no evidence of a corporate policy of STAA violations beyond his own treatment. As such, it is unlikely that a punitive damages award would deter Respondent or any other party from breaking the law in the future. Complainant is not entitled to punitive damages from Respondent.

#### E. Compensatory Damages

A successful whistleblower complainant may recover for compensatory damages if they can establish “by a preponderance of the evidence that the unfavorable personnel action caused the harm.” *Evans v. Miami Valley Hosp.*, ARB Nos. 2007-0118, -0121; ALJ No. 2006-AIR-00022, at 20 (ARB June 30, 2009). Here, Complainant alleges that he is entitled to compensatory damages for reputational harm, humiliation, the worsening of an existing anxiety condition, pain, and suffering (anxiety), insomnia, loss of love and sex life with his wife, and loss of enjoyment of life’s activities. See Angelo Scott Answers to Interrogatories, at 2-3. However, for each of these claims, Complainant attributes the harms he has suffered not to Respondent, but instead, to OSHA and other employees of the Department of Labor. As such, Complainant’s compensatory damages claims generally face the same problem as his arguments for punitive damages—such damages are not available against judges who hear STAA cases, or against those who did not cause the complained-of harm. See, e.g., *Clevinger v. Saxner*, 474 U.S. 193, 200 (1985).

For each of his compensatory damages claims, Complainant identifies OSHA or the Department of Labor, not Respondent, as the source of his harm. In support of his reputational harm claim, Complainant argues that his “reputation has been ruined” because of “the company and the government act[ing] as one,” alleging that he can no longer defend himself and that his permit to carry a concealed weapon has been revoked because of “rogue federal investigators and city of Philadelphia officials.” See Angelo Scott Answers to Interrogatories, at 2. Complainant testified in his deposition that that the revocation of his gun license was the “extent of his reputational harm.” Deposition Transcript at 110:20–24 (Respondent’s Brief on Damages, .pdf pg. 234).

Next, Complainant argues that he has experienced humiliation from “the company and the federal government” which has affected his “self-esteem and ability to focus” on his new career. Angelo Scott Answers to Interrogatories, at 2. However, Complainant has testified that he has not seen a psychiatrist or any other medical professional about his self-esteem, humiliation, or reputational harm. Deposition Transcript at 111:23–112:20. Without further documentation, Complainant is unable to establish the necessity of compensatory damages for the stated reasons.

Complainant argues that he has experienced a worsened anxiety condition from the harm “caused to [him] from the company and the federal government.” See Angelo Scott Answers to Interrogatories, at 2. However, Complainant provides no evidence of a connection between his anxiety condition and his treatment by Respondent. As evidence of his worsened condition, Complainant has provided testimony that he had to increase his medication dosage of paroxetine (Paxil) from 20 mg daily to 40 mg “around when OSHA was just giving [him] a hard time when they went rogue.” Deposition Transcript at 114:3–11 (Respondent’s Brief on Damages, .pdf pg. 238). He agreed that he contacted his doctor about his dosage “because of the stress [he] felt due to OSHA”; however, he further agreed that he never discussed with his doctor Respondent or Respondent’s treatment of him as the reason for his need to increase his medication dosage. See Deposition Transcript at 114:3–15 (Respondent’s Brief on Damages, .pdf pg. 238). Complainant only ever described his change in medication in connection to his treatment by OSHA, not by Respondent, meaning he cannot recover compensatory damages from Respondent for that alleged harm.

Complainant alleges that he suffers from anxiety and has had a “hard time sleeping at night suffering from insomnia.” See Angelo Scott Answers to Interrogatories, at 3. However, he testified that he began experiencing issues sleeping “when the whole thing with OSHA and what they were doing” began, and explicitly agreed that his sleeping problems were a result of OSHA’s “actions and obstruction of justice.” Deposition Transcript at 117:10–13.

Complainant alleges that his relationship with his wife of twenty-seven years “has really been strained” because of “this ordeal,” including the fact that his wife has had to borrow from her 401(k) plan to support him. See Angelo Scott Answers to Interrogatories, at 3. He also alleges that his wife has been “directly affected by the discrimination to Mr. Scott and it has worsened her anxiety condition.” *Id.* However, Complainant admits that he has “no receipts” for, or no evidence of, his loss of intimacy or love life. Deposition Transcript at 126:14–20.

Finally, Complainant alleges that he has suffered a loss of enjoyment of activities “ever since being discriminated against by EOH, and the OSHA investigators.” See Angelo Scott Answers to Interrogatories, at 3. He alleges that he no longer “enjoy[s] anything” and that “the corruption from the federal government . . . is on [his] mind every day.” *Id.* In his deposition testimony, Complainant specifically attributed his loss of enjoyment of life’s activities to “OSHA’s conduct,” and explicitly rejected that this harm was because of Respondent’s conduct. Deposition Transcript at 126:21–128:20 (Respondent’s Brief on Damages, .pdf pgs. 250-53).

Complainant has not provided specific evidence of harm to support his compensatory damages claims, let alone evidence of harm specifically caused by Respondent. As such, he is not entitled to compensatory damages.

#### IV. Conclusion

Complainant is entitled to back pay for his period of unemployment of approximately four months between his termination from E.O. Habegger, and the beginning of his employment at P.T.R. Baler. Because he had been making \$14.00/hour at Respondent, or about \$29,120.00 a year, Complainant is entitled to \$9,973.32 in back pay damages, plus an interest award of \$2,265.12.

Complainant has not provided sufficient evidence to prove that reinstatement was impossible such that a front pay award would be justified here. Additionally, Complainant is not entitled to the other categories of damages which he has requested, including compensatory damages and punitive damages, because he attributes those damages not to the actions of Respondent, but rather to OSHA and to the Department itself. As such, Complainant's relief is limited to back pay damages and interest only.

ORDER

Respondent is directed to pay Complainant \$12,238.44 in damages and interest.

SO ORDERED.

**THERESA C. TIMLIN**  
Administrative Law Judge

Cherry Hill, New Jersey-District Office

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within **fourteen (14) days** of the date of the administrative law judge's decision.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-filing; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, the Associate Solicitor, Division of Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).

**IMPORTANT NOTICE ABOUT FILING APPEALS:**

**The Notice of Appeal Rights has changed because the system for online filing has become mandatory for parties represented by counsel. Parties represented by counsel must file an appeal by accessing the eFile/eServe system (EFS) at <https://efile.dol.gov/> EFILE.DOL.GOV.**

*Filing Your Appeal Online*

Information regarding registration for access to the new EFS, as well as user guides, video tutorials, and answers to FAQs are found at <https://efile.dol.gov/support/>.

Registration with EFS is a two-step process. First, all users, including those who are registered users of the former EFSR system, will need first create an account at login.gov (if they do not have one already). Second, if you have not previously registered with the EFSR system, you will then have to create an account with EFS using your login.gov username and password. Once you have set up your EFS account, you can learn how to file an appeal to the Board using the written guide at <https://efile.dol.gov/system/files/2020-10/file-new-appeal-arb.pdf> and/or the video tutorial at <https://efile.dol.gov/support/boards/new-appeal-arb>. Existing EFSR system users will not have to create a new EFS profile.

Establishing an EFS account should take less than an hour, but you will need additional time to review the user guides and training materials. If you experience difficulty establishing your account, you can find contact information for login.gov and EFS at <https://efile.dol.gov/contact>. If you file your appeal online, no paper copies need be filed with the Board.

**You are still responsible for serving the notice of appeal on the other parties to the case and for attaching a certificate of service to your filing. If the other parties are registered in the EFS system, then the filing of your document through EFS will constitute filing of your document on those registered parties. Non-registered parties must be served using other means. Include a certificate of service showing how you have completed service whether through the EFS system or otherwise.**

*Filing Your Appeal by Mail*

Self-represented (pro se) litigants may, in the alternative, file appeals using regular mail to this address:

Administrative Review Board  
U.S. Department of Labor  
200 Constitution Avenue, N.W., Room S-5220,  
Washington, D.C., 20210

*Access to EFS for Other Parties*

If you are a party other than the party that is appealing, you may request access to the appeal by obtaining a login.gov account and EFS account, and then following the written directions and/or via the video tutorial located at:

<https://efile.dol.gov/support/boards/request-access-an-appeal>

*After An Appeal Is Filed*

After an appeal is filed, all inquiries and correspondence should be directed to the Board.

*Service by the Board*

Registered e-filers will be e-served with Board-issued documents via EFS; they will not be served by regular mail. If you file your appeal by regular mail, you will be served with Board-issued documents by regular mail; however, you may opt into e-service by establishing an EFS account, even if you initially filed your appeal by regular mail.