SUPREME COURT OF THE UNITED STATES

No. 94–500

COMMISSIONER OF INTERNAL REVENUE, PETITIONER
v. ERICH E. SCHLEIER AND HELEN B. SCHLEIER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 14, 1995]

JUSTICE STEVENS delivered the opinion of the Court.

The question presented is whether §104(a)(2) of the Internal Revenue Code authorizes a taxpayer to exclude from his gross income the amount received in settlement of a claim for backpay and liquidated damages under the Age Discrimination in Employment Act of 1967 (ADEA).

Erich Schleier (respondent)[1] is a former employee of United Airlines, Inc. (United). Pursuant to established policy, United fired respondent when he reached the age of 60. Respondent then filed a complaint in Federal District Court alleging that his termination violated the ADEA.

The ADEA "broadly prohibits arbitrary discrimination in the workplace based on age." *Lorillard* v. *Pollard*, 434 U. S. 575, 577 (1978); *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S. 111, 120 (1985); see also *McKennon* v. *Nashville Banner Publishing Co.*, 513 U. S. __ (slip op., at 4) (1995). Subject to certain defenses, see 29 U. S. C. §623(f) (1988 ed. and Supp. V), §§4 and 12 of the ADEA make it unlawful for an employer, *inter alia*, to discharge

[1]Helen Schleier is also a respondent because she and her husband Erich filed a joint return.

any individual between the ages of 40 and 70 "because of such individual's age." 29 U. S. C. §§623(a)(1) and 631(a). The ADEA incorporates many of the enforcement and remedial mechanisms of the Fair Labor Standards Act (FLSA). Like the FLSA, the ADEA provides for "such legal or equitable relief as may be appropriate to effectuate the purposes of this chapter." §626(b). That relief may include "without limitation judgments compelling employment, reinstatement or promotion." *Ibid*. More importantly for respondent's purposes, the ADEA incorporates FLSA provisions that permit the recovery "of wages lost and an additional equal amount as liquidated damages." §216(b). See generally *McKennon*, 513 U. S., at __ (slip op., at 4–5).

Despite these broad remedial mechanisms, there are two important constraints on courts' remedial power under the ADEA. First, unlike the FLSA, the ADEA specifically provides that "liquidated damages shall be payable only in cases of willful violations of this chapter." 29 U. S. C. §626(b); see *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S., at 125. Second, the Courts of Appeals have unanimously held, and respondent does not contest, that the ADEA does not permit a separate recovery of compensatory damages for pain and suffering or emotional distress.[2]

Respondent's ADEA complaint was consolidated with a class action brought by other former United employees challenging United's policy. The ADEA claims were tried before a jury, which determined that United had committed a willful violation of the ADEA. The District Court entered judgment for the plaintiffs, but that judgment was reversed on appeal. See *Monroe* v. *United Air Lines, Inc.*, 736 F. 2d 394 (CA7 1984). The parties then entered into a settlement, pursuant to which respondent received

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[2]See, *e. g.*, *Vasquez* v. *Eastern Air Lines, Inc.*, 579 F. 2d 107 (CA1 1978); *Johnson* v. *Al Tech Specialties Steel Corp.*, 731 F. 2d 143, 147 (CA2 1984); *Rogers* v. *Exxon Research & Engineering Co.*, 550 F. 2d 834 (CA3 1977); *Slatin* v. *Stanford Research Institute*, 590 F. 2d 1292) (CA4 1979); *Dean* v. *American Security Ins. Co.*, 559 F. 2d 1036 (CA5 1977), cert. denied, 434 U. S. 1066 (1978); *Hill* v. *Spiegel, Inc.*, 708 F. 2d 233 (CA6 1983); *Pfeiffer* v. *Essex Wire Corp.*, 682 F. 2d 684, 687–688 (CA7) cert. denied, 459 U. S. 1039 (1982); *Fiedler* v. *Indianhead Truck Line, Inc.*, 670 F. 2d 806 (CA8 1982); *Schmitz* v. *Commissioner*, 34 F. 3d 790 (CA9 1994); *Perrell* v. *FinanceAmerica Corp.*, 726 F. 2d 654 (CA10 1984); *Goldstein* v. *Manhattan Industries, Inc.*, 758 F. 2d 1435, 1446 (CA11 1985). See generally, H. Eglit, 2 Age Discrimination §18.19 (1982 and Supp. 1984); J. Kalet, Age Discrimination in Employment Law 110–111 (1986).

$145,629. Half of respondent's award was attributed to "backpay" and half to "liquidated damages." United did not withhold any payroll or income taxes from the portion of the settlement attributed to liquidated damages.

When respondent filed his 1986 federal income tax return, he included as gross income the backpay portion of the settlement, but excluded the portion attributed to liquidated damages. The Commissioner issued a deficiency notice, asserting that respondent should have included the liquidated damages as gross income. Respondent then initiated proceedings in the Tax Court, claiming that he had properly excluded the liquidated damages. Respondent also sought a refund for the tax he had paid on the backpay portion of the settlement. The Tax Court agreed with respondent that the entire settlement constituted "damages received . . . on account of personal injuries or sickness" within the meaning of §104(a)(2) of the Code and was therefore excludable from gross income. Relying on a prior Circuit decision that had in turn relied on our decision in *United States* v. *Burke*, 504 U. S. 229 (1992), the Court of Appeals for the Fifth Circuit affirmed. Because the Courts of Appeals have reached inconsistent conclusions as to the taxability of ADEA recoveries in general and of the United settlement in particular, compare *Downey* v. *Commissioner*, 33 F. 3d 836 (CA7 1994) (United settlement award is taxable) with *Schmitz* v. *Commissioner*, 34 F. 3d 790 (CA9 1994) (United settlement award is excludable), we granted certiorari, 513 U. S. __ (1994). Our consideration of the plain language of §104(a), the text of the regulation implementing §104(a)(2), and our reasoning in *Burke* convinces us that a recovery under the ADEA is not excludable from gross income.

Section 61(a) of the Internal Revenue Code

provides a broad definition of "gross income": "Except as otherwise provided in this subtitle, gross income means all income from whatever source derived." 26 U. S. C. §61(a). We have repeatedly emphasized the "sweeping scope" of this section and its statutory predecessors. *Commissioner* v. *Glenshaw Glass Co*., 348 U. S. 426, 429 (1955). See also *United States* v. *Burke*, 504 U. S., at 233; *Helvering* v. *Clifford*, 309 U. S. 331, 334 (1940). We have also emphasized the corollary to §61(a)'s broad construction, namely the "default rule of statutory interpretation that exclusions from income must be narrowly construed." *United States* v. *Burke*, 504 U. S., at 248 (SOUTER, J., concurring in judgment); see *United States* v. *Centennial Savings Bank FSB*, 499 U. S. 573, 583–584 (1991); *Commissioner* v. *Jacobson*, 336 U. S. 28, 49 (1949); *United States* v. *Burke*, 504 U. S., at 244 (SCALIA, J., concurring in judgment).

Respondent recognizes §61(a)'s "sweeping" definition and concedes that his settlement constitutes gross income unless it is expressly excepted by another provision in the Code. Respondent claims, however, that his settlement proceeds are excluded from §61(a)'s reach by 26 U. S. C. §104(a).[3] Section 104(a) provides an

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[3]At the time of respondent's return, §104(a) provided in relevant part:

"Compensation for injuries or sickness

"(a) In general.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

"(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

"(2) the amount of any damages received (whether by suit or agreement and whether as lump sums or as periodic payments) on account of personal injuries or

exclusion for five categories of "compensation for personal injuries or sickness." Respondent argues that his settlement award falls within the second of those categories, which excludes from gross income "the amount of any damages received . . . on account of personal injuries or sickness." §104(a)(2).

In our view, the plain language of the statute undermines respondent's contention. Consideration of a typical recovery in a personal injury case illustrates the usual meaning of "on account of personal injuries." Assume that a taxpayer is in an automobile accident, is injured, and as a result of that

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sickness;

"(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includable in the gross income of the employee, or (B) are paid by the employer);

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

"(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of his official duties outside the United States." 26 U. S. C. §104 (1988 ed. and Supp. V).

In 1989, §104(a) was amended, adding, *inter alia*, the following provision: "Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness." *Ibid*.

injury suffers (a) medical expenses, (b) lost wages, and (c) pain, suffering, and emotional distress that cannot be measured with precision. If the taxpayer settles a resulting lawsuit for $30,000 (and if the taxpayer has not previously deducted her medical expenses, see §104(a)), the entire $30,000 would be excludable under §104(a)(2). The medical expenses for injuries arising out of the accident clearly constitute damages received "on account of personal injuries." Similarly, the portion of the settlement intended to compensate for pain and suffering constitutes damages "on account of personal injury."[4] Finally, the recovery for lost wages is also excludable as being "on account of personal injuries," as long as the lost wages resulted from time in which the taxpayer was out of work as a result of her injuries. See, *e.g.*, *Threlkeld* v. *Commissioner*, 87 T. C. 1294, 1300 (1986) (hypothetical surgeon who loses finger through tortious conduct may exclude any recovery for lost wages because "[t]his injury . . . will also undoubtedly cause special damages including loss of future income"), aff'd, 848 F. 2d 81 (CA6 1988). The critical point this hypothetical illustrates is that each element of the settlement is recoverable not simply because the taxpayer received a tort settlement, but rather because each element of the settlement satisfies the requirement set forth in 104(a)(2) (and in all of the other subsections of §104(a)) that the damages were received "on account of personal injuries or sickness."

In contrast, no part of respondent's ADEA

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[4]Though the text of §104(a)(2) might be considered ambiguous on this point, it is by now clear that §104(a)(2) encompasses recoveries based on intangible as well as tangible harms. See *United States* v. *Burke*, 504 U. S., at 235, n. 6; *id.*, at 244, and n. 3 (SCALIA, J., concurring in judgment) (acknowledging that "`personal injuries or sickness'" includes nonphysical injuries).

settlement is excludable under the plain language of §104(a)(2). Respondent's recovery of back wages, though at first glance comparable to our hypothetical accident victim's recovery of lost wages, does not fall within §104(a)(2)'s exclusion because it does not satisfy the critical requirement of being "on account of personal injury or sickness." Whether one treats respondent's attaining the age of 60 or his being laid off on account of his age as the proximate cause of respondent's loss of income, neither the birthday nor the discharge can fairly be described as a "personal injury" or "sickness." Moreover, though respondent's unlawful termination may have caused some psychological or "personal" injury comparable to the intangible pain and suffering caused by an automobile accident, it is clear that no part of respondent's recovery of back wages is attributable to that injury. Thus, in our automobile hypothetical, the accident causes a personal injury which in turn causes a loss of wages. In age discrimination, the discrimination causes both personal injury and loss of wages, but neither is linked to the other. The amount of back wages recovered is completely independent of the existence or extent of any personal injury. In short, §104(a)(2) does not permit the exclusion of respondent's back wages because the recovery of back wages was not "on account of" any personal injury and because no personal injury affected the amount of back wages recovered.

Respondent suggests, nonetheless, that the liquidated damages portion of his settlement fits comfortably within the plain language of §104(a)(2)'s exclusion. He cites our observation in *Overnight Motor Transportation Co.* v. *Missel*, 316 U. S. 572 (1942), that liquidated damages under the FLSA "are compensation, not a penalty or punishment," and that such damages might compensate for "damages too obscure and difficult of proof for estimate." *Id*., at 584–585; see also *Brooklyn Savings Bank* v. *O'Neil*,

324 U. S. 697, 707 (1945). He argues that Congress must be presumed to have known of our interpretation of liquidated damages when it incorporated FLSA's liquidated damages provision into the ADEA, and that Congress must therefore have intended that liquidated damages under the ADEA serve, at least in part, to compensate plaintiffs for personal injuries that are difficult to quantify.

We agree with respondent that if Congress had intended the ADEA's liquidated damages to compensate plaintiffs for personal injuries, those damages might well come within §104(a)(2)'s exclusion. There are, however, two weaknesses in respondent's argument. First, even if we assume that Congress was aware of the Court's observation in *Overnight Motor* that the liquidated damages authorized by the FLSA might provide compensation for some "obscure" injuries, it does not necessarily follow that Congress would have understood that observation as referring to injuries that were personal rather than economic. Second, and more importantly, we have previously rejected respondent's argument: We have already concluded that the liquidated damages provisions of the ADEA were a significant departure from those in the FLSA, see *Lorillard* v. *Pons*, 434 U. S., at 581; *Trans World Airlines, Inc.* v. *Thurston*, 469 U. S., at 126, and we explicitly held in *Thurston:* "Congress intended for liquidated damages to be punitive in nature." *Id*., at 125.[5]

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[5]We find it noteworthy that the Court in *Thurston* was presented with many of the arguments offered by respondent today. For example, to counter the argument that "the ADEA liquidated damages provision is punitive," the Equal Employment Opportunity Commission (EEOC) argued that "the legislative history of the liquidated damages provision in the ADEA—as in the FLSA—shows that such damages are designed to provide full

Our holding in *Thurston* disposes of respondent's argument and requires the conclusion that liquidated damages under the ADEA, like back wages under the ADEA, are not received "on account of personal injury or sickness."[6]

Respondent seeks to circumvent the plain language

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compensation to the employee, rather than primarily to punish the employer." Brief for the EEOC in *Transworld Airlines, Inc.* v. *Thurston*, O. T. 1984, Nos. 83–997 and 83–1325, p. 36. The EEOC continued: "Thus, Congress focused on the need to be fair to the *employee*, and to provide him full compensation for nonpecuniary damages not readily calculable, including emotional injuries such as humiliation and loss of self respect." *Id.*, at 36–37. See also *id.*, at 37 (relying on *Overnight Motor*). Against this background, the Court's statement that "Congress intended for liquidated damages to be punitive in nature" can only be taken as a rejection of the argument that those damages are also (or are exclusively) compensatory.

We recognize that the House Conference Report accompanying the 1978 Amendments to the ADEA contains language that supports respondent. See H. R. Conf. Rep. No. 95–950 (1978). However, this evidence was before the Court in *Thurston*, see Brief for the EEOC 37, and the Court did not find it persuasive. We see no reason to reach a different result now.

Moreover, there is much force to the Court's conclusion in *Thurston* that the ADEA's liquidated damages provisions are punitive. Under our decision in *Thurston*, liquidated damages are only available under the ADEA if "the employer . . . knew or showed reckless disregard for the matter of whether its conduct was prohibited by the ADEA." 469 U. S., at 126 (internal quotation marks omitted). If liquidated damages were designed to compensate ADEA victims, we see no reason

of §104(a)(2) by relying on the Commissioner's regulation interpreting that section. Section 1.104–1(c) of the Treasury Regulations, 26 CFR §1.104–1(c) (1994), provides:

> "Section 104(a)(2) [of the Internal Revenue Code] excludes from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. The term `damages received (whether by suit or agreement)' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution."

Respondent contends that an action to recover damages for a violation of the ADEA is "based upon tort or tort type rights" as those terms are used in that regulation, and that his settlement is thus excludable under the plain language of the regulation.

Even if we accept respondent's characterization of the action, but see *infra*, at __, there is no basis for excluding the proceeds of his settlement from his gross income. The regulatory requirement that the

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why the employer's knowledge of the unlawfulness of his conduct should be the determinative factor in the award of liquidated damages.

[6]We find odd the dissent's suggestion, *post*, at 6, that our holding today assumes that the intangible harms of discrimination do not constitute personal injuries. We of course have no doubt that the intangible harms of discrimination can constitute personal injury, and that compensation for such harms may be excludable under §104(a)(2). However, to acknowledge that discrimination may cause intangible harms is not to say that the ADEA compensates for such harms, or that any of the damages received were on account of those harms.

amount be received in a tort type action is not a substitute for the statutory requirement that the amount be received "on account of personal injuries or sickness"; it is an additional requirement. Indeed, the statutory requirement is repeated in the regulation. As the Commissioner argues in her brief, an exclusion from gross income is authorized by the regulation "only when it both (i) was received through prosecution or settlement of an `action based upon tort or tort type rights'. . . and (ii) was received `on account of personal injuries or sickness.'" Reply Brief for Petitioner 2.[7] We need not decide whether the Commissioner would have authority to dispense entirely with the statutory requirement, because she disclaims any intent to do so, and the text of the regulation does not belie her disclaimer. Thus, respondent's reliance on the text of the regulation is unpersuasive.

Respondent also suggests that our decision in *United States* v. *Burke*, 504 U. S. 229 (1992), compels the conclusion that his settlement award is excludable. In *Burke*, we rejected the taxpayer's argument that the payment received in settlement of her backpay claim under the pre-1991 version of Title

[7]We recognize that the Commissioner has arguably in the past treated the regulation as though its second sentence superseded the first sentence. See, *e. g.*, *United States* v. *Burke*, 504 U. S., at 242, n. 1 (SCALIA, J., concurring in judgment). In this case, however, the Commissioner unambiguously contends that the regulation is not intended to eliminate the "on account of" requirement from the statutory language. In view of the Commissioner's differing interpretations of her own regulation, we do not accord her present litigating position any special deference. We do agree, however, that she reads the regulation correctly in this case.

VII of the Civil Rights Act of 1964 was excludable from her gross income. Our decision rested on the conclusion that such a claim was not based upon "tort or tort type rights" within the meaning of the regulation quoted above. For two independent reasons, we think *Burke* provides no foundation for respondent's argument.

First, respondent's ADEA recovery is not based upon "tort or tort type rights" as that term was construed in *Burke*. In *Burke*, we examined the remedial scheme established by the pre-1991 version of Title VII. Noting that "Title VII does not allow awards for compensatory or punitive damages," and that "instead, it limits available remedies to backpay, injunctions, and other equitable relief," we concluded that Title VII was not tort-like because it addressed "`legal injuries of an economic character.'" 504 U. S., at 238, 239.

Respondent points to two elements of the ADEA that he argues distinguish it from the remedial scheme at issue in *Burke:* First, the ADEA provides for jury trial, see 29 U. S. C. §626(b); *Lorillard* v. *Pons*, 434 U. S., at 585; but cf. *Lehman* v. *Nakshian*, 453 U. S. 156 (1981); and second, the ADEA allows for liquidated damages. We do not believe that these features of the ADEA are sufficient to bring it within *Burke*'s conception of a "tort type righ[t]." It is true, as respondent notes, that we emphasized in *Burke* the lack of a right to a jury trial and the absence of any provision for punitive damages as factors distinguishing the pre-1991 Title VII action from traditional tort litigation, *id.*, at 238–240. We did not, however, indicate that the presence of either or both of those factors would be sufficient to bring a statutory claim within the coverage of the regulation.

In our view, respondent's argument gives insufficient attention to what the *Burke* Court recognized as the primary characteristic of an "action based upon . . . tort type rights": the availability of

compensatory remedies. Indeed, we noted that "one of the hallmarks of traditional tort liability is the availability of a broad range of damages to compensate the plaintiff `fairly for injuries caused by the violation of his legal rights.'" *Id*., at 235. We continued: "Although these damages often are described in compensatory terms . . . , in many cases they are larger than the amount necessary to reimburse actual monetary loss sustained or even anticipated by the plaintiff, and thus redress intangible elements of injury that are deemed important, even though not pecuniary in [their] immediate consequence[s]." *Ibid* (internal quotation marks omitted). Against this background, we found critical that the pre-1991 version of Title VII provided no compensation "for any of the other traditional harms associated with personal injury, such as pain and suffering, emotional distress, harm to reputation, or other consequential damages." *Id.*, at 239.

Like the pre-1991 version of Title VII, the ADEA provides no compensation "for any of the other traditional harms associated with personal injury." Monetary remedies under the ADEA are limited to back wages, which are clearly of an "economic character," and liquidated damages, which we have already noted serve no compensatory function. Thus, though this is a closer case than *Burke*, we conclude that a recovery under the ADEA is not one that is "based upon tort or tort type rights."

Second, and more importantly, the holding of *Burke* is narrower than respondent suggests. In *Burke*, following the framework established in the IRS regulations, we noted that §104(a)(2) requires a determination whether the underlying action is "based upon tort or tort type rights." *United States* v. *Burke*, 504 U. S., at 234. In so doing, however, we did not hold that the inquiry into "tort or tort type rights" constituted the beginning and end of the analysis. In particular, though *Burke* relied on Title VII's failure to

qualify as an action based upon tort type rights, we did not intend to eliminate the basic requirement found in both the statute and the regulation that only amounts received "on account of personal injuries or sickness" come within §104(a)(2)'s exclusion. Thus, though satisfaction of *Burke*'s "tort or tort type" inquiry is a necessary condition for excludability under §104(a)(2), it is not a sufficient condition.[8]

In sum, the plain language of §104(a)(2), the text of the applicable regulation, and our decision in *Burke* establish two independent requirements that a taxpayer must meet before a recovery may be excluded under §104(a)(2). First, the taxpayer must demonstrate that the underlying cause of action giving rise to the recovery is "based upon tort or tort type rights"; and second, the taxpayer must show that the damages were received "on account of personal injuries or sickness." For the reasons discussed above, we believe that respondent has failed to satisfy either requirement, and thus no part of his settlement is excludable under §104(a)(2).

The judgment is reversed.

It is so ordered.

JUSTICE SCALIA concurs in the judgment.

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[8]We recognize that a recent revenue ruling from the IRS seems to rely on the same reading of *Burke* urged by respondent. See Rev. Rul. 93–88, 1993–2 Cum. Bull. 61. Though this Revenue Ruling is not before us, we note that "the Service's interpretive rulings do not have the force and effect of regulations," *Davis* v. *United States*, 495 U. S. 472, 484 (1990), and they may not be used to overturn the plain language of a statute, see, *e.g.*, *Bartels* v. *Birmingham*, 332 U. S. 126, 132 (1947).