



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

[REDACTED]  
Verdie A.,<sup>1</sup>  
Complainant,

v.

Sonny Perdue,  
Secretary,  
Department of Agriculture  
(Food Safety and Inspection Service),  
Agency.

Appeal No. 0120170100

Agency No. FSIS-2009-00392

**DECISION**

Complainant filed an appeal with the Equal Employment Opportunity Commission (EEOC or Commission), pursuant to 29 C.F.R. § 1614.403(a), from the Agency's September 19, 2016, final decision concerning her entitlement to attorney's fees for prevailing in an equal employment opportunity (EEO) complaint alleging employment discrimination in violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission REVERSES the Agency's final decision.

Complainant worked as a Management Assistant, GS-0344-07 at the Agency's Administrative Services Division facility in Beltsville, Maryland. In an EEO complaint filed on May 5, 2009 and subsequently amended, she alleged that members of her management team had subjected her to fourteen incidents of discriminatory harassment between June 2007 and February 11, 2010. The Agency investigated the Complainant and on July 11, 2011, issued a final decision in which it found in Complainant's favor on nine of the fourteen incidents and concluded that Complainant was entitled to compensatory damages, attorney's fees and other remedies. On August 21, 2014, the Agency issued a decision awarding Complainant compensatory damages with reasonable interest.

Complainant submitted a request for attorney's fees on August 27, 2014, and followed up with a letter to the Agency dated September 11, 2014.

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<sup>1</sup> This case has been randomly assigned a pseudonym which will replace Complainant's name when the decision is published to non-parties and the Commission's website.

Complainant stated in her appeal that her attorney had represented her between May 2009 and September 2011, that he suffered a debilitating stroke in November 2013, and that he passed away in November 2015. In her September 11, 2014 letter to the Agency, Complainant stated that the total amount of her fee request was \$5,482.88 of which there was a \$1,000.00 retainer that she had already paid to her attorney. She reiterated her request that the sum of \$4,482.88 be paid to the attorney (who was alive at the time) and that the \$1,000 retainer be refunded to her.

The attorney's invoice is dated September 26, 2011, and is addressed to Complainant at her home address. It covered 17.9 hours of legal work at a rate of \$300.00 per hour for a total of \$5,370.00. The invoice also included costs for printing and postage in the amount of \$112.88. The total amount of fees and costs claimed was \$5,482.88 less the retainer payment of \$1,000.00 that Complainant had already paid. According to the invoice, the total amount due from Complainant was \$4,482.88.

In its final decision on attorney's fees, the Agency found the attorney's hourly rate of \$300 and \$4,482.88 in fees for 17.9 hours of work plus expenses to be reasonable and concluded that the attorney was entitled to the full amount of the fees requested. The Agency also stated, however, that neither the estate of the deceased attorney nor his law firm submitted a request for payment of fees, and that it was barred as a matter of law from remitting attorney's fees to Complainant as she was not an attorney, a law clerk, or other representative of the attorney's firm. Therefore, the Agency stated that Complainant's attorney's estate was entitled to \$4,482.88 in attorney's fees and costs, but that it would not remit payment to Complainant.

On appeal, Complainant requests guidance in recovering the awarded attorney's fees and \$1,000.00 she paid to her then-attorney as a retainer. There is no documentation in the record, either from the Agency or from the attorney's estate, that the ordered attorney's fees have yet been paid.

The Commission finds that the Agency erred in its final decision. The Agency found that the submitted invoice's listing of 17.9 hours expended at \$300.00 per hour were reasonable. In addition, the Agency concluded that Complainant was entitled to the requested \$112.88 for costs. Based on those findings, Complainant should have been awarded \$5,482.88. Instead, the Agency determined improperly that Complainant was only entitled to \$4,482.88 based apparently on her payment of \$1,000.00 to her then-attorney as a retainer fee. Furthermore, the Agency erroneously declared that, even though Complainant established her entitlement to the fees, it would not remit payment to Complainant because she is not an attorney, law clerk, or other representative of the attorney's firm. The Commission notes that the right to recover attorney's fees and costs lies with Complainant. 29 C.F.R. § 1614.501(e)(1). Additionally, any agreement between Complainant and her former attorney is a private contractual matter not within our purview. The Agency did not challenge the invoice's listed hours and hourly rate; therefore, the Commission finds that Complainant is entitled to the full amount of attorney's fees and costs requested.

### CONCLUSION

Upon review of the record, the Commission REVERSES the Agency's final decision regarding Complainant's entitlement to attorney's fees and REMANDS the matter to the Agency to take action in accordance with the ORDER below.

### ORDER (C0618)

To the extent that it has not already done so, within sixty (60) calendar days of the date this decision is issued, the Agency shall pay Complainant \$5,482.88 in attorney's fees and costs.

The Agency is further directed to submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision." The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Further, the report must include supporting documentation of the Agency's calculation of back pay and other benefits due Complainant, including evidence that the corrective action has been implemented.

### IMPLEMENTATION OF THE COMMISSION'S DECISION (K0618)

Under 29 C.F.R. § 1614.405(c) and §1614.502, compliance with the Commission's corrective action is mandatory. Within seven (7) calendar days of the completion of each ordered corrective action, the Agency shall submit via the Federal Sector EEO Portal (FedSEP) supporting documents in the digital format required by the Commission, referencing the compliance docket number under which compliance was being monitored. Once all compliance is complete, the Agency shall submit via FedSEP a final compliance report in the digital format required by the Commission. See 29 C.F.R. § 1614.403(g). The Agency's final report must contain supporting documentation when previously not uploaded, and the Agency must send a copy of all submissions to the Complainant and his/her representative.

If the Agency does not comply with the Commission's order, the Complainant may petition the Commission for enforcement of the order. 29 C.F.R. § 1614.503(a). The Complainant also has the right to file a civil action to enforce compliance with the Commission's order prior to or following an administrative petition for enforcement. See 29 C.F.R. §§ 1614.407, 1614.408, and 29 C.F.R. § 1614.503(g). Alternatively, the Complainant has the right to file a civil action on the underlying complaint in accordance with the paragraph below entitled "Right to File a Civil Action." 29 C.F.R. §§ 1614.407 and 1614.408. A civil action for enforcement or a civil action on the underlying complaint is subject to the deadline stated in 42 U.S.C. 2000e-16(c) (1994 & Supp. IV 1999). **If the Complainant files a civil action, the administrative processing of the complaint, including any petition for enforcement, will be terminated.** See 29 C.F.R. § 1614.409.

STATEMENT OF RIGHTS - ON APPEAL  
RECONSIDERATION (M0617)

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

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

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

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

COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (R0610)


This is a decision requiring the Agency to continue its administrative processing of your complaint. However, if you wish to file a civil action, you have the right to file such action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. In the alternative, you may file a civil action **after one hundred and eighty (180) calendar days** of the date you filed your complaint with the Agency, or filed your appeal with the Commission. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title.

Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means the national organization, and not the local office, facility or department in which you work. **Filing a civil action will terminate the administrative processing of your complaint.**

RIGHT TO REQUEST COUNSEL (Z0815)

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

FOR THE COMMISSION:

A handwritten signature in blue ink that reads "Carlton M. Hadden". The signature is written in a cursive style and is positioned above a horizontal line.

Carlton M. Hadden, Director  
Office of Federal Operations

November 6, 2018

Date