



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

[REDACTED]  
Cletus W.,<sup>1</sup>  
Complainant,

v.

Steven T. Mnuchin,  
Secretary,  
Department of the Treasury  
(Bureau of Engraving and Printing),  
Agency.

Appeal No. 0120170739

Hearing No. 570-2011-00764X

Agency No. BEP-11-0328-F

**DECISION**

On December 23, 2016, 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 November 23, 2016, final order concerning his supplemental attorney's fees request. For the following reasons, the Commission MODIFIES the Agency's final decision.

**ISSUE PRESENTED**

The issue presented is whether the amount of attorney's fees provided by the Agency in its final decision was appropriate.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as an Acting Assistant Foreman Electrician at the Agency's Office of Facilities in Washington, DC. On March 2, 2011, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the bases of race (African-American) and age (56) when he was not selected for the position of Electro-Machinist (EM) Trainee. A hearing was held on April 28-29, 2015.

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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.

The Administrative Judge (AJ) found that Complainant had been subjected to discrimination. The AJ ordered that Complainant be promoted to the position of Electro-Machinist Trainee, provided back pay and \$25,000 in compensatory damages, and attorney's fees. Complainant had two attorneys, so the AJ made a determination as to the amount each attorney would get. A2, the attorney who handled the hearing, and who is the subject of the instant appeal, joined the case in 2015. He requested an hourly billing rate of \$520 per hour. The AJ reduced the amount to \$350 per hour because the AJ found that A2 had not vigorously advocated for Complainant concerning his damages. The Agency appealed the AJ's finding of discrimination. In EEOC Appeal No. 0720160008 (Aug. 3, 2016), the Commission found that substantial evidence supported the AJ's analysis and conclusions with respect to liability and affirmed the AJ's attorney fee award.

Following, the Commission's decision, Complainant submitted a supplemental attorney's fees request regarding the work on the successful appeal. A2 indicated that he and members of his firm worked on the case from May 31, 2015 through August 5, 2016. He submitted a total of 90.2 hours for attorney time, billed at the Laffey Matrix rate of \$568 per hour, and 4.5 hours of paralegal/law clerk time, billed at the Laffey Matrix hourly rate of \$154, for a total of \$51,233.60.

The Agency issued a FAD regarding A2's request. The Agency rejected A2's request on several bases. First, the Agency maintained that for fee calculating purposes, the \$350 per hour rate previously used by the AJ and affirmed by the Commission in the prior litigation should be used. The Agency maintained that when using the \$350 per hour rate, the "ceiling of supplemental attorney's fees should be awarded in the amount of \$32,263.00, which is the sum of 90.2 hours multiplied by \$350 an hour, plus the paralegal/law clerk charges of \$693. The Agency also argued however, that the ceiling rate should be further reduced because A2 failed to submit resumes for the attorneys that worked on the case, only submitted a one paragraph statement for his billing and fell short of the Commission's requisite standards.

The Agency noted that the bulk of the work on the opposition brief was performed by an attorney other than A2 even though he was familiar with the case documents; there were no novel or difficult issues in the case warranting the number of hours billed; there were duplicative and excessive entries for hours expended; and the itemized statement of fees lacked sufficient detail and specificity. For example, the Agency noted the entry for one attorney that read, "Research for AKA; reviewing AKA" with a total 1.5 hours, with no indication provided as to who or what "AKA" was in reference to in this case. The Agency concluded that amount of \$32,263 should be reduced by at least 50 percent, to \$16,131.

Alternatively, the Agency proposed that the Commission reduce the 90.2 hours by 1.5 hours billed for the entry pertaining to "AKA," in the absence of any connection with the instant case, and by 2.0 hours for Attorney X, in the absence of his resume or other documentation establishing his legal experience. In addition to the attorney's fees, the Agency include 4.5 hours of paralegal/law clerk time. Therefore, it proposed a total of \$31,038 in supplemental attorney's fees as a ceiling.

### CONTENTIONS ON APPEAL

On appeal, Complainant's attorney, A2 contends, among other things, that the reduction in fees from the Laffey rate of \$520 to \$350 was unwarranted. He maintains that the only reason the AJ reduced his request from \$520 at the hearing was for what she described as counsel's "barren and unpersuasive explanation of his client's damages." Because the request concerning the instant fee petition is based on the work performed on the appeal, the AJ's reduction in fees should not automatically apply. Therefore, A2 requests \$51,233.60 in fees.

In response, the Agency contends, in pertinent part, that the \$350 amount determined by the AJ and the Commission should remain in effect with respect to the work performed on the appeal. The Agency also contends that Complainant's fees that it calculated as \$31,038, should be further reduced by 50% to \$16,131.00, as set forth above. Finally, the Agency notes that "Complainant's counsel submitted a supplemental fee petition for this very limited work performed at the appellate level, in which he seeks almost three times more from the Agency than what he was previously awarded for performing legal services during the bulk of the case."

### ANALYSIS AND FINDINGS

#### *Attorney's Fees and Costs*

Title VII and the Commission's regulations authorize the award of reasonable attorney's fees and costs to a prevailing complainant. 29 C.F.R. § 1614.501(e); see also EEO Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at 11-1 (Aug. 5, 2015). Fee awards are typically calculated by multiplying the number of hours reasonably expended times a reasonable hourly rate, an amount also known as a lodestar. See 29 C.F.R. § 1614.501(e)(ii)(B); Blum v. Stenson, 465 U.S. 886, 899 (1984); Hensley v. Eckerhart, 461 U.S. 424, 435 (1983).

All hours reasonably spent in processing the complaint are compensable, but the number of hours should not include excessive, redundant or otherwise unnecessary hours. EEO MD-110 at 11-14. A reasonable hourly rate is based on prevailing market rates in the relevant community for attorneys of similar experience in similar cases. *Id.* 11-14. An application for attorney's fees must include a verified statement of attorney's fees accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services. *Id.* 11-17.

At the outset, we find that the Agency erred in reducing Complainant's fee request from \$568 per hour to \$350 per hour. There is no dispute that the AJ's reduction to \$350 was due to Counsel's failure to vigorously advocate for Complainant concerning his compensatory damages. The Agency, in its brief, acknowledges this when it stated that: "the AJ unquestioningly tied the reduction in fees to Complainant's counsel's failure to properly demonstrate damages." The Agency specifically noted the AJ's determination that:

[A2] submitted an eloquent section on attorney's fees which he supports with a plethora of evidence. His attorney's fees submission is disturbing and problematic,

however, in comparison to the section submitted regarding compensatory damages. When considering his expertise and that of [A1], it is illogical that he would submit such a barren and unpersuasive explanation of his client's damages. . . [A2] and [A1] have explained their levels of expertise, but that knowledge was apparently not used to vigorously advocate for [Complainant's] damages.

Agency Brief, p.6.

We find no persuasive reason why the AJ's reduction at the hearing stage, which was implemented for a specific reason, should be extended to the appeal. Consequently, we find that the Agency has not established that the appropriate hourly rate should not be \$520 hours. *In this case, Complainant's attorney has submitted a fee petition requesting \$51,233,60 in attorney's fees. While an attorney is not required to record in detail the way each minute of his or her time was expended, the attorney does have the burden of identifying the subject matters on which he or she spent his or her time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. See Spencer v. Dep't of the Treasury, EEOC Appeal No. 07A10035 (May 6, 2003). The attorney requesting the fee award has the burden of proving, by specific evidence, entitlement to the requested fees and costs. Koren v. U.S. Postal Serv., EEOC Request No. 05A20843 (Feb. 18, 2003).*

We are also not persuaded by the Agency's argument that the fees should be reduced by half, as the Agency only presented a couple of items that it disagreed with regarding the petition. The Agency disputes two specific entries on A2's itemization arguing they are vague. We agree with the Agency here. Therefore, the award should be reduced by \$1988.00, i.e., 1.5 hours x \$568 + 2 hours x \$568. Thus, the attorney's fees would equal \$49,245.60, plus the paralegal/law clerk charges of \$693. This would bring the total amount owed to \$49,938.60.

### CONCLUSION

Accordingly, we MODIFY the Agency's FAD.

### ORDER

The Agency, within one hundred and twenty days (120) of this decision being issued, shall pay attorney's fees in the amount of \$49,938.60 to Complainant.

The Agency is further directed to submit a report of compliance, as provided in the statement entitled "Implementation of the Commission's Decision." The report shall include supporting documentation verifying that the corrective action has been implemented.

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), he is entitled to an award of reasonable attorney's fees incurred in the processing of the complaint. 29 C.F.R. § 1614.501(e). The award of attorney's fees shall be paid by the Agency. The attorney shall submit a verified statement of fees to the Agency -- **not** to the Equal Employment Opportunity Commission, Office of Federal Operations -- within thirty (30) calendar days of the date this decision was issued. The Agency shall then process the claim for attorney's fees in accordance with 29 C.F.R. § 1614.501.

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.

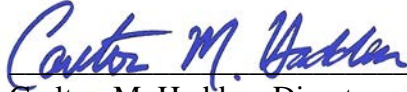
If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. "Agency" or "department" means 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:



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Carlton M. Hadden, Director  
Office of Federal Operations

March 27, 2019

Date