



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

[REDACTED]
Ileana H.,¹
Complainant,

v.

Jeff B. Sessions,
Attorney General,
Department of Justice
(Federal Bureau of Investigation),
Agency.

Appeal No. 0120180059

Agency No. FBI-2011-00261

DECISION

The Equal Employment Opportunity Commission (EEOC or Commission) accepts Complainant's appeal from the Agency's decision concerning attorney's fees for a violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as an Investigative Operations Analyst at the Agency's Montgomery Resident Agency in Montgomery, Alabama. On August 19, 2011, Complainant filed a formal complaint alleging that the Agency discriminated against her in reprisal for prior protected EEO activity when allegations of misconduct were made against her, thereby resulting in an internal investigation being initiated on June 8, 2011, and her indefinite suspension on February 24, 2012.

At the conclusion of the investigation, Complainant requested a hearing before an EEOC Administrative Judge (AJ). The AJ held a hearing and issued a decision finding that Complainant had been subjected to reprisal.

¹ 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 AJ ordered the Agency to pay Complainant back pay; expunge the suspension from all personnel and Agency-associated records; pay her \$75,000.00 in non-pecuniary compensatory damages; pay \$65,013.00 in attorney's fees and \$2,869.25 in costs; provide training to all employees in the Montgomery Resident Agency; and to post a notice.

The Agency subsequently issued a final order. In the final order, the Agency accepted the AJ's finding of reprisal and agreed to implement the AJ's order of back pay; attorney's fees and costs; EEO training for Agency officials; and expungement of the suspension. The Agency, however, did not agree to implement the AJ's non-pecuniary compensatory damages award of \$75,000.00. Instead, the Agency argued that an award of \$20,000.00 was more appropriate. The Agency simultaneously filed an appeal with the Commission. In Ileana H. v. Dep't of Justice, EEOC Appeal No. 0720170016 (Apr. 21, 2017), the Commission modified the final order finding that the AJ properly found that Complainant was entitled to \$75,000.00 in non-pecuniary compensatory damages. The Commission ordered the Agency to pay Complainant \$75,000.00 in compensatory damages and all other relief previously ordered, including attorney's fees incurred in filing the appeal.²

On or around May 11, 2017, Complainant's attorney submitted a fee statement to the Agency requesting \$23,012.50 in fees incurred during the processing of the appeal. In response, the Agency disputed the fees requested and paid Complainant's attorney \$5,600.00. Complainant's attorney filed the instant appeal.

CONTENTIONS ON APPEAL

On appeal, Complainant's attorney submits a copy of the fee statement and requests that the Commission order the Agency to pay the full amount requested in fees.

In response, the Agency first contends that Complainant's attorney included improperly billed time. The Agency argues that several of the entries on the fee petition describe tasks that were unreasonably excessive. For example, the Agency points out that Complainant's attorney claimed 6.75 hours to prepare a two-page motion and 17.50 hours on a four-page motion. The Agency noted that neither motion was novel nor complicated. Next, the Agency contests Complainant's attorney's claim for 25 hours expended on the appeal brief, which the Agency notes was a near-exact duplicate of a brief previously submitted in the record. In addition, the Agency challenges the attorney's requested 23 hours spent on unsuccessful motions. Finally, the Agency urges the Commission, in the alternative, to reduce the balance of the remaining disputed attorney's fees by 50 percent.

² The matter was assigned to a Compliance Officer and docketed as Compliance No. 0620170463 on April 21, 2017. Complainant subsequently filed a petition for enforcement docketed as EEOC Petition No. 0420180004.

ANALYSIS AND FINDINGS

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. Id. 11-15. A reasonable hourly rate is based on prevailing market rates in the relevant community for attorneys of similar experience in similar cases. Id. 11-6. 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. 11-9.

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).

Here, Complainant's attorney submitted a fee petition requesting \$23,012.50 in attorney's fees for work related to the previous appeal. The record indicates that \$17,412.50 of the requested fees are disputed. The Agency challenges numerous entries as excessive, duplicative, and/or clerical in nature. The Agency does not challenge the hourly rate. The Commission agrees with the Agency that several entries appear to be excessive or duplicative. For example, Complainant's attorney claimed 6.50 hours over two days for "receipt/review Agency brief on FAD," 6.75 hours for a two-page motion for an extension of time, and 17.50 hours over the course of five days for work on "draft/research brief failure to imp[lement] FAD." Furthermore, Complainant's attorney claimed 25.0 hours for work performed on the appeal response brief which was a near-exact duplicate of a brief submitted previously to the Agency. Additionally, Complainant's attorney claimed 5.50 hours for unsuccessful motions to strike. In computing attorney's fees, "[t]ime spent on clearly meritless arguments or motions, and time spent on unnecessarily uncooperative or contentious conduct may be deducted." EEO MD-110, at 11-4, citing Luciano v. Olsten Corp., 109 F.3d 111 (2d Cir. 1997); Clanton v. Allied Chemical Corp., 416 F. Supp. 39 (E.D. Va. 1976).

Based on the above, the Commission finds support for the Agency's request to apply a 50% across-the-board reduction of the remaining disputed fees. Accordingly, the Commission finds that Complainant is entitled to \$8,706.50 in attorney's fees.

CONCLUSION

Upon review of the record, the Commission MODIFIES 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

Within sixty (60) calendar days of the date this decision is issued, the Agency is ordered to pay Complainant \$8,706.50 in attorney's fees.

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).

ATTORNEY'S FEES (H1016)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she 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).

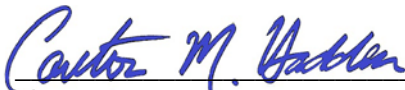
COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

This decision affirms the Agency's final decision/action in part, but it also requires the Agency to continue its administrative processing of a portion of your complaint. You have the right to file a civil action in an appropriate United States District Court within ninety (90) calendar days from the date that you receive this decision on both that portion of your complaint which the Commission has affirmed and that portion of the complaint which has been remanded for continued administrative processing. 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 your appeal with the Commission, until such time as the Agency issues its final decision on your complaint. 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. If you file a request to reconsider and also file a civil action, 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:



Carlton M. Hadden, Director
Office of Federal Operations

September 28, 2018

Date