



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

Lynne M. Doherty, a/k/a  
Marvella B.,<sup>1</sup>  
Complainant,

v.

Jeff B. Sessions,  
Attorney General,  
Department of Justice  
(Bureau of Alcohol, Tobacco, Firearms & Explosives),  
Agency.

Appeal No. 0720170027

Hearing No. 520-2013-00327X

Agency No. ATF-2012-00965

**DECISION**

Following its April 11, 2017, final order, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). On appeal, the Agency acknowledges its acceptance of an Equal Employment Opportunity Commission Administrative Judge's (AJ's) finding of discrimination in violation of Title VII of the Civil Rights Act of 1964 (Title VII), as amended, 42 U.S.C. § 2000e et seq. However, the Agency requests that the Commission affirm its rejection of the relief ordered by the AJ. Specifically, the Agency rejects that portion of the AJ's decision ordering it to award Complainant attorney's fees for work done by a prior law firm. On May 5, 2017, Complainant's Counsel filed a timely cross-appeal in which she challenged the Agency's reduction of attorney's fees as well as other remedial elements of the Agency's final order. For the following reasons, the Commission MODIFIES the Agency's final order.

**BACKGROUND**

Complainant worked as an Industry Operations Investigator at the Agency's Field Office in Providence, Rhode Island. Organizationally, the Providence Field Office was located within the Boston Field Division. On October 3, 2012, Complainant filed an EEO complaint in which she

---

<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.

alleged that officials within her management chain subjected her to discriminatory harassment because of her sex (female) and in reprisal for prior protected EEO activity. She identified the following incidents as comprising her claim:

1. In May 2010, management discriminated against and harassed Complainant by saying that she was “nothing but a trouble maker and that’s all you’ll ever be,” and repeatedly attempting to undermine her abilities to do work and threatening to follow her around and inspect her work.
2. In October 2010, management gave Complainant inspection assignments in areas far from her home, despite having knowledge that she was required to remain close to her husband who is disabled and was seriously ill at the time. She then requested help from her second-line supervisor, and was ignored for almost an entire year until the inspections were removed.
3. Since December 2010, management repeatedly undermined Complainant’s inspections work by requiring her to return to a licensee after the inspection was already completed for photographs to be added as exhibits, which resulted in her alienation from the licensee. Management ultimately removed her from inspection of that licensee and her report of violation was written by another Industry Operations Investigator with one of the violations edited out.
4. In April 2012, management failed to protect Complainant from a licensee who behaved in a threatening manner towards her during a firearms compliance inspection.
5. In April 2012, management falsely accused Complainant of threatening a licensee and behaving unprofessionally.
6. In April 2012, management removed Complainant from her duties as an investigator for the licensee in question, despite her following proper protocol as per her training.
7. In June 2012, management forced Complainant to re-do an inspection report on the licensee in question, despite the report being done properly.
8. On June 13, 2012, management falsely accused Complainant of not properly performing a licensee inspection and then reprimanded her verbally and in writing for being “accusatory and unprofessional.”
9. On June 13, 2012, management stated to Complainant, “none of the other Industry Operations Investigators will work with you.”

10. In July 2012, management attempted to force Complainant to falsify a report of violations of an industry member who she was inspecting and she refused to do so, resulting in management having another Agency employee change the report and sign off on it with the violations removed, thus undermining her ability to perform her duties.
11. In October 2012, management issued a notice of proposal to suspend and terminate Complainant's right to telework.
12. On December 3, 2012, Complainant's second-line supervisor retaliated against Complainant for filing the instant complaint by suspending her for three calendar days.

Complainant timely requested a hearing following the conclusion of the investigation. The AJ held a hearing on May 16, 2016, and issued a decision on March 1, 2017. Based upon the hearing testimony and the investigative record, the AJ concluded that Complainant had met her burden of proving the existence of a hostile work environment that was the result of her having filed an EEO complaint, which had previously been settled. AJ Decision, pp. 10-12. As relief, the AJ ordered the following remedies:

1. non-pecuniary compensatory damages in the amount of \$110,000;
2. pecuniary compensatory damages in the amount of \$1,335;
3. attorney's fees in the amount of \$95,000;
4. costs in the amount of \$8,600.43;
5. additional attorney's fees paid by Complainant to the prior law firm who represented Complainant between June 26, 2012, and February 27, 2014, in the amount of \$39,940.21;
6. an order directing the Agency to cease and desist any retaliatory or other discriminatory conduct toward Complainant;
7. an order directing the Agency to post notice;
8. an order to provide a minimum of six hours of EEO training to the individuals identified in the complaint as the responsible management officials;
9. an order to consider whether to take disciplinary action against the responsible management officials;

10. an order to consider whether to remove Complainant's second-level supervisor from her chain of command; and
11. an order to restore Complainant's telework privileges, effective from the date of the final decision forward.

Counsel claimed compensation for 284.17 hours expended on Complainant's case at a rate of \$530 per hour, for a total fee award of \$150,610. AJ Decision, p. 25. The AJ addressed the Agency's various objections as to why Complainant should not have been awarded the full amount of attorney's fees requested. In its response to Complainant's fee petition, the Agency argued that Complainant withdrew a claim and bases prior to the hearing and therefore did not prevail on all the claims in the complaint, pointing out that fees are not recoverable on unsuccessful claims. The AJ found, however, that Complainant did prevail on the claims and bases accepted at the hearing. The AJ further stated that there would be a reduction for non-successful claims only if those claims are "truly fractionable" or unrelated, and that they are unrelated only if they involved distinct claims based on different facts and legal theories. The AJ determined that this was not the case because all of the incidents listed in the complaint were related to her claims of harassment and reprisal. AJ Decision, pp. 25-26.

Nevertheless, the AJ determined that reductions in Counsel's fees were warranted. The AJ disallowed 57.76 hours as excessive, which are broken down as follows:

- 7.76 hours for finalizing briefs and filing motions for damages on October 3, 2016;
- 20 hours for work between September 20, 2016 and October 3, 2016, for work related to damages; and
- 30 hours for work done on the opposition to the Agency's motion for summary judgment.

At an hourly rate of \$530, this reduction adds up to approximately \$30,613. The AJ pointed out that while it was not her function to parse an attorney's hours, she was required to ascertain what might be considered excessive by reasonable standards for an attorney of Counsel's level of experience in her field on certain aspects of the case. AJ Decision, p. 26.

The AJ further stated that omissions by Counsel were also to be considered in determining the fee award. She determined that Counsel did not supplement discovery responses to the Agency with information regarding the potential testimony by Complainant's therapist regarding pain and suffering. The AJ also noted that Counsel did not supply the Agency with such information it would need to make a settlement offer regarding attorney's fees. In light of this consideration, the AJ further reduced Counsel's fee award by an additional \$24,997. Ultimately, the AJ ordered the Agency to award Complainant attorney's fees in the amount of \$95,000. AJ Decision, pp. 26-27. As previously noted, the AJ also ordered the Agency to award Complainant an additional \$39,940 to reimburse her for fees she paid to the prior law firm who had represented her earlier in the EEO process. AJ Decision, p. 27.

### CONTENTIONS ON APPEAL

In issuing its final order on April 11, 2017, the Agency agreed with the AJ's finding of liability and award of compensatory damages, attorney's fees and costs, and other relief, with the exception of the \$39,940 fee award concerning the prior law firm. On appeal, the Agency contends that neither Complainant nor the prior law firm submitted a proper fee petition and that the AJ improperly placed upon it the burden of proving Complainant's non-entitlement to those fees by requiring it to seek information about fees charged by the prior law firm from that firm. Memorandum Explaining Final Order, pp. 7-8, citing AJ Decision, p. 27 n. 6.

In its appeal brief submitted on May 1, 2017, the Agency pointed out that eight attorneys had submitted charges on the prior law firm's invoices and that Complainant did not provide any evidence to support the reasonableness of their hourly rates, the actual services they performed, or the reasonableness of the time spent on the case. Agency's Appeal Brief, pp. 14-17. In the alternative, the Agency contends that even if Complainant were entitled to fees for work done by the prior law firm, the award should be reduced by \$5,695, the amount attributable to charges for work performed prior to the filing of the formal complaint on October 3, 2012. Agency's Appeal Brief, p. 17.

Complainant, through Counsel, filed a response brief dated May 31, 2017, in which she concedes that the verified statement of fees from the prior law firm was not accompanied by the required affidavit attesting to the attorneys' experience. Counsel argued, however, that this was not the fault of Complainant. She stated that both she and Complainant made numerous attempts to obtain the affidavit from the prior law firm and had been unable to do so until May 3, 2017. The affidavit was executed by the prior law firm's managing partner who stated that it accurately described the experience and qualifications of all the attorneys who worked on Complainant's case. Complainant's Response to Agency's Appeal, pp. 6-7.

In its reply to Complainant's response dated June 6, 2017, the Agency contended that because the AJ issued her decision on March 1, 2017, Complainant was required to submit the verified statement of attorney's fees accompanied by the affidavit executed by the attorney of record by March 30, 2017, and that the affidavit had been submitted thirty-four days late. The Agency also argued that the affidavit was invalid because the managing partner who executed it was not the attorney of record, and that the attorneys who actually did the work were the attorneys of record who would each have to submit their own affidavit. Finally, the Agency argues that from the invoices, it was not clear whether the individuals who submitted charges were attorneys, law clerks, or paralegals.

On June 26, 2017, Complainant's Counsel filed a brief in support of her May 5, 2017 cross-appeal in which she raises several contentions regarding the \$95,000 attorney's fee award set forth in the AJ's order:

- In accordance with the Laffey Matrix<sup>2</sup>, Counsel's hourly rate had increased from \$530 to \$543, raising her overall fee award to \$154,304. Complainant's Cross-Appeal Brief, pp. 3, 19-21 & Exhibit A.
- The AJ abused her discretion by improperly reducing Counsel's fees as a sanction in connection with failing to disclose the identity of one of Complainant's witnesses. Counsel maintained that Complainant had not told her about this witness until two weeks before a damages hearing that was held on September 4, 2016. Counsel also stated that as soon as Complainant had told her about this witness, she immediately notified the Agency and the AJ. Complainant's Cross-Appeal Brief, pp. 12-14.
- Contrary to the AJ's assessment regarding the attorney's fees settlement negotiations, because the Agency had refused to accept Counsel's settlement offer, Counsel was under no legal obligation to send her private billing records, which were protected by attorney-client privilege. Complainant's Cross-Appeal Brief, pp. 14-16 & Exhibit I.
- The AJ erred in concluding that 57.76 hours claimed by Counsel were excessive. Complainant's Cross-Appeal Brief, pp. 17-19.
- The AJ erred in limiting Counsel's costs award to \$1,201.63, rather than the \$1,297.68 that Counsel requested. Complainant's Cross-Appeal Brief, p. 21 & Exhibit A.
- The Commission should award additional attorney's fees to Counsel for 35.5 hours of work performed after the AJ rendered her decision, at the Laffey Matrix hourly rate of \$543 for a total of \$19,276.50. Complainant's Cross-Appeal Brief, pp. 24-25.

In addition to her contention regarding attorney's fees, Counsel raises several additional arguments pertaining to remedial relief:

- In her order for relief, the AJ failed to include expungement of the suspension Complainant served in December 2012, together with reimbursement for all wages and benefits lost as a result of the suspension and interest thereon to compensate Complainant for the five-year delay in restoring her lost wages. Complainant's Cross-Appeal Brief, pp. 10-11.

---

<sup>2</sup> To determine the appropriate prevailing market rate for an attorney in the Washington, D.C. area, the Commission uses the Laffey Matrix. The Laffey Matrix is a schedule of hourly rates for attorneys, paralegals, and law clerks based on experience level. It is based on the hourly rates allowed by the United States District Court for the District of Columbia in Laffey v. Northwest Airlines, Inc., 572 F. Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984). It is prepared by the United States Attorney's Office for the District of Columbia for use in cases where a statute permits the prevailing party to recover "reasonable" attorney's fees. 42 U.S.C. § 2000e-5(k). See also e.g. Cletus W. v. Dept. of the Treasury, EEOC Appeal No. 0720160008 (Aug. 3, 2016).

- Complainant should have been awarded \$2,325.21 in pecuniary damages, as opposed to \$1,335 in pecuniary damages that she was actually awarded. Complainant's Cross-Appeal Brief, p. 21 and Exhibit A.
- The Commission should enforce the AJ's decision. Complainant's Cross-Appeal Brief, pp. 22-24.

On July 26, 2017, the Agency submitted its response brief to Complainant's cross-appeal brief in which it raised the following contentions concerning the fee award:

- Complainant's cross-appeal brief was untimely filed. It was due on June 5, 2017, but was not submitted until June 26, 2017. Agency's Response Brief, pp. 1-2.
- Counsel's hourly rate was \$530, which was the prevailing rate on October 3, 2016, the date that Counsel submitted her fee petition. Agency's Response Brief, pp. 2-4.
- Counsel's failure to timely provide information concerning Complainant's therapist in advance of the settlement negotiations was merely an additional reason for reducing the fee award, not the primary reason. The primary reason for reducing the fee award was that 57.76 claimed hours were excessive. Agency Response Brief, pp. 4-6.
- Counsel's fee award should be reduced by an additional 7.7% because Complainant had withdrawn one of the incidents comprising her claim, and by an additional 20% for having withdrawn two of five bases prior to the hearing. Agency Response Brief, pp. 6-8.
- Fifteen hours should be deducted for work done on March 1 and 2, 2014, for drafting a motion for summary judgment that was never filed. Agency Response Brief, p. 8.
- Counsel double-billed for 11 hours charged on May 15, 2015, and again for 14 hours charged on September 18, 2016. Agency Response Brief, pp. 8-9.

Concerning Counsel's petition to enforce the other elements of the AJ's order:

- The Agency conceded that Complainant was entitled to additional pecuniary damages in the amount of \$990.21 for a total award of \$2,325.21, and was in the process of making that additional payment. Agency Response Brief, p. 9 and Exhibit (3).
- The Agency acknowledged that it had inadvertently neglected to award costs in the amount of \$8,600.43 and had made the disbursement on July 21, 2017. Agency Response Brief, p. 9 and Exhibit (4).

- The responsible management officials named in the complaint were all provided with the required training on June 2, 2017. Agency Response Brief, pp. 9-10 and Exhibit (5).
- The Agency considered removing Complainant's second-level supervisor from her chain of command but declined to do so since he would be retiring from federal service on October 28, 2017. Agency Response Brief, p. 10 and Exhibit (6).
- A check from the U.S. Treasury dated May 20, 2017, was made directly payable to Complainant in the amount of \$111,335 for compensatory damages, both pecuniary and non-pecuniary. Complainant's Appeal Brief, Exhibit (F).
- A check from the U.S. Treasury dated May 30, 2017, was made payable to the order of Counsel's firm, in the amount of \$95,000 for the non-disputed portion of Counsel's fees. Complainant's Appeal Brief, Exhibit (G).

### ANALYSIS AND FINDINGS

#### *Attorney's Fees*

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 EEOC's Management Directive 110 (MD-110) (August 5, 2015) Chapter 11, Section VI. 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); MD-110, Chapter 11, Subsection VI(F). The reasonable hourly rate is generally determined by the prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skill, experience, and reputation. Blum v. Stenson, 465 U.S. 886 (1984). All hours reasonably spent in processing the complaint are compensable, but the number of hours should not include excessive, redundant, or otherwise unnecessary hours. MD-110 at 11-5 citing Hensley v. Eckerhart, 461 U.S. 424, 434 (1983).

#### The Agency's Appeal:

The sole issue raised in the Agency's appeal is the AJ's decision to award Complainant \$39,940.21 to compensate her for attorney's fees paid to the previously retained law firm. We will address the Agency's contentions on appeal, as gleaned from the memorandum explaining its final order, its appeal brief, and its response to Complainant's response brief.

The fee petition was improper: An application for attorney's fees must include a verified petition accompanied by an affidavit executed by the attorney of record itemizing each expense comprising the attorney's charges for legal services, together with bills, receipts, or other appropriate documentation. 29 C.F.R. § 1614.501(e)(2)(ii)(B); MD-110, Chapter 11, Subsection VI(F)(1). The documentation submitted with Complainant's petition for attorney's fees includes the required affidavit from the previous law firm's managing partner and over fifty pages of



billing records from the previous law firm spanning the period from June 26, 2012 through February 27, 2014. Contrary to the Agency's assertion, the fee petition concerning attorney's fees from the previous law firm included all of the elements prescribed in EEOC Regulation 29 C.F.R. § 1614.501(e)(2)(ii)(B).

The AJ erred in placing the burden on the Agency to prove non-entitlement to fees: The attorney requesting an award has the burden of proving, by specific evidence, entitlement to the requested fees and costs. Koren v. U.S. Postal Service, EEOC Request No. 05A20843 (Feb. 18, 2003). Given the detail of the charges set forth in the billing statements, which were automatically and contemporaneously generated, we find that Complainant has met her burden to establish entitlement to compensation for the fees she paid to the previous law firm. In the memorandum explaining its final order, the Agency contends that the AJ placed upon it the burden of proving that Complainant was not entitled to the fees when, in a footnote to her decision, the AJ directed it to seek information about the previous law firm's hourly rates from the firm itself. This is a mischaracterization of the AJ's instructions. In that footnote, the AJ merely pointed the Agency to the source of the information that it was disputing. See AJ Decision, p. 27 n.6 ("To the extent that the Agency disputes the [previous law firm's] rates based on [the Laffey Matrix], it is to seek the information from the firm itself \* \* \* and if there is documentation of a different rate, the Agency may pay that.") We find the Agency's argument on this point to be specious.

The prior law firm did not provide evidence to support the reasonableness of its charges: On the contrary, the prior law firm did provide such evidence, in the form of an affidavit from its managing partner dated May 3, 2017. The managing partner averred that specific legal services provided and hours expended in connection with Complainant's case had been contemporaneously recorded in the firm's electronic billing systems. Managing Partner's Affidavit, ¶ 9. She averred that she had been practicing law in Washington, D.C. since 1985 and was very familiar with market rates in the area. Managing Partner's Affidavit, ¶ 9. Seven attorneys with levels of experience ranging from two to twenty-four years had billed for substantive work. Managing Partner's Affidavit, ¶¶ 13-20. Information about their rates was included in the billing statements referenced above. We find the managing partner's affidavit more than sufficient to support the reasonableness of the charges to Complainant, with the exception of work done prior to the filing of the formal complaint, discussed below.

The award should be reduced by \$5,695 for work done before the filing of the formal complaint: EEOC Regulation 29 C.F.R. § 1614.501(e)(1)(iv) provides, in pertinent part, that agencies are not required to pay attorney's fees on services performed during the pre-complaint process, except that fees are allowable when the Commission affirms on appeal an AJ's decision finding discrimination after the Agency takes final action by not implementing the AJ's decision. In Maryanne S. v. Dept. of Justice, EEOC Appeal No. 0720140028 (December 30, 2015), the Commission upheld an AJ's discrimination findings on the merits and ordered that the Complainant's attorney's fee award include fees for legal work performed prior to the filing of the formal complaint. Unlike in Maryanne S., the Agency in this case did not challenge the AJ's findings on appeal, and we note that the decision in Maryanne S. and the exception in the regulation are designed to dissuade an Agency from erroneously rejecting a discrimination

finding. The Agency did not do so here. We therefore agree that \$5,695 representing fees for work done prior to the filing of the formal complaint should be disallowed, with the exception of the fees discussed below.

Allowable fees for work performed prior to the filing of the formal complaint: An attorney may reasonably expend up to two hours to determine whether to represent a complainant. Nenita S. v. Dept. of Veterans Affairs, EEOC Appeal No. 0120151925 (May 23, 2017). According to the prior law firm's billing invoices, the lead counsel's hourly rate in Complainant's case was \$430.00. Consequently, we will authorize an award of \$860. In addition, the billing invoices indicated that an associate with an hourly rate of \$300 expended 3.5 hours in an effort to mediate. The prior law firm claimed fees in the amount of \$1,050 for work related to the attempted mediation. The Commission has a longstanding policy of encouraging parties to make reasonable efforts to voluntarily settle complaints of discrimination as early as possible in the administrative process. See Green, et al. v. Dept. of Agriculture, EEOC Appeal No. 01973651 (June 27, 2000). Complainant clearly made a diligent effort to do so. We will therefore award fees for pre-complaint work performed in the amount of \$1,910.

The affidavit from the prior law firm accompanying the fee petition was submitted thirty-four days late: The Agency argues that Complainant was required to submit the verified statement of attorney's fees and the affidavit from the attorney of record by March 30, 2017, but that the affidavit was not submitted until May 3, 2017. This was not the fault of Complainant, however. Complainant and her then-current Counsel made numerous attempts to contact the prior law firm in order to obtain the affidavit in question. Complainant submitted the affidavit to the Agency upon receiving it. Consequently, we find that the late submission of the affidavit is not a sufficient reason to disallow an award for fees paid to the prior law firm.

The affidavit was not executed by the attorney-of-record: This contention ignores the realities of modern law practice, which recognize the law firm as the attorney-of-record. The affidavit was executed by the prior law firm's managing partner. The affidavit identified all of the attorneys who worked on Complainant's case, the hourly rate that they charged, and the hours that they billed. Every entry in the invoices submitted by the prior law firm likewise identified the attorney who performed the work, the number of hours worked on particular items, and the fees for those items. Contrary to the Agency, we find that the affidavit submitted by the prior law firm's managing partner is sufficient to satisfy the requirements of EEOC Regulation 29 C.F.R. § 1614.501(e)(2)(ii)(B).

Therefore, we award Complainant compensation for fees paid to the prior law firm in the amount of \$36,155.21.

#### Complainant's Cross-Appeal:

Counsel should be awarded fees based on the current year's Laffey Matrix hourly rate: Counsel contends on appeal that the AJ abused her discretion when she refused to award her the current Laffey rate. When awarding attorney's fees, Agencies are required to apply the current

prevailing market rates that were in effect at the time a complainant's attorney submits her verified statement of fees rather than when the legal services are actually provided. Grant A. and Val L. v. Dept. of Agriculture, EEOC Appeal Nos. 0120132145 & 0120130146 (January 8, 2016); Holmes v. Dept. of Agriculture, EEOC Appeal No. 0120112135 (July 19, 2013). By her own admission, Counsel submitted her fee petition on October 3, 2016. The prevailing market hourly rate for an attorney of Counsel's experience level, as set forth in the Laffey matrix at that time was \$530. Consequently, we find that the AJ neither erred nor abused her discretion in awarding Counsel fees at the hourly rate of \$530.00.

The AJ erred in disallowing 7.76 hours for finalizing briefs and attachments and filing motions: As we stated above and repeat here, all hours reasonably spent in processing the complaint are compensable unless they are deemed to be excessive, redundant, or otherwise unnecessary. While the attorney is not required to record in great detail the manner in which each minute of time was expended, the attorney does have the burden of identifying the subject matters on which she spent her time by submitting sufficiently detailed and contemporaneous time records to ensure that the time spent was accurately recorded. See Spencer v. Dept. of the Treasury, EEOC Appeal No. 07A10035 (May 6, 2003). Regarding the 7.76 hours that Counsel claimed for work done on October 3, 2015 "finalizing briefs and attachments and filing motions for damages and attorney's fees," we find that one hour at most would be appropriate. The use of the word "finalize" as a descriptor implies last minute edits or grammatical corrections, not substantial rewrites. Assembling attachments and filing motions are clerical tasks and therefore not compensable. Karol K. v. Dept. of State, EEOC Appeal No. 0120151671 (October 27, 2017) citing Martina S. v. Dept. of Homeland Security, EEOC Appeal No. 0120160001 (Jan. 24, 2017) (agencies are not required to pay attorney's fees for tasks that are clerical in nature). As the description of this item does not specify how much time Counsel devoted to each listed task, we will award Counsel one hour at an hourly rate of \$530.

The AJ erred in disallowing 20 hours for work on the damages brief between September 20, 2016 and October 3, 2016: A review of Counsel's invoices indicates that Counsel spent 13.67 hours preparing the brief on compensatory damages, not 20 hours. Those invoices further indicate that Counsel spent the remaining 6.33 hours drafting her attorney's fee petition. Time spent preparing a fee petition is compensable so long the number of hours is reasonable when compared to the main case. See Sanora S. v. U.S. Postal Service, EEOC Appeal Nos. 0120133235 & 0120140921 (Dec. 11, 2015) (discussion on attorney's fee petitions), request for reconsideration denied, EEOC Request Nos. 0520160145 & 0520160146 (Apr. 11, 2016). Although the AJ stated that it was warranted for her to ascertain what may be considered excessive, she does not explain why she found these items to be excessive. The descriptions corresponding to the rejected items are no less detailed than those corresponding to the allowed items. Accordingly, we will award Counsel an additional \$10,600 for 20 hours of legal work.

The AJ erred in disallowing 30 hours for preparing Complainant's response to the Agency's motion for summary judgment: Counsel's invoices indicate Counsel billed for 28.83 hours of work in connection with responding to the Agency's motion for summary judgment between February 27, 2014 and March 2, 2014. Items included drafting the document, researching case

law and reviewing notes and exhibits, all of which are routine and necessary. As discussed above, we find nothing unusual or out of the ordinary in either the existence of these items or the manner in which they were listed and described on the invoices. Thanks to Counsel's efforts, Complainant not only defeated the motion for summary judgment but won her case convincingly enough that the Agency did not challenge the AJ's liability findings on appeal. While AJ's have considerable discretion in evaluating attorney's fee petitions, they must take care not to cross the line into arbitrariness. Accordingly, we find that Counsel is entitled to an additional \$15,279.90 for work done in connection with Complainant's response to the Agency's motion for summary judgment.

The AJ abused her discretion by sanctioning Counsel in the form of an effective reduction of her fees in the additional amount of \$24,997: In her decision, the AJ reduced Counsel's attorney's fee award based upon what she believed to be Counsel's omissions in conducting the case. The AJ found that Counsel did not supplement discovery responses to the Agency with information regarding the identity of a therapist that Complainant had been seeing beginning in February 2014. The AJ stated that Counsel did not supply the Agency with such information it would need to make an offer if it had agreed to do so. Counsel responded that Complainant did not inform her about the therapist's identity or whereabouts until two weeks prior to the damages hearing, and that as soon as she became aware that the therapist could be a witness, she immediately put the therapist on the witness list and informed the Agency and the AJ of the therapist's existence. Under these circumstances, we find that the AJ's decision to reduce Counsel's fees based upon her evaluation of Counsel's conduct constitutes an abuse of her discretion. We will therefore increase Counsel's fee award by \$24,997.

The AJ erred in limiting Counsel's award for costs to \$1,201.63: The Agency acknowledged that that this was part of an award of costs in the amount of \$8,600.43 which it had inadvertently neglected to pay. As noted above, documents submitted by the Agency establish that it made the disbursement on July 21, 2017.

The Commission should award Counsel fees in the amount of \$19,276.50 for obtaining attorney's fees: On appeal, Counsel contends that she performed an additional 35.5 hours of legal work following the issuance of the AJ's decision. An application for attorney's fees must include a verified petition accompanied by an affidavit executed by the attorney of record itemizing each expense comprising the attorney's charges for legal services, together with bills, receipts, or other appropriate documentation. Counsel has not submitted any of the required documentation in support of her requests for additional fees. Consequently, we are unable to make this award.

Therefore, we find that, in addition to the \$95,000 in attorney's fees that Counsel has been awarded, she is entitled to \$51,406.90.

Agency's Response to Complainant's Cross Appeal

Untimely Appeal: The Agency contends that Complainant's appeal brief was untimely in that it was originally due on June 5, 2017. Counsel presented a letter from the Commission granting her an extension until June 26, 2017, to submit her cross-appeal brief. The Commission sent a similar letter to the Agency extending its time frame to respond. Agency's Response Brief, Exhibits (1) and (2).

Further Reductions: The Agency contends that Counsel's fee award should be reduced by an additional 7.7% because Complainant had withdrawn a claim and by an additional 20% because Complainant had withdrawn the bases of age and disability. As to the proposed 7.7% reduction, the Agency does not identify any items in Counsel's invoices attributable to the allegedly withdrawn claim. The Agency's argument regarding the 20% reduction is without merit.

Remaining Contentions: We find that the Agency's contentions regarding reductions in connection with work done in March 2014, May 2015 and September 2016 are likewise without merit.

#### *Other Remedies*

In connection with the three-day suspension at issue in Incident No. (12), Complainant argued that the AJ erred in failing to include expungement of the suspension from her official personnel file and reimbursement for any lost wages and benefits that occurred as a result of the suspension. Complainant is correct in this regard. We will therefore include this element in our order for relief below.

In connection with the award of pecuniary damages set forth in Element No. (2) in the AJ's order for relief, Complainant had requested a total award of \$2,325.21, rather than the \$1,335 awarded by the AJ. The Agency conceded that it owed Complainant the former amount. We will therefore include an order directing the Agency to award Complainant an additional \$990.21 in pecuniary compensatory damages to the extent that it has not already done so.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we MODIFY the Agency's final order.

### ORDER

Within sixty (60) calendar days of the date this decision is issued, the Agency is ordered to take the following remedial action to the extent that it has not already done so:

1. The Agency shall issue Complainant a check in the amount of \$36,155.21 to compensate her for the fees that she paid to the prior law firm.

2. The Agency shall issue Counsel a check in the amount of \$51,406.90, representing the remainder of Counsel's attorney's fees for work performed in connection with the instant matter.
3. To the extent it has not already done so, the Agency shall issue Complainant a check in the amount of \$8,600.43, representing costs incurred and paid to Counsel in connection with Counsel's representation of Complainant in the instant matter.
4. The Agency shall determine the appropriate amount of back pay, with interest, and other benefits due the Complainant, pursuant to 29 C.F.R. § 1614.501, owed Complainant as a result of the discriminatory 3-day suspension Complainant served in December 2012, no later than sixty (60) calendar days after the date this decision was issued. The Complainant shall cooperate in the Agency's efforts to compute the amount of back pay and benefits due, and shall provide all relevant information requested by the Agency. If there is a dispute regarding the exact amount of back pay and/or benefits, the Agency shall issue a check to the Complainant for the undisputed amount within sixty (60) calendar days of the date the Agency determines the amount it believes to be due. The Complainant may petition for enforcement or clarification of the amount in dispute. The petition for clarification or enforcement must be filed with the Compliance Officer, at the address referenced in the statement entitled "Implementation of the Commission's Decision."
5. The Agency shall expunge all references to the 3-day suspension from Complainant's official personnel file.
6. The Agency shall issue Complainant a check in the amount of \$990.21, representing the remainder of the non-pecuniary damages award that the Agency acknowledged it owed Complainant.
7. The Agency shall restore Complainant's telework privileges.
8. To the extent that any of the responsible management officials named in the complaint are still employed by the Agency, the Agency shall consider taking disciplinary action against these individuals. The Agency shall report its decision to the Compliance Officer. If the Agency decides to take disciplinary action, it shall identify the action taken. If the Agency decides not to take disciplinary action, it shall set forth the reason(s) for its decision not to impose discipline. If the responsible management officials have left the Agency's employ, the Agency shall furnish documentation of their departure dates.

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 evidence that the corrective action has been implemented.

POSTING ORDER (G0617)

Unless it has already done so, the Agency is ordered to post at its Field Office in Providence, Rhode Island copies of the attached notice. Copies of the notice, after being signed by the Agency's duly authorized representative, shall be posted **both in hard copy and electronic format** by the Agency within 30 calendar days of the date this decision was issued, and shall remain posted for 60 consecutive days, in conspicuous places, including all places where notices to employees are customarily posted. The Agency shall take reasonable steps to ensure that said notices are not altered, defaced, or covered by any other material. The original signed notice is to be submitted to the Compliance Officer as directed in the paragraph entitled "Implementation of the Commission's Decision," within 10 calendar days of the expiration of the posting period. The report must be in digital format, and must 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 (K0617)

Compliance with the Commission's corrective action is mandatory. The Agency shall submit its compliance report **within thirty (30) calendar days** of the completion of all ordered corrective action. The report shall be in the digital format required by the Commission, and submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). The Agency's report must contain supporting documentation, and the Agency must send a copy of all submissions to the Complainant. 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 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.

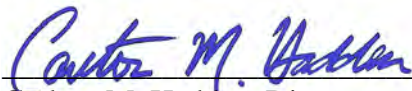


If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department head, identifying that person by his or her full name and official title. Failure to do so may result in the dismissal of your case in court. “Agency” or “department” means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

December 14, 2017

Date