



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

████████████████████
Chi E.,¹
Complainant,

v.

Megan J. Brennan,
Postmaster General,
United States Postal Service
(Great Lakes Area),
Agency.

Appeal No. 2019002476

Agency No. 4J-630-0131-13

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 February 1, 2019, final decision concerning his entitlement to attorney's fees and costs. For the following reasons, the Commission AFFIRMS the Agency's final decision.

BACKGROUND

At the time of events giving rise to this complaint, Complainant worked as a Full-Time City Carrier at the Agency's Florissant Post Office in Florissant, Missouri. In July 2012, Complainant became aware that his co-worker (CW1) had posted, in her workspace, offensive materials invoking the history of slavery and other racially inflammatory issues.

On January 31, 2013, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of race (African-American) when CW1 displayed racially insensitive material in the work area, and after being removed, the coworker was subsequently returned to the workplace in October 2012. The Agency dismissed the complaint, but that decision was reversed by the Commission and the matter was remanded for further proceedings. EEOC Appeal 0120131663 (June 26, 2013).

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.

On remand, following the investigation, the Agency provided Complainant with a copy of the report of investigation (ROI) and notice of his right to request a hearing before an EEOC Administrative Judge (AJ). When Complainant did not request a hearing within the time frame provided in 29 C.F.R. §1614.108(f), the Agency issued a final decision pursuant to 29 C.F.R. § 1614.110(b). The decision concluded that Complainant failed to prove that the Agency subjected him to discrimination as alleged.

In EEOC Appeal No. 0120170068 (November 29, 2018), the Commission reversed the Agency's final decision, finding that Complainant established that he was subjected to unlawful discriminatory racial harassment, as he alleged. The Commission noted that in light of the racially inflammatory, and clearly offensive nature of the material CW1 had displayed in the workplace, which the Agency determined was so offensive as to require CW1's emergency removal from the workplace, the Agency's act of returning CW1 to the same workplace on October 12, 2012, was itself racially hostile and abusive. As a result of the finding of discrimination, the Commission determined that Complainant, as the prevailing party, was entitled to an award of attorney's fees incurred in the processing of his complaint.

Thereafter, Complainant's three attorneys, Attorney 1 (A1), Attorney 2 (A2), and Attorney 3 (A3) petitioned the Agency for \$31,521.91 in fees, each at the rate of \$350 per hour. A1 and A2 submitted their fee petition together under the name of the same law firm, totaling \$21,844.41 (Petition 1). A1 then submitted A3's separate fee petition in the amount of \$9,677.50 (Petition 2).

On February 1, 2019, the Agency issued a final decision on attorney's fees and costs.² The Agency initially determined that Complainant's attorneys did not establish the reasonableness of their hourly rate. In so finding, the Agency noted that Complainant's attorneys did not provide a list of their previous cases where their \$350 per hour rate was accepted, and also did not provide affidavits from other attorneys of comparable experience in their legal community showing the reasonableness of their hourly rate.

The Agency specifically found nothing in the record or in the fee petition which suggested that A3 had any particular expertise in employment discrimination cases so as to warrant his requested hourly rate. The Agency additionally maintained that on December 24, 2013, A3 was disciplined by the State of Missouri for a violation of the rules of professional conduct, which resulted in the temporary suspension and probation of his law license. The Agency noted that A3's fee petition does not identify his address or even the name of the firm for which he works. The Agency observed, moreover, that A3 did not submit an affidavit or an affidavit from another attorney in his community with comparable experience showing the reasonableness of his hourly rate. Therefore, the Agency totally struck Petition 2 wherein A3 requested \$9,677.50 in fees.

The Agency also reduced the hourly rate requested of A2 to \$175 per hour, finding that A2 was a relatively new attorney with limited experience in employment law, and she did not submit any

² Complainant's attorneys did not request an amount in costs.

supporting affidavits, resume, or list of cases which she has worked to justify an hourly rate of \$350 per hour. The Agency accepted the rate of A1 at \$350 per hour.

The Agency next conducted a line-by-line analysis of Petition 1, finding that many of the billable hours requested by A1 and A2 were either vague, excessive, or duplicative. The Agency also found that A1 and A2 billed for work that was not performed, including for a hearing that was never held. The Agency ultimately reduced the attorney fee amount requested and awarded A1 and A2 a total of \$13,171.91 in fees.

CONTENTIONS ON APPEAL

Complainant has not filed a brief on appeal. The Agency requests that we affirm its February 1, 2019, final decision, awarding Complainant \$13,171.91 in attorney's fees.

ANALYSIS AND FINDINGS

Attorney's Fees and Reasonable Hourly Rate

Attorney's fee awards are governed by 29 C.F.R. § 1614.501(e) and Chapter 11 of Management Directive 110 (EEO MD-110). In order to receive a fee award, Complainant's attorney must submit a verified statement of fees and costs accompanied by an affidavit executed by the attorney attesting to the statement's accuracy. 29 C.F.R. § 1614.501(e)(2)(i). The verified statement must include the following:

1. A list of services rendered itemized by date, number of hours, detailed summary of the task, rate, and the attorney's name;
2. Documentary evidence of reasonableness of hours, such as contemporaneous time records, billing records, or a reasonably accurate substantial reconstruction of time records.
3. Documentary evidence of reasonableness of rate, such as an affidavit stating that the requested rate is the attorney's normal billing rate, a detailed affidavit of another attorney in the community familiar with prevailing community rates for attorneys of comparable experience and expertise, a resume, a list of cases handled or a list of comparable cases where a similar rate was accepted; and
4. Documentation of costs.

EEO MD-110, Ch. 11, Section VI.G (August 5, 2015).

In the instant case, while the Agency accepted A1's hourly rate of \$350 per hour, the Agency determined that A2 was only entitled to a rate of \$175 per hour. In reducing A2's hourly rate by half, the Agency noted that A2 did not submit any supporting affidavits, resume or list of cases

which she has worked on to justify an hourly rate of \$350 per hour. The Agency, moreover, disallowed A3's fee petition (fee petition 2) in its entirety determining that A3 did not submit an affidavit or an affidavit from another attorney in his community with comparable experience showing the reasonableness of his hourly rate. The Agency also noted that A3's petition contained very little information about A3, including his address.

Upon review, the Commission finds that both A2 and A3 have presented insufficient evidence from which a determination of the reasonableness of their hourly rate can be made. A2 and A3 failed to submit affidavit themselves, and also did not submit corroborative evidence of billing rates, i.e., a detailed affidavit of another attorney in the community familiar with prevailing community rates for attorneys of comparable experience and expertise; a resume; a list of cases handled; or a list of comparable cases where a similar rate was accepted. Moreover, Complainant, through her attorneys, have not filed a brief on appeal. As such, due to A2 and A3's failure to meet their burden of justifying their hourly rate, we adopt the Agency's finding that A2 was only entitled to a rate of \$175 per hour and disallow A3's hourly rate and fee petition in its entirety (fee petition 2). In disallowing A3's fee petition, like the Agency, we note that the fee petition does not even identify A3's address or even the name of the firm for which A3 works.

Reasonable Hours Expended

To determine the proper amount of the fee, a lodestar amount is reached by calculating the number of hours reasonably expended by the attorney on the complaint multiplied by a reasonable hourly rate. Blum v. Stenson, 465 U.S. 886 (1984); Hensley v. Eckerhart, 461 U.S. 424 (1983).

There is a strong presumption that the number of hours reasonably expended multiplied by a reasonable hourly rate, the lodestar, represents a reasonable fee, but this amount may be reduced or increased in consideration of the degree of success, quality of representation, and long delay caused by the agency. 29 C.F.R. § 1614.501(e)(2)(ii)(B). The circumstances under which the lodestar may be adjusted are extremely limited, and are set forth in EEO MD-110, Ch. 11 § VI.F. A fee award may be reduced: in cases of limited success; where the quality of representation was poor; the attorney's conduct resulted in undue delay or obstruction of the process; or where settlement likely could have been reached much earlier, but for the attorney's conduct. Id. The party seeking to adjust the lodestar, either up or down, has the burden of justifying the deviation. Id.

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. The Commission has ruled that, when reviewing fee petitions which contain many excessive, redundant, unnecessary or inadequately documented expenditures of time, in lieu of engaging in a line-by-line analysis of each charge claimed, the Commission may calculate the number of hours compensable by applying an across-the-board reduction to the number of hours requested. See Complainant v. Dep't of Veterans Affairs, EEOC Appeal No. 01966861 (July 17, 1998).

In the instant case, like the Agency, we find that a number of billable hours which were claimed in Fee Petition 1 appear to have been excessive and/or duplicative, and we note that the fee petition contains instances where entries appear to be identical. We also note that most of the entries are vague and not sufficiently detailed. Moreover, as noted earlier in this decision, we find there is no evidence to support the reasonableness of A2's hourly rate of \$350 per hour, but many of her billing entries appear to be comingled with A1. Therefore, after our review of the fee petition, we find no showing that the Agency's reduction of A1 and A2's fee petition to \$13,171.91 to be improper. See Complainant v. Dep't of Agriculture, EEOC Appeal No. 0120093410 (June 11, 2012) (finding that a 60 percent across-the-board reduction of attorney's fees was warranted where some of the counsel's hours were excessive, and there was no evidence to support the reasonableness of the requested hourly rate and hours expended).

CONCLUSION

We AFFIRM the Agency's final decision awarding \$13,171.91 in attorney's fees and costs.

ORDER

To the extent that it has not already done so, within 60 days of the date this decision is issued, the Agency shall pay Complainant's attorney's fees and costs in the amount of \$13,171.91.

IMPLEMENTATION OF THE COMMISSION'S DECISION (K0719)

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.

Failure by an agency to either file a compliance report or implement any of the orders set forth in this decision, without good cause shown, may result in the referral of this matter to the Office of Special Counsel pursuant to 29 C.F.R. § 1614.503(f) for enforcement by that agency.

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 (S0610)

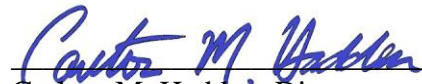
You have the right to file a civil action in an appropriate United States District Court **within ninety (90) calendar days** from the date that you receive this decision. If you file a civil action, you must name as the defendant in the complaint the person who is the official Agency head or department 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

February 21, 2020
Date