



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

[REDACTED]  
Orlando O.,<sup>1</sup>  
Complainant,

v.

Merrick B. Garland,  
Attorney General,  
Department of Justice  
(Federal Bureau of Prisons),  
Agency.

Appeal No. 2021003074

Hearing No. 410-2016-00285X

Agency No. BOP-2015-01669

**DECISION**

On April 29, 2021, the Agency filed a timely appeal with the Equal Employment Opportunity Commission (EEOC or Commission) pursuant to 29 C.F.R. § 1614.403(a). While the Agency accepts the EEOC Administrative Judge (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., the Agency requests that the Commission affirm its final order modifying the AJ's award of attorneys' fees. For the following reasons, we REVERSE the Agency's final order.

**ISSUE PRESENTED**

The issue presented on appeal concerns whether substantial evidence supports the Agency's decision to modify the AJ's award of attorneys' fees.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Teacher, GS-1710-11, at the United States Penitentiary in Atlanta, Georgia.

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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.

On April 28, 2015, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of religion (Muslim) under Title VII of the Civil Rights Act of 1964 when:

1. From January 31, 2013 to February 26, 2015, his requests for reasonable accommodation were denied;<sup>2</sup> and
2. On February 27, 2015, March 13, 2015, April 10, 2015, April 17, 2015, April 24, 2015, May 1, 2015, May 8, 2015, May 15, 2015, May 22, 2015, and May 29, 2015, his requests for leave without pay were denied, and he was placed on absent without leave (AWOL) status for the corresponding days.

At the conclusion of 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 Equal Employment Opportunity Commission Administrative Judge (AJ). Complainant timely requested a hearing. Following discovery, the Agency filed a motion for a decision without a hearing on February 28, 2019; however, the AJ assigned to the matter denied the Agency's motion and held a hearing on July 15-16, 2020.

On July 29, 2020, the AJ issued a bench decision, finding, in relevant part, that the Agency failed to reasonably accommodate Complainant's religious beliefs. To remedy the finding of discrimination, the AJ held a hearing on December 4, 2020, regarding Complainant's entitlement to damages. On March 23, 2021, the AJ issued a decision, awarding Complainant the following:

- a. Nonpecuniary compensatory damages in the amount of \$15,000.00;
- b. Sick leave restoration of 468 hours;
- c. Annual leave restoration of 468 hours; and
- d. Record expungement, i.e., removal of absent without leave (AWOL) classification and/or all direct disciplinary action resulting from Complainant improperly having been classified as AWOL.

The AJ also awarded Complainant \$74,225.00 in attorneys' fees, reflecting a full grant of Complainant's request, as the AJ determined that the billing records Complainant provided proved his entitlement to full reimbursement of the work performed. In so finding, the AJ emphasized that the hourly rates for Complainant's legal team, which include multiple attorneys and support staff, were compliant with the Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110).

The Agency subsequently issued a final order on April 29, 2021, which accepted and implemented the AJ's finding of liability and the entirety of the AJ's award of nonpecuniary compensatory damages, sick leave restoration, annual leave restoration, and record expungement.

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<sup>2</sup> Complainant requested to attend Friday prayers during his lunch break; however, the Agency denied his requests and marked him as AWOL on the dates listed in claim 2.

However, with regard to the AJ's award of attorneys' fees, the Agency found that Complainant was only entitled to recoup \$43,137.50 out of his requested \$74,225.00. In declining to award Complainant the remaining \$31,087.50, the Agency determined that while Complainant's lead attorney (Attorney-1) had provided sufficient information about her skills and experience to substantiate her claimed fees, there was insufficient information to support the fees charged by Complainant's two other attorneys of record (Attorney-2 and Attorney-3), two assisting attorneys, three paralegals, and an unknown number of legal interns. The Agency also found that "the record lack[ed] substantial evidence to support the AJ's acceptance of the use of three attorneys [of record]" for a case that was not overly complex and questioned the need for multiple attorneys given Attorney-1's "obvious skill and excellent representation" of Complainant.

Furthermore, the Agency found that Complainant's request for \$74,225.00 in attorneys' fees was excessive on the grounds that Complainant's legal team made no effort to eliminate redundant or unnecessary hours. In so finding, the Agency cited to the following examples where Complainant allegedly engaged in duplicative billing: on June 22 and July 13, 2020, all three attorneys participated in a call with Complainant with no explanation why all three needed to be on the call; on July 14-23, 2020, both Attorney-1 and Attorney-2 both prepared for and appeared at the hearing, despite the fact that Attorney-2 had no role in the hearing; on November 13, 17, and December 3-4, 2020, Attorney-1 and Attorney-3 called Complainant and prepared and appeared at the hearing on damages, despite the fact that Attorney-3 had no role in the hearing. The Agency concluded that a reduction was warranted "[b]ased on the information presented" because "Complainant's counsel made no effort to eliminate redundant or [un]necessary hours." In accordance with 29 C.F.R. § 1614.110(a), the Agency filed an appeal with the Commission simultaneously with its partial acceptance of the AJ's decision.

### CONTENTIONS ON APPEAL

On appeal, the Agency reiterates its contention that Complainant's fee petition lacks the necessary specificity required under EEO MD-110 to support the claimed attorneys' fees. In so arguing, the Agency notes that while Complainant's fee petition contains table columns reflecting the hours performed by each attorney and the services rendered, "there is no information contained on which to determine the reasonableness of the fees of any of the attorneys other [than the lead attorney]." The Agency further reiterates its position regarding "the lack of any substantial evidence to support [the need for] additional attorney[s]," especially in light of [Attorney-1]'s extensive experience. Finally, the Agency asserts that Complainant's fee petition "fails to meet the MD-110 requirement of a detailed summary of the task sufficient to justify the associated fees." The Agency contends that Complainant's failure to do so, renders these fees to be non-reimbursable under McCann v. Dep't of the Air Force, EEOC Appeal No. 01980715 (Jan. 13, 2000) (emphasizing that while an attorney is not required to record in great detail the manner in which each minute of his or her time was expended, he or she does have the burden of identifying the subject matters addressed).

Through Attorney-1, Complainant opposes the Agency's appeal and argues that his legal team's use of junior attorneys, paralegals, and other supporting staff to assist Attorney-1 "is standard practice" for a nonprofit organization with a heavy caseload, "and in fact is in compliance with an attorney's ethical obligation to responsibly and competently handle their case load." Furthermore, Complainant asserts that the Agency ignored "that either [Attorney-2] or [Attorney-3] appeared at each hearing, not both at any one hearing, and that [Attorney-3] substituted in for [Attorney-2]'s appearance after [Attorney-2] left the nonprofit Law Center's practice."

Complainant also disputes the Agency's position that his legal team failed to provide sufficient evidence regarding their skills and qualifications, and he emphasizes that the information that the Agency seeks about the individual attorneys on his team is publicly available on the website for the State Bar of Texas and on LinkedIn. Furthermore, Complainant maintains that the Agency could have raised its concerns about the alleged lack of information regarding his attorneys' qualifications during the hearing on damages. To alleviate any potential concerns that the Commission may have, Complainant preemptively offers additional evidence concerning the skills and qualifications of his attorneys.

Finally, Complainant argues that contrary to the Agency's assertion, his fee petition is indeed sufficiently detailed to be compensable. In so arguing, Complainant notes that the Agency found Attorney-1's billing entries to be sufficiently detailed. He emphasizes that "the same level of detail was provided for [Attorney-2 and Attorney-3]," as the billing entries for Attorney-2 and Attorney-3 are contained on the same table as Attorney-1 in adjacent columns. Additionally, Complainant asserts that while the Agency "takes issue with [Attorney-3] billing for the damages hearing before [the AJ] on the grounds that [Attorney-3] had no role in the hearing, he maintains that [Attorney-3] was present throughout the entirety of the damages hearing and was available and prepared for cross examination or testimony, had the Agency requested the right to question her on the fees which had already been submitted." Complainant contends that "[t]he Agency's decision not to do so does not eliminate the hours that [Attorney-3] spent in the hearing and assisting [Attorney-1] while [Attorney-1] questioned witnesses." Given that each of his attorneys were engaged in "distinct work at various stages of the case," Complainant requests that the Commission reverse the Agency's final order and order the Agency to fully reimburse his attorneys' fees.

### STANDARD OF REVIEW

Pursuant to 29 C.F.R. § 1614.405(a), all post-hearing factual findings by an AJ will be upheld if supported by substantial evidence in the record. Substantial evidence is defined as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Universal Camera Corp. v. National Labor Relations Board, 340 U.S. 474, 477 (1951) (citation omitted). A finding regarding whether or not discriminatory intent existed is a factual finding. See Pullman-Standard Co. v. Swint, 456 U.S. 273, 293 (1982). An AJ's conclusions of law are subject to a de novo standard of review, whether or not a hearing was held.

An AJ's credibility determination based on the demeanor of a witness or on the tone of voice of a witness will be accepted unless documents or other objective evidence so contradicts the testimony, or the testimony so lacks in credibility that a reasonable fact finder would not credit it. See EEOC MD-110 at Chap. 9, at § VI.B. (Aug. 5, 2015).

### ANALYSIS AND FINDINGS

The Commission's regulations require federal agencies to award attorney's fees and costs for the successful processing of an EEO complaint in accordance with existing case law and regulatory standards. 29 C.F.R. § 1614.501(e)(1)(ii). Attorney's fees are calculated by determining the lodestar, which consists of the number of hours reasonably expended multiplied by a reasonable hourly rate. All hours reasonably spent to process the complaint are compensable; however, the number of hours should not include excessive, redundant, or otherwise expenditures of time. Attorney's fees are also not recoverable for work on unsuccessful claims. Blum v. Stenson, 465 U.S. 886 (1984); and Hensley v. Eckerhart, 461 U.S. 424 (1983). As a general matter, we note that there is a "presumption of entitlement to an award of attorney's fees" where a complainant prevails on his or her claim(s) of discrimination. 29 C.F.R. § 1614.501(e)(i).

We begin with the Agency's contention that its modification of the AJ's award of attorneys' fees was proper because Complainant failed to provide sufficient information about the skills and qualifications of Attorney-2 and Attorney-3. We find such strict technical denials to be inconsistent with both our regulations and case law, which impose a strong presumption of entitlement to attorneys' fees for the prevailing party.

In Wynn v. Dep't of the Treasury, EEOC Appeal No. 0120063627 (Feb. 8, 2007), we addressed a similar factual pattern, where the agency disallowed attorney's fees on the grounds that the attorney of record in that case was an inactive member of the bar, and not a member in good standing. Though the Commission ultimately found the attorney to be in good standing with the state bar, the Commission was unpersuaded by the agency's reliance on minor technical grounds as the basis for the denial. In finding the Agency's denial to be unwarranted, the Commission emphasized that the Agency adduced no evidence showing that the attorneys' bar status had any effect on Complainant's underlying entitlement to attorneys' fees.

Given the strong presumption of entitlement, we are disinclined to affirm the Agency's modification of the AJ's award of attorneys' fees, especially in light of the Agency's failure to raise its concerns with the AJ during the hearing on damages. Moreover, we note that Complainant, on appeal, submitted a sworn statement from Attorney-3 attesting to the veracity of the fee petition and addressing her skills and qualifications.

We find the submitted evidence to be sufficient to comply with EEO MD-110.<sup>3</sup> See Coffee v. Dep't of the Army, EEOC Appeal No. 0120093008 (Nov. 17, 2009) (accepting affidavit that was submitting for the first time on appeal concerning the skills and qualifications of complainant's attorney).

In the same vein, we are also unpersuaded by the Agency's argument that its reduction of the AJ's award was proper because Complainant did not provide any affidavits or information regarding the "additional attorneys and staff members who assisted the trial team with the case." As before, we note that the Agency had the opportunity to raise these concerns with the AJ during the hearing on damages but failed to do so. As we would be remiss to allow the Agency to modify the AJ's decision based on arguments that the Agency did not raise with the AJ, we conclude that the Agency improperly excluded these fees.

We turn now to the Agency's objection over Complainant's use of multiple attorneys. On appeal, the Agency argues that a reduction in the attorneys' fees awarded by the AJ is appropriate because the work performed by the attorneys was duplicative and unnecessary given Attorney-1's expertise. Complainant counters by arguing that the use of multiple attorneys is not only allowed in the federal EEO sector, but also necessary given the high-volume nature of his attorney's nonprofit Law Center. Furthermore, Complainant emphasizes that all three of his attorneys of record did not appear at the hearings together, and that either Attorney-2 or Attorney-3, but not both, appeared with Attorney-1 at the hearings.

Having reviewed the record, we agree with Complainant that the Agency has not persuasively shown that the presence of multiple attorneys in this case was duplicative. In this regard, we note that the Commission has long held that [t]he presence of multiple counsel is not necessarily duplicative, however, and is often justifiable." EEOC MD-110 at Chap. 11, VI (4); see also Elliott v. Dep't of Veterans Affairs, EEOC Appeal No. 0720080046 (Apr. 15, 2009). There is no presumption that two attorneys working on one case will result in redundant services being rendered. Coard v. Dep't of Justice, EEOC Appeal No. 01A30222 (Feb. 27, 2004) (finding the work of two attorneys not wasteful where time records revealed the attorneys did not duplicate work). Furthermore, courts recognize the propriety and practical necessity of the use of more than one lawyer during litigation. See Taylor v. U.S. Postal Serv., EEOC Appeal No. 0720090036 (Dec. 7, 2010), citing Bohen v. East Chicago, 666 F. Supp. 154, 157 (N.D. Ind. 1987) (finding that in an employment litigation case, the use of more than one lawyer is common in legal practice). We further note that the Commission weighs a variety of factors as to whether there is justification for using more than one attorney on the same case, such as the volume of pleadings filed in the case, the complexity involved in the case, the length of the hearing, and novel legal issues raised in the litigation. Katz v. Dep't of State, EEOC Appeal Nos. 0720060024, 0720060025 (Mar. 26, 2009).

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<sup>3</sup> Though the Agency did not supplement the record on appeal with an affidavit from Attorney-2, presumably due to Attorney-2's resignation from the nonprofit Law Center, we note that the Agency had the opportunity during the damages hearing to question Attorney-1 and Attorney-3 about Attorney-2's skills and qualifications but did not do so.

We find that Complainant's legal team represented Complainant for approximately six years. Given this extended timespan, we do not find the presence of multiple counsel and support staff over the years to be too excessive, duplicative, and/or redundant.

We are also unpersuaded by the Agency's contention that Complainant's fee petition lacks sufficient specificity to be reimbursable. As discussed above, the Agency found that Attorney-1's fees were reimbursable because "the fee petition and supporting evidence sufficiently support[ed] awarding [Attorney-1]'s fees." Although the Agency raises concerns regarding the lack of specificity in the billing entries from Attorney-2 and Attorney-3, we note that their billing entries are located on the same table as Attorney-1 in adjacent columns. Given that the billing entries for Attorney-2 and Attorney-3 provide the same level of detail as the billing entries for Attorney-1, we find the Agency's expressed concerns regarding the lack of specificity to be unpersuasive.

As for the cited examples of duplicative billing noted in the Agency's final order, we are disinclined to find the claimed hours to be duplicative. In this regard, while we acknowledge that some of the claimed hours include reviewing carbon copied emails or participating in group conference calls, we find these hours to be reasonable, as both Attorney-2 and Attorney-3 engaged in these activities to ensure that they were aware of the latest details about the case. Moreover, we agree with Complainant that the Agency's "decision not to call on Attorney-3 does not eliminate the hours that [Attorney-3] spent in the hearing and assisting [Attorney-1] while [Attorney-1] questioned witnesses." For these reasons, we conclude that substantial evidence supports the AJ's assessment of \$74,225.00 in attorneys' fees.

### CONCLUSION

Based on a thorough review of the record and the contentions on appeal, including those not specifically addressed herein, we REVERSE the Agency's final order and direct the Agency to comply with the ORDER below.

### ORDER

Within sixty (60) calendar days from the date this decision is issued, to the extent the Agency has not done so already, the Agency shall pay Complainant \$74,225.00 in attorneys' fees.

### ATTORNEY'S FEES (H1019)

If Complainant has been represented by an attorney (as defined by 29 C.F.R. § 1614.501(e)(1)(iii)), she/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 receipt of this decision. 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 (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 (M0920)

The Commission may, in its discretion, reconsider this appellate decision if Complainant or the Agency submits a written request that contains arguments or evidence that 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 for reconsideration must be filed with EEOC's Office of Federal Operations (OFO) **within thirty (30) calendar days** of receipt of this decision. If the party requesting reconsideration elects to file a statement or brief in support of the request, **that statement or brief must be filed together with the request for reconsideration.**

A party shall have **twenty (20) calendar days** from receipt of another party's request for reconsideration within 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).

Complainant should submit his or her request for reconsideration, and any statement or brief in support of his or her request, via the EEOC Public Portal, which can be found at

<https://publicportal.eeoc.gov/Portal/Login.aspx>

Alternatively, Complainant can submit his or her request and arguments to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, via regular mail addressed to P.O. Box 77960, Washington, DC 20013, or by certified mail addressed to 131 M Street, NE, Washington, DC 20507. In the absence of a legible postmark, a complainant's request to reconsider shall be deemed timely filed if OFO receives it by mail within five days of the expiration of the applicable filing period. See 29 C.F.R. § 1614.604.

An agency's request for reconsideration must be submitted in digital format via the EEOC's Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g). Either party's request and/or statement or brief in opposition must also include proof of service on the other party, unless Complainant files his or her request via the EEOC Public Portal, in which case no proof of service is required.

Failure to file within the 30-day time period will result in dismissal of the party's request for reconsideration as untimely, unless extenuating circumstances prevented the timely filing of the request. **Any supporting documentation must be submitted together with the 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).

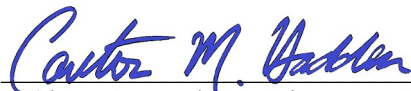
#### COMPLAINANT'S RIGHT TO FILE A CIVIL ACTION (T0610)

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

November 15, 2021

Date