



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

[REDACTED]  
Joshua M.,<sup>1</sup>  
Complainant,

v.

Denis R. McDonough,  
Secretary,  
Department of Veterans Affairs,  
Agency.

Appeal No. 2022002575

Agency No. 2003-0350-2021102819

**DECISION**

On April 8, 2022, 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 March 9, 2022, final decision concerning his entitlement to attorney's fees following a violation of Section 501 of the Rehabilitation Act of 1973 (Rehabilitation Act), as amended, 29 U.S.C. § 791 et seq. For the following reasons, the Commission MODIFIES the Agency's final decision.

**BACKGROUND**

At the time of events giving rise to this complaint, Complainant worked as a Legal Administrative Specialist at the Agency's Regional Office in Little Rock, Arkansas. On April 7, 2021, Complainant filed an EEO complaint alleging that the Agency discriminated against him on the basis of disability when he was denied a reasonable accommodation allowing him to telework five-days per week.

Following the Agency's finding that Complainant was subjected to discrimination, on November 1, 2021, Complainant's attorney (Attorney) submitted an affidavit in support of Complainant's request for attorney's fees. Therein, Attorney proffered that he worked 60.5 hours on Complainant's case at an hourly rate of \$325.00 per hour, totaling \$19,662.50, plus costs of \$5,260.00 (\$1,250.00 expert retainer with a balance due of \$4,010.00).

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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.

He thoroughly explained his hourly rate and substantiated his work. Moreover, he attached what he indicated was a true and accurate account of the hours expended in representing Complainant.

In its decision, the Agency noted that the record contained a letter<sup>2</sup> from Attorney which indicated that he had spent approximately 30 hours working on Complainant's case, and that the appropriate hourly rate was \$325.00. However, the Agency determined that Attorney did not provide additional documentation, such as a verified statement confirming the hours worked. The Agency noted that Complainant was advised multiple times that the attorney's fees petition was incomplete. Specifically, the Agency found that Complainant and Attorney failed to provide a verified statement of fees in conjunction with the Attorney's statement regarding the hourly rate. As such, the Agency determined that Complainant should be awarded no attorney's fees for the work done by Attorney and \$1,250.00 in costs for Complainant's expert.

### CONTENTIONS ON APPEAL

On appeal, Attorney makes clear that the Agency misstated the 30-hour amount and corresponding monetary sum in the FAD. Therefore, although 30 hours is stated in the FAD, at no time did Complainant or Attorney request 30 hours' worth of fees. See Complainant's Appeal Brief at 2. Complainant has consistently requested attorney's fees in the amount of \$19,662.50 plus costs for 60.5 hours expended at a rate of \$325.00.

Complainant argues that Attorney's November 2021 submission was satisfactory, and the entire amount requested should be awarded. In addition, documents provided by Attorney reflect that upon emailing his aforementioned affidavit to the Agency, the attachment including the breakdown of his hours failed to send. However, as noted by Attorney, he then resent the document and it appeared to go through. See Attorney's Fees Appeal Brief at 2; Complainant's Attachment A at 16-17. Attorney explained that he received no further information from the Agency regarding the attachment, and as such, was under the impression it was received. Attorney's Fees Appeal Brief at 2.

Nonetheless, on January 24, 2022, the Agency sent an email to Complainant indicating that they did not have complete information regarding attorney's fees. Complainant's Attachment A at 5-6. The Agency then corresponded with Complainant without contacting the Attorney. On February 2, 2022, Attorney emailed the Agency and inquired about any issues regarding his fee submission. In response, the Agency provided boilerplate information regarding attorney's fees submissions, and stated that Attorney's submissions did not comport with guidelines. See Complainant's Attachment A at 5.

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<sup>2</sup> The "letter" from Attorney is noted to be from October 2021 by the Agency, and separately noted to be from November 2021 by Attorney. There appears to have been ongoing email exchanges between Complainant and the Agency throughout the fall of 2021. For brevity and clarity, herein the correspondence is referred to as being submitted in November 2021 as stated by Attorney.

In response to the appeal, the Agency continues to argue that denial of fees is appropriate due to failure to provide proper documentation of hours worked. The Agency contends that even had the attached submission from Attorney been accepted, it is not sufficient in that it does “not appear to be from a billing system used.” Agency’s Appeal Brief at 3. The Agency argues that the submission from Attorney lacks detail and does not provide enough information regarding the tasks completed by Attorney.

### ANALYSIS AND FINDINGS

As this is an appeal from a decision issued without a hearing, pursuant to 29 C.F.R. § 1614.110(b), the Agency's decision is subject to de novo review by the Commission. 29 C.F.R. § 1614.405(a). See Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO MD-110), at Chap. 9, § VI.A. (Aug. 5, 2015) (explaining that the de novo standard of review “requires that the Commission examine the record without regard to the factual and legal determinations of the previous decision maker,” and that EEOC “review the documents, statements, and testimony of record, including any timely and relevant submissions of the parties, and . . . issue its decision based on the Commission’s own assessment of the record and its interpretation of the law”).

As an initial matter, we note that Complainant’s appeal solely focused on the issue of attorney’s fees. Complainant did not contest the Agency’s award of \$1,250.00 in costs. As Complainant has not specifically raised on appeal the \$4,010 balance associated with the cost of the expert, we shall not address this matter herein. EEO MD-110, Chap. 9, at § IV.A (“Although the Commission has the right to review all of the issues in a complaint on appeal, it also has the discretion to focus only on those issues specifically raised on appeal”).

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

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

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, at Chap. 11, §VI. F. 1. 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 (emphasis added) 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. at Chap. 11, § VI. F. 2.

In the present case, it is apparent that there were technological difficulties as well as miscommunications between the Agency and Complainant and the Attorney. However, despite these impediments, it is also apparent that Attorney submitted an affidavit discussing his hourly rate as well as an attachment itemizing his hourly expenditures on Complainant's case.

As noted by the Agency, 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); EEO MD-110, at Chap 11, § VI.F.1.

We find that the documentation submitted by Attorney includes the required affidavit and an appropriate itemized listing of his hours worked on Complainant's case from the period encompassing the underlying merit determination through the current decision on attorney's fees. Contrary to the Agency's assertion, the affidavit and attachments concerning hourly work from Attorney included all of the elements prescribed in EEOC Regulation 29 C.F.R. § 1614.501(e)(2)(ii)(B). It is unclear why this submission from Complainant and Attorney was not accepted in the first instance in October or November 2021, nor why any discrepancy was not properly addressed in January or February 2022 during communications prior to the issuance of decision on attorney's fees.

While the Agency found that Attorney failed to submit proper documentation, it appears that the Agency either already had satisfactory documentation from Complainant or failed to suitably explain what was improper about the submission previously provided by Complainant. In either circumstance, the fault is not on the part of Complainant or Attorney, as we have found that the affidavit and attachment are sufficient for an attorney's fees request submission.

We note that the Agency did not challenge Attorney's hourly rate. The sole issue before us is whether the Attorney provided satisfactory documentation to support the hours expended on the matter at hand. While the Agency was in possession of the documents which indicated Attorney's hours, they focused on the format of the reporting rather than the hours themselves. As such, upon our review of the submission, Attorney has clearly accounted for his hours expended and we discern no reason to exclude any hours.

Therefore, we find that Attorney has supported his request for fees in the amount of \$19,662.50, providing a detailed explanation of the 60.5 hours expended on Complainant's case at the rate of \$325.00 per hour. As we have determined that his submission its entirety was satisfactory, we award Complainant \$19,662.50 in attorney's fees.

### 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 decision and REMAND the matter to the Agency for further action in accordance with the ORDER below.

### ORDER

We ORDER, within sixty (60) days of the date this decision is issued, the Agency, to the extent it has not done so already, to pay Complainant \$19,662.50 in attorney's fees and \$1,250.00 in costs.

The Agency is further directed to **submit a report of compliance in digital format as provided in the statement entitled "Implementation of the Commission's Decision."** The report shall be submitted via the Federal Sector EEO Portal (FedSEP). See 29 C.F.R. § 1614.403(g).

### ATTORNEY'S FEES (H1016)

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

### IMPLEMENTATION OF THE COMMISSION'S DECISION (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 (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:



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Carlton M. Hadden, Director  
Office of Federal Operations

February 8, 2023  
Date