

Alfred E. Ramey v. U.S. General Accounting Office

Docket No. 01-703-17-81

Date of Decision: March 9, 1982

Cite as: Ramey v. GAO (3/9/82)

Before: Gallas (Chair), Bussey, Simmelkjaer, and Taylor, Members

Attorney Fees

Board Decision on Petitioner's Motion for Attorney's Fees

By Motion dated January 15, 1981, and received on that date, a request has been made for attorney's fees in the above-captioned case. On February 4, 1982, the Board received Respondent's brief in opposition to the Petitioner's motion. Finally, on February 16, 1982, the Board received the Petitioner's reply to the Respondent's opposition memorandum.

Since this is a matter of first impression, this motion was considered by the entire Board.

In its regulations, the Board has provided at 4 C.F.R. §28.22(m) for the award of attorney's fees to prevailing parties. However, these regulations provide that such an award must be consistent with the standards set forth at 5 U.S.C. §7701(g). The latter provision states in pertinent part:

"...the Board¹ ...may require payment by the agency involved of reasonable attorney fees incurred by an employee or applicant for employment if the employee or applicant is the prevailing party and the Board... determines that payment by the agency is warranted in the interest of justice..."

Thus, before attorney's fees can be awarded under section 7701(g), three conditions must be met:

- (1) The Petitioner must be the prevailing party;
- (2) The award of attorney's fees must be "warranted in the interest of justice"; and
- (3) The fees awarded must be reasonable.

By a trilogy of cases decided on July 22, 1980, the Merit Systems Protection Board, which administers section 7701(g), set forth the criteria for satisfying the above-referenced requirements. See, Allen v. Postal Service, 80 FMSR 7015 (July 22, 1980); O'Donnell v. Department of the Interior, 80 FMSR 7016 (July 22, 1980); and Kling v. Department of Justice, 80 FMSR 7018 (July 22, 1980). Since this Board, in accordance with our regulations, is to be consistent with the cited statutory provision, this trilogy of cases serves as a useful guide for our determinations on the award of attorney's fees until such time as this Board sees the need to further clarify its general guidelines, as outlined below.

Before this Board will consider any request for the award of attorney's fees, it is necessary for the Petitioner to initially satisfy the statutory requirements of 5 U.S.C. §7701(g) and the criteria set forth in the above-referenced cases. Additionally, in submitting such a request, it is incumbent upon the Petitioner's counsel to present it in the form of a memorandum. That document should set forth why the

award of attorney's fees is appropriate in the case. Attached to that memorandum should be the following documentation:

- (1) A copy of the retainer letter or agreement between the attorney and the Petitioner;
- (2) Copies of all time records or other evidence establishing the actual time expended on the case, the days on which the time was expended, the time spent on each given day, and the nature of the legal services rendered on each day;
- (3) A copy of the actual billing statement(s) sent to the Petitioner which reflects the hours expended, converted into dollars;
- (4) An affidavit from the attorney attesting to the accuracy of the time records and the billing statement(s) sent the Petitioner;
- (5) An affidavit from the Petitioner corroborating the affidavit of the Petitioner's counsel;
- (6) A resume or other statement as to the qualifications of Petitioner's counsel; and
- (7) Any additional supporting documentation which would aid the Board in determining the reasonableness of the fees requested.

These three criteria: compliance with 5 U.S.C. §7701(g); a memorandum in support of the request for attorney fees; and the supporting documentation constitute the minimum requirements for submission of a request for the award of attorney's fees to the Personnel Appeals Board in this case. The referenced criteria may be modified by the Board as future cases so dictate.

Since counsel for the Petitioner in the above-captioned case has not submitted his request for attorney's fees, in accordance with these guidelines, Petitioner's Motion is denied.

Notes

1. Reference here is to the Merit Systems Protection Board.