

Dr. John H. M. Chen v. U.S. General Accounting Office

Docket No. 17-201-17-82

Date of Decision: July 27, 1983

Cite as: Chen v. GAO (7/27/83)

Before: Bussey, Presiding Member

Attorney Fees

AWARD OF ATTORNEY'S FEES AND EXPENSES

Petitioner, Dr. John H.M. Chen, has moved for an award of attorney's fees and expenses. In her decision of February 22, 1983, the Presiding Member held that Respondent violated Title VII's ban on national origin discrimination when it failed to hire Dr. Chen because of his accent. On May 2, 1983, Respondent's motion for reconsideration was denied by the Board. Respondent concedes that Petitioner is entitled to an award of reasonable attorney's fees and costs. See 4 C.F.R. §28.21(m) and 5 U.S.C. §7701(g)(2). The parties disagree only on what the reasonable rate should be and on certain of the time and costs claimed.

Reasonable Rate of Counsel

The parties agree that "the computation of the amount of attorney fees to be awarded consists of a 'lodestar figure' which is determined by multiplying the reasonable rate charged by counsel by the amount of time reasonably spent on the case." (GAO Response, pp. 2-3.)

The Presiding Member believes that the most appropriate measure of the reasonable rate of counsel is the prevailing rate, at the time the award is made, charged by attorneys who possess background and experience similar to that which Petitioner's counsel possessed at the time he performed the services in this case. This results in an award which does not over-compensate counsel for skills and experience acquired after the services for which an award is sought were performed, while at the same time taking into account inflationary increases in prevailing rates that may have occurred since the services were performed.

Services in this case were performed between August 31, 1982 and May 19, 1983. Throughout this period, Petitioner's counsel was in his third year of legal practice since completion of law school. Hourly rates at his firm are determined by level of experience. Presently, attorneys in that firm in their third year of legal practice charge \$85 per hour for their services. GAO's contention that \$70 per hour is a more appropriate rate is rejected. That rate is based upon the lowest rate charged for associates in counsel's firm during the period of 1981-1982. First, the \$70 rate was that charged by associates in their first year of legal practice. As noted, Petitioner's counsel was in his third year. Second, that rate was based on the firm's fee schedule for a period prior to when the services in this case were performed. (For example, presently the rate charged by first year associates is \$75 per hour, not \$70.) The Presiding Member finds that \$85 per hour is in line with prevailing rates in the community for attorneys with such experience in firms such as counsel's.

Accordingly, the Presiding Member finds that \$85 per hour is the reasonable rate for counsel's services in this case.

Hours Reasonably Expended by Counsel

Petitioner seeks payment for 139.25 hours of services performed by his counsel. The Presiding Member has reviewed carefully the itemization of counsel's time. She observed counsel's participation in this case and his contribution to Petitioner's claim, and is satisfied that the hours claimed were reasonably spent and not duplicative of the services of the Board's General Counsel.

Accordingly, the Presiding Member finds that Petitioner is entitled to an award of attorney's fees for 139.25 hours at a rate of \$85 per hour, for a total of \$11,836.25.

Expense

Petitioner seeks payment for paralegal time spent cite checking a brief, and expenses for duplicating, local transportation, LEXIS research, and postage.

Respondent does not contest the amounts claimed for duplicating (\$125.56) and postage (\$2.34), and they are awarded. Counsel has satisfied the Presiding Member that the local transportation expenses claimed (\$141.45) are reasonable and they also are awarded. The Presiding Member finds that the time claimed for cite checking by paralegals is excessive. She finds that one hour, at the rate of \$47 per hour, is reasonable and therefore awards \$47.00 for paralegal time. Finally, the Presiding Member denies the request for payment of LEXIS research expenses. She agrees with the observation of the court in Leftwich v. Harris State College, 31 FEP Cases 376, 382 (8th Cir. 1983), that "computer-aided research, like any other form of legal research, is a component of attorneys' fees and cannot be independently taxed as an item of cost in addition to the attorneys' fee award ..."

Accordingly, Petitioner hereby is awarded the following amounts in attorney's fees and expenses:

| | |
|--|--------------------|
| Attorney's Fees: 139.25 @ \$85 per hour | \$11,836.25 |
| Paralegal Fees: 1.0 hour @ \$47 per hour | 47.00 |
| Duplicating Expenses: | 125.56 |
| Local Transportation Expenses: | 141.45 |
| Postage Expenses: | 2.34 |
| Total Award | \$12,152.60 |