

BOARD OF DIRECTORS OF OFFICE OF COMPLIANCE

John Adams Building, Room LA-200
110 Second Street, S.E.
Washington, D.C. 20540-1999

JUANITA JOHNSON,)
)
)
 Appellee (Employee),)
)
 v.)
)
)
 OFFICE OF THE ARCHITECT OF)
 THE CAPITOL,)
)
 Appellant (Employing Office).)
_____)

Case No. 99-AC-326(DA)

Before the Board of Directors: Susan S. Robfogel, Chair; Barbara L. Camens; Alan V. Friedman; Roberta L. Holzwarth; Barbara Childs Wallace, Members.

ORDER

The Board issued its decision, on February 25, 2002, affirming the Hearing Officer’s conclusion that the Complainant prevailed in her discrimination claim under the Americans with Disabilities Act, and upholding the Hearing Officer’s award to the Complainant of back pay and interest, compensatory damages, and attorney’s fees and costs. However, the Board remanded to the Hearing Officer for further proceedings the remedial issue of the Complainant’s reassignment. That matter is presently before the Hearing Officer.

On March 22, 2002, the Complainant’s counsel filed a motion with the Hearing Officer for the award of attorney’s fees and costs in connection with the appellate stage before the Board. On April 2, 2002, the Employing Office filed its opposition to that motion. The Hearing Officer issued his Memorandum and Order, dated April 22, 2002, concluding that the Board should address the attorney’s fees and costs claim connected with the appellate proceeding before us.

We believe that the disputed appellate stage attorney’s fees and costs claim would be reviewed most efficaciously by the Hearing Officer, who will also be considering any additional

attorney's fees and costs claims in connection with the remanded proceeding. While section 9.03 of the Office's Procedural Rules contemplates the Board initially entertaining attorney's fees, we envisage that provision as being operative where a Hearing Officer has no active role in a case; e.g., where the Board issues a dispositive decision requiring no Hearing Officer implementation action.

In earlier proceedings before the Hearing Officer, on appeal to the Board, and now in opposition to this attorney's fee claim, the Employing Office repeatedly has argued, *inter alia*, that the attorney-client relationship is between Complainant's exclusive bargaining agent and the law firm appearing on the Complainant's behalf. The Hearing Officer rejected those contentions in his Supplemental Decision and we affirmed his conclusion, without discussion, in our February 25, 2002 decision, at page 1. We agree with the Hearing Officer that the attorney-client relationship is between the Complainant and the law firm appearing on her behalf and that the retainer agreement between the Complainant's exclusive bargaining representative and the law firm permits the firm to recover its fees at the market rate. *See, Blum v. Stenson*, 465 U.S. 886 (1984); *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1998) (*en banc*); *Preseault v. United States*, 2002 U.S. Claims LEXIS 124 (Fed. Cl. May 22, 2002).

Accordingly, we refer to the Hearing Officer Complainant's Counsel's claim for attorney's fees and costs related to the appellate stage of this proceeding culminating in the Board's issuance of its decision, dated February 25, 2002..

It is so ordered.

Issued July 2, 2002, at Washington, D.C.

CERTIFICATE OF SERVICE

I, the undersigned employee of the Office of Compliance, certify that on the date indicated below I served the following Order of the Board of Directors upon the below named persons, addressed to them at the address indicated.

Sarah Starrett, Esquire
Beins, Axelrod & Kraft, P.C.
1717 Massachusetts Avenue, NW
Suite 704
Washington, DC 20036-2001

Via Facsimile 202-328-7300
and First Class Mail

Edgard Martinez, Esquire

Via Facsimile 202-226-8700

Office of the Employment Counsel
Office of the Architect of the Capitol
Ford House Office Building, Rm H2-202
Second & D Streets, SW
Washington, DC 20515

and First Class Mail

Signed in Washington, D.C. this 2nd day of July 2002

Kisha Harley
Hearing Clerk
Office of Compliance