In the Matter of:

MARK VAN,

COMPLAINANT,

v.

PORTNEUF MEDICAL CENTER,

RESPONDENT.

ARB CASE NOS. 11-028
12-043

ALJ CASE NO. 2007-AIR-002

DATE: January 31, 2013

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:
Nick L. Nielson, Esq., *Nielson Law Office,* Pocatello, Idaho

For the Respondent:
Paul D. McFarlane, Esq.; Tyler J. Anderson, Esq.; Patricia M. Olsson, Esq.; and David J. Dance, Esq.; *Moffat, Thomas, Barrett, Rock & Fields, Chartered,* Boise, Idaho

BEFORE: Paul M. Igasaki, *Chief Administrative Appeals Judge*; Joanne Royce, *Administrative Appeals Judge*; and Lisa Wilson Edwards, *Administrative Appeals Judge.*

FINAL DECISION AND ORDER

This case arises under the employee protection provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21 or the Act), 49 U.S.C.A. § 42121 (Thomason/West 2011). Mark Van filed a complaint alleging that his employer, Portneuf Medical Center (PMC), violated AIR 21 by terminating his employment after he complained about air safety issues. Following a hearing, a United States Department of Labor (DOL) Administrative Law Judge (ALJ) issued a Decision and Order (D. & O.) on February 2, 2011, determining that PMC was liable for violating the employment protection provisions of AIR 21, and awarded monetary and equitable relief to Van. PMC petitioned the Administrative Review Board (ARB) for review. We affirm.

On May 24, 2011, the ALJ entered a supplemental order awarding Van attorney's fees and expenses. PMC petitioned the ARB for review of the Order. Van moved to dismiss PMC's petition as untimely. We deny the motion to dismiss and affirm the ALJ's supplemental order awarding attorney's fees and expenses to Van.[1]

BACKGROUND

While the facts are briefly set out below, the ALJ's decision fully sets out in detail the facts pertaining to this AIR 21 case.

Portneuf Medical Center (PMC), a hospital in Idaho, operates a helicopter emergency medical service (HEMS) program called Life Flight. Life Flight is an air carrier program certified by the Federal Aviation Administration (FAA).[2] Van had worked as a mechanic for PMC's emergency medical service program on a contract basis in 1985, and was employed by the Hospital full-time beginning in 1986.[3] He was PMC's Chief Helicopter Mechanic at the time of his termination.

A. Prior Helicopter Accidents Involving PMC Personnel

PMC has had two serious accidents involving its emergency medical program helicopters operating during winter weather, in 1993 and 2001. In January 1993, around the lunch hour, an air ambulance made an emergency landing on a city street near the hospital shortly after takeoff.[4] The helicopter slid across four lanes of traffic. "Both the compressors . . . had been damaged; [s]now and ice had gone through both engines and flamed out the left engine and damaged the compressor blades on the right engine."[5] The pilot failed to turn the continuous ignition on, which caused the "engine to flame out when a chunk of ice that should have been removed from the cabin roof before take off was sucked into the air intake."[6]

The next accident occurred in November 2001. On a weekend flight returning to PMC, problems developed with the air ambulance's fuel system, which led the pilot to telephone Van before taking off from Salmon, Idaho. Later, the pilot set down the flight in a remote valley

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[1] There are pending two petitions for review filed by PMC in this case. *Van v. Portneuf Med. Ctr.*, ARB Nos. 11-028, 12-043. These petitions are consolidated for purposes of review and decision. *See, e.g., Levi v. Anheuser Busch Cos., Inc.*, ARB Nos. 06-102, 07-020, 08-006; ALJ Nos. 2006-SOX-037, -108, 2007-SOX-055; slip op. at 8 (ARB June 2, 2006).

[2] D. & O. at 1, 3-4; Complainant's Exhibit (CX) 50.

[3] D. & O. at 1, 4.

[4] D. & O. at 5; see also Hearing Transcript (HT) at 30.

[5] D. & O. at 5; see also HT at 31.

[6] D. & O. at 5; see also HT at 33-34, 38.

because there was insufficient fuel for the full flight. Van and his teen-age son drove to the helicopter's landing carrying fuel and equipment. Van removed fuel from the aircraft, changed both fuel pumps for its main tank, and refueled. By then it was midnight, and very dark in the valley. The pilot had been on duty for 17 hours. As Van and his son pulled away in their truck, the pilot took off. The pilot lost his horizon and crashed into a hill. Van and his son used their flashlights and found the helicopter wreckage. The pilot had unstrapped himself from his seat and crawled away from the crash site. Van and his son found the injured pilot and got him to the top of a hill with a stretcher. Van located the helicopter's ignition system and disconnected the battery to reduce the danger of more explosions or fire.[7] This 2001 crash incident "caused Van to become even more safety conscious."[8]

B. Events Leading To Van's Complaints About De-Icing The Helicopter And His Termination

FAA regulation 14 C.F.R. § 135.227(a) (2012) states: "No pilot may take off an aircraft that has frost, ice, or snow adhering to any rotor blade." Around October 30, 2004, Gary Stoltz, a part-time mechanic with the HEMS program, informed Van that a helicopter pilot, Barry Neilsen, had taken the helicopter off on a flight with ice or frost on its rotors, in apparent violation of the FAA regulation.[9] On December 3, 2004, Van e-mailed Chief Pilot Ron Fergie recommendations for the helicopter program's proposed cold weather policy, to avoid future such incidents.[10] Van's proposal was adopted by the company in December 2004 and January 2005.[11]

Van received a favorable performance evaluation in January 2005.[12] On February 1, 2005, Van discovered that the helicopter's rotor blades had not been properly de-iced prior to Chief Pilo Fergie putting the rotor blade covers on the night before, in violation of the cold weather policy the company had recently adopted.[13] Van e-mailed his concerns to the Hospital's Director of Emergency Services Pam Holmes, and the program's Director of Operations Gary Alzola, about the "unsafe" condition of the helicopter as a result of the incident, along with his

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[7] D. & O. at 6-7; see also HT at 41-46, 576.

[8] D. & O. at 7; see also HT at 53.

[9] D. & O. at 1, 12; HT at 168; CX 14.

[10] D. & O. at 2, 12; CX 32.

[11] D. & O. at 1-2.

[12] D. & O. at 55; CX 95, 151; Respondent's Exhibit (RX) 567. The ALJ noted that in the record, Pam Holmes is also referred to as Pam Humphrey, but chose to refer to her as Pam Holmes throughout his decision. D. & O. at 4. We do the same for the sake of continuity with the ALJ's decision.

[13] D. & O. at 13; HT at 173-175, 178-179.

suggestions on how the matter should have been handled.[14] Van followed up that e-mail with a subsequent e-mail to Alzola and Holmes on February 21, 2005, stating that the incident was the second time, along with the October 2004 incident, where ice was found on the rotor blades. He stated that this "does not instill confidence that this issue is behind us."[15] Van requested a meeting with all of the program and helicopter crew members "about all the recommendations [he] . . . made to make [the] program safer."[16] Two days later, Van again e-mailed Holmes requesting a meeting with the entire program team to discuss "their safety and the operational readiness of the helicopter."[17] Pilot Neilsen confronted Van on February 25, and told Van that he was "tired of all these emails flying around."[18] At a meeting on February 28, 2005, attended by Van, Holmes, Alzola and Fergie, Van's recommendations for modifying the cold weather policy were discussed and some were adopted.[19] During this meeting, Van told Holmes, Alzola and Audrey Fletcher, of PMC's Human Resources Department, about his confrontation with Pilot Neilsen.[20]

On March 24, 2005, Van attended a HEMS program leadership meeting where he stated that Chief Pilot Fergie had erroneously claimed that the October incident only involved frost on the helicopter rotor blades and not snow or ice.[21] Holmes told Van that he could discuss the issue at a later special safety meeting.[22] Alzola later e-mailed Holmes stating that Van's attempt to discuss his safety concerns at the leadership meeting was an attempt to "undermine [the] . . . morale of the program." Holmes responded that he would "be addressing this situation."[23] Chief Pilot Fergie also sent a memo to Alzola and Fletcher about Van's "continuous intrusion into other aspects" of the program.[24]

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14 D. & O. at 13; CX 15.

15 D. & O. at 14; CX 17, 218; HT at 182-183.

16 CX 17, 218.

17 D. & O. at 14-15; CX 217.

18 D. & O. at 17; HT at 193, 195-196.

19 D. & O. at 15; HT at 172, 186, 189; CX 216.

20 D. & O. at 18; CX 15, 166, 189; HT at 196, 2680.

21 D. & O. at 19; HT at 216-217.

22 D. & O. at 19; HT at 191-192.

23 D. & O. at 19-20; CX 185.

24 D. & O. at 21; CX 184.

Van e-mailed program staff on March 28, 2005, outlining the safety concerns he wanted to address at the special safety meeting that Holmes indicated that she would hold.[25] In response, however, Holmes notified Van on March 30, 2005, that she no longer thought a safety meeting was needed.[26] On March 31, 2005, Holmes authorized a pay raise for Van, which Fletcher testified was a merit-based raise stemming from Van's January 14, 2005, performance evaluation.[27]

Fletcher held a meeting on April 1, 2005, with Van, Neilsen, Alzola and Holmes to discuss Van's confrontation with Neilsen.[28] The meeting was contentious.[29] Fletcher asked Van why he was raising these safety concerns, and Van replied that he "didn't want to see another accident."[30] Azola stormed out of the meeting.[31] Fletcher testified that at this meeting she realized the level of "dysfunction" that existed between Van and the other program members and decided to interview other Life Flight staff to better understand the situation.[32] Fletcher later recommended to Dale Mapes, head of Human Resources for the Hospital, that Van be terminated.[33] Van was terminated on April 20, 2005, and in a separate letter the hospital informed him that his firing was due to his "inability to maintain positive interpersonal relations."[34]

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated her authority to the ARB to issue final agency decisions in AIR 21 cases. Secretary's Order No. 02-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69378-69380 (Nov. 16, 2012); 29 C.F.R. § 1979.110(a). The ALJ's factual findings are reviewed for substantial evidence. 29 C.F.R. § 1979.110(b). Substantial evidence is "such relevant evidence

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25 D. & O. at 20; CX 212, 214; RX 518, 519.

26 D. & O. at 21; CX 280 at exhibit 24; CX 188.

27 D. & O. at 21-22; CX 142; HT at 2899.

28 D. & O. at 22; HT at 223-224.

29 D. & O. at 22, 39.

30 D. & O. at 22; see also HT at 227, 644-645, 694-697.

31 *Id*.

32 D. & O. at 22; see also HT at 2687.

33 D. & O. at 21, 39.

34 D. & O. at 23; CX 21; HT at 230-231.

as a reasonable mind might accept as adequate to support a conclusion."[35] We must uphold an ALJ's factual finding that is supported by substantial evidence even if there is also substantial evidence for the other party, and even if we "would justifiably have made a different choice had the matter been before us de novo."[36] The ALJ's legal conclusions are reviewed de novo.[37] The ARB generally defers to an ALJ's credibility determinations, unless they are "inherently incredible or patently unreasonable."[38]

DISCUSSION

A. The ALJ's Determination That PMC's Termination Of Van Violated The AIR 21 Whistleblower Provision Is Fully Supported by Substantial Evidence And Is In Accordance With Law

To prevail under AIR 21, a complainant must prove by a preponderance of the evidence that his protected activity was a contributing factor to the alleged adverse action.[39] Protected activity under AIR 21 has two elements: (1) the information that the complainant provides must involve a purported violation of a regulation, order, or standard relating to air carrier safety, though the complainant need not prove an actual violation; and (2) the complainant's belief that a violation occurred must be objectively reasonable.[40] "Protection for activities that further the purposes of the statutes depends on whether the complainant reasonably believed that the employer was violating or would violate the pertinent act and its implementing regulations."[41]

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[35] *Clean Harbors Envtl. Servs., Inc. v. Herman*, 146 F.3d 12, 21 (1st Cir. 1998), quoting *Richardson v. Perales*, 402 U.S. 389, 401 (1971).

[36] *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951).

[37] *Rooks v. Planet Airways, Inc.*, ARB No. 04-092, ALJ No. 2003-AIR-035, slip op. at 4 (ARB June 29, 2006) (*citing Mehan v. Delta Air Lines*, ARB No. 03-070, ALJ No. 2003-AIR-004, slip op. at 2 (ARB Feb. 24, 2005); *Negron v. Vieques Air Links, Inc.*, ARB No. 04-021, ALJ No. 2003-AIR-010, slip op. at 4 (ARB Dec. 30, 2004)).

[38] *Mizusawa v. United Parcel Servc.*, ARB No. 11-009, ALJ No. 2010-AIR-011, slip op. at 3 (ARB June 15, 2012).

[39] *See* 49 U.S.C.A. § 42121(b)(2)(B)(i); 29 C.F.R. § 1979.109(a). A complainant's failure to prove by a preponderance of the evidence any one of the above listed elements of his complaint warrants dismissal. *Robinson v. Northwest Airlines, Inc.*, ARB No. 04-041, ALJ No. 2003-AIR-022, slip op. at 7 (ARB Nov. 30, 2005).

[40] *See Furland v. American Airlines Inc.*, ARB No. 09-102, ALJ No. 2008-AIR-011, slip op. at 5 (ARB July 27, 2011); *Rooks*, ARB No. 04-092, slip op. at 6.

[41] *Furland*, ARB No. 09-102, slip op. at 5; see also *Melendez v. Exxon Chems. Americas*, ARB No. 96-051, ALJ No. 1993-ERA-006 (ARB July 14, 2000).

"[A] complainant need not prove an actual violation, but need only establish a reasonable belief that his or her safety concern was valid."[42] If the complainant proves that the respondent violated AIR 21, the complainant is entitled to relief unless the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable action in the absence of the protected activity.[43]

In this case, following a lengthy hearing, the ALJ entered a 97-page decision determining that PMC violated the employment protection provision of AIR 21 when it terminated Van after he complained about the air safety measures taken for the helicopter utilized by the Hospital's Life Flight program during cold weather conditions. The ALJ determined that Van's complaints about air safety was activity protected by AIR 21 (D. & O. at 12-20), that his protected activity contributed to the adverse action he suffered (D. & O. at 23-24), and that his termination constitutes an adverse action under the Act (D. & O. at 21-23 ("It goes without saying that termination is an adverse employment action.")). We conclude that the ALJ's findings in support of an AIR 21 violation are supported fully by substantial evidence, and are in accordance with law. PMC contends that some conclusions reached by the ALJ rest on legal error. These contentions, however, lack merit.

PMC contends that Van had no reasonable belief of an FAA violation because there is no evidence that any PMC pilot ever actually took off or flew with frost, ice, or snow adhering to the helicopter's rotor blades and asserts that it is not a violation of the FAA regulation for the helicopter to merely sit on the ground with frost, ice, or snow on it. This contention lacks merit.[44] Van is not required to prove an actual violation of a law or regulation related to air safety; he need only establish a reasonable belief that his safety concern was valid.[45] Specifically, he must show that he "subjectively believed that his employer was engaged in unlawful practices and his belief must be objectively reasonable in light of the facts and record presented."[46] The ALJ's findings establish that Van met this burden. The ALJ found that Van's safety complaints to his managers about the pilot's failure to properly treat accumulations of ice, snow, and frost on the emergency helicopter fell within the scope of AIR 21 protected activity, as it related to FAA regulation 14 C.F.R. § 135.227(a), which prohibits operation of an aircraft with "frost, ice, or snow adhering to any rotor blade."[47] In any event, the ALJ found that the evidence

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[42] *Furland*, slip op. at 5-6, citing *Kesterson v. Y-12 Nuclear Weapons Plant*, ARB No. 96-173, ALJ No. 1995-CAA-012, slip op. at 4-5 (ARB Apr. 8, 1997).

[43] *See* 49 U.S.C.A. § 42121(b)(2)(B)(ii); 29 C.F.R. § 1979.109(a).

[44] Respondent's Brief at 20-21.

[45] *Rooks*, ARB No. 04-092, slip op. at 6.

[46] *Blount v. Northwest Airlines*, ARB No. 09-120, ALJ No. 2007-AIR-009, slip op. at 6 (ARB Oct. 24, 2011).

[47] D. & O. at 11-14.

established that, more likely than not, Neilsen had taken off in October 2004 with ice on the rotor blades.[48] PMC argued that Van's concerns centered on management and policy issues, and not safety. The ALJ, however, expressly rejected that argument and found that Van's concerns were for the safety of the entire program crew.[49]

PMC next contends that Van's safety concerns were no longer reasonable, or protected, once PMC adopted its cold weather policy based in part on Van's recommendations.[50] The ALJ, however, found that due to the February 2005 incident, it was reasonable for Van to believe that the cold weather policy was not being properly followed and that there were ongoing safety concerns.[51] Moreover, the ALJ rejected PMC's contention that Van's safety concerns were not protected because of the disruptive and disrespectful manner in which he raised them. The ALJ found that Van "never raised his voice or caused an uproar."[52]

PMC argues that substantial evidence does not support the ALJ's determination that the hospital would have fired Van even absent the protected activity.[53] This argument also lacks merit. The ALJ found in a thorough and exhaustive analysis of the evidence that PMC failed to demonstrate by clear and convincing evidence that it would have fired Van absent his protected activity.[54] Although PMC argued below that Van was fired due to his "inability to maintain positive interpersonal relations,"[55] the ALJ rejected PMC's contention as not supported by the evidence of record.[56] The ALJ determined, based on the evidence, that Van was terminated due to his protected activity of expressing his ongoing air safety concerns and that PMC's reasoning was pretext for discrimination.[57] Indeed, the ALJ found that Van never received a warning or discipline before his termination, and that he received a pay increase shortly before his termination.[58]

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48 *See* D. & O. at 12, n. 55, and D. & O. at 54, 78.

49 D. & O. at 14-17, 24-25.

50 Respondent's Brief at 26-28.

51 D. & O. at 24-26, 29-30.

52 *Id.* at 35.

53 Respondent's Brief at 33-38.

54 D. & O. at 36-86.

55 CX 21.

56 D. & O. at 36-37, 52, 79.

57 *Id.* at 3, 37-39, 52-53, 70 at n.548, 72, 79.

58 *Id.* at 77-78, 81-82, 84.

Finally, PMC asserts that Van was advised to improve his relations with other program members, and was terminated without any warning or prior discipline because Idaho is a Right to Work State.[59] However, the ALJ's determination that PMC failed to show by clear and convincing evidence that it would have fired Van absent his protected activity is supported by substantial evidence in the record. We find no reason to disturb the ALJ's well-supported and well-reasoned ruling.

B. The Remedies Ordered By The ALJ Were Well Within His Discretion

When an AIR 21 complainant establishes that his employer retaliated against him for whistleblowing activities, the Secretary of Labor shall order the employer to "(i) take affirmative action to abate the violation; (ii) reinstate the complainant to his or her former position together with the compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and (iii) provide compensatory damages."[60]

The ALJ's remedy to Van included monetary and equitable relief. As part of the monetary award, the ALJ determined that Van is entitled to back pay and fringe benefits in the amount of $287,438.31, compensatory damages for non-economic damages due to emotional distress in the amount of $100,000 and, because reinstatement was inappropriate in this case, front pay in the amount of $98,576.00.[61] In addition, the ALJ found Van entitled to interest on these amounts as of the date of his order at the rate described in 26 U.S.C.A. § 6621(a)(2), compounded quarterly.[62] While PMC does not petition for review of the monetary award, we nonetheless find that the award is supported by substantial evidence and in accordance with law. The ALJ's award of monetary and equitable relief was well within his discretion.

The ALJ also ordered PMC to expunge from Van's personnel file all negative, derogatory information that pertains to his firing, and to deliver a copy of the ALJ's Decision directly to PMC's pilots, medical flight staff, mechanics, and dispatchers and prominently post copies of his decision at every location where it posts other notices to employees that relate to employment law for no fewer than 60 days.[63] PMC argues that the ALJ's posting requirement is an abuse of discretion because the regulation administering AIR 21, 29 C.F.R. § 1979.109(b), does not

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[59] Respondent's Brief at 35-37.

[60] 49 U.S.C.A. § 42121(b)(3)(B); 29 C.F.R. § 1979.109(b). *See Luder v. Continental Airlines, Inc.*, ARB No. 10-026, ALJ No. 2008-AIR-009, slip op. at 13 (ARB Jan. 31, 2012).

[61] D. & O. at 86-97.

[62] *Id.* at 89, 97.

[63] *Id*. at 96.

authorize the ALJ to order an employer to post an ALJ's decision in its offices.[64] We disagree. Similar to other employee whistleblower protection statutes, the purpose of AIR 21 is to eliminate employer discrimination and retaliation against employees who report violations of air safety regulations.[65] AIR 21 includes abatement as a remedy for a violation.[66] It is a common remedy in discrimination cases to require a company liable for unlawful retaliation to notify employees of the liability.[67] The ALJ was within his remedial discretion to order that PMC post the ALJ Decision finding the hospital liable for retaliating against Van in violation of AIR 21. While we recognize the burden that might be imposed on PMC to deliver a copy of the ALJ's 97-page Decision directly to its employees, the ALJ's decision is available electronically on the DOL's ALJ website at http://www.oalj.dol.gov and could be provided to its employees electronically via e-mail or other means.

C. The ALJ's Order Awarding Attorney's Fees And Expenses Was Reasonable and Within The ALJ's Discretion

The ALJ ordered payment of attorney's fees and expenses to Van in the amount of $207,123.59. PMC petitioned for review of the award.[68]

Under AIR 21, the Secretary of Labor shall, at the complainant's request, assess against a person who violated the employee protection provision the costs of bringing the case, including attorney's fees the complainant reasonably incurred.[69] The regulations governing AIR 21 provide for an award of attorney's fees incurred by a complainant who prevails before the ALJ, and before the ARB.[70] A prevailing party is entitled to receive all costs and expenses, including

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64 Respondent's Brief at 38-39.

65 *Clemmons v. Ameristar Inc.*, ARB No. 08-067, ALJ No. 2004-AIR-011, slip op. at 4 (ARB Apr. 27, 2012).

66 *Id.*; see also 49 U.S.C.A. § 42121(b)(3)(B)(i).

67 *Pollack v. Continental Express*, ARB Nos. 07-073, 08-051; ALJ No. 2006-STA-001, slip op. at 16 (ARB Apr. 7, 2010); *Michaud v. BSP Transp., Inc.*, ARB No. 97-113, ALJ No. 1995-STA-029, slip op. at 10 (ARB Oct. 9, 1997).

68 Van moved to dismiss PMC's petition for review of the ALJ's order awarding attorney's fees and expenses as untimely. The ARB ordered PMC to show cause whether PMC's petition was timely and properly before the Board. On review of the legal arguments and facts surrounding Van's motion to dismiss as presented by the parties' briefing on this issue, we deny Van's motion to dismiss and affirm the ALJ's order awarding attorney's fees and expenses to Van.

69 49 U.S.C.A. § 42121(b)(3)(B)(iii).

70 See 29 C.F.R. § 1979.109(b) ("At the request of the complainant, the administrative law judge shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred); see also 29 C.F.R. § 1979.110(d) ("If the Board concludes that

attorney's fees, reasonably incurred in bringing the complaint.[71] A petition for attorney's fees requires evidence documenting the hours worked and the rates claimed, as well as records identifying the date, time, and duration necessary to accomplish each specific activity and all claimed costs. The burden of proof is also on the petitioning party to demonstrate the reasonableness of the hourly fee by producing evidence that the requested rate is in line with fees prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.[72] If the documentation of hours is inadequate, the award may be reduced accordingly.[73]

Van has submitted an appropriately itemized and documented petition for attorney's fees and expenses for proceedings before the ALJ. The hours expended and the hourly rates charged are reasonable, and the ALJ's order granting fees is supported by substantial evidence, and in accordance with law. For these reasons, the ALJ was well within his discretion in awarding Van attorney's fees and expenses in the amount of $207,123.59.

CONCLUSION

For the foregoing reasons, the ALJ's February 2, 2011, Decision and Order on liability and remedy is **AFFIRMED**, and the ALJ's May 24, 2011, Supplemental Order awarding attorney's fees and expenses to Van in the amount of $207,123.59 is **AFFIRMED**.

SO ORDERED.

LISA WILSON EDWARDS
Administrative Appeals Judge

PAUL M. IGASAKI
Chief Administrative Appeals Judge

JOANNE ROYCE
Administrative Appeals Judge

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the party charged has violated the law, . . . the Board shall assess against the named person all costs and expenses (including attorney's and expert witness fees) reasonably incurred."). *Jackson v. Butler & Co.*, ARB Nos. 03-116, -144; ALJ No. 2003-STA-026 (ARB Aug. 31, 2004).

[71] *Evans v. Miami Valley Hosp.*, ARB Nos. 08-039, -043; ALJ No. 2006-AIR-022, slip op. at 3 (ARB Aug. 31, 2009).

[72] *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, -161, ALJ No. 2003-STA-055, slip op. at 3 (ARB Apr. 3, 2008).

[73] *Pollock*, ARB Nos. 07-073, 08-051; slip op. at 19.