U.S. Department of Labor

Administrative Review Board
200 Constitution Avenue, N.W.
Washington, D.C. 20210

In the Matter of:

SHANNON T. DOYLE,

COMPLAINANT,

v.

HYDRO NUCLEAR SERVICES,

RESPONDENT.

CASE NO. 89-ERA-22

DATE: SEP 6, 1996

BEFORE: THE ADMINISTRATIVE REVIEW BOARD[1]

FINAL DECISION AND ORDER

This case arises under the employee protection provision of the Energy Reorganization Act of 1974 (ERA), 42 U.S.C. § 5851 (1988).[2] In a 1994 decision, the Secretary found that Respondent, Hydro Nuclear Services (Hydro), violated the ERA when it refused to hire Complainant, Shannon Doyle, as a decontamination technician under a contract to provide such technicians to the D. C. Cook nuclear power plant.[3] The Secretary ordered Hydro to reinstate Doyle and to pay back pay.

After Hydro petitioned for Judicial review of the Secretary's decision, the Secretary and Hydro jointly moved to remand the case to the Secretary for a determination of the damages. In

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[1] On April 17, 1996, the Secretary delegated jurisdiction to issue final agency decisions under, *inter alia,* the Energy Reorganization Act of 19741, 42 U.S.C. § 5851 (1988), and the implementing regulations, 29 C.F.R. Part 24, to the newly created Administrative Review Board (the Board). Secretary's Order 2-96 (Apr. 17, 1996), 61 Fed. Reg. 19978, May 3, 1996 (copy attached).

Secretary's Order 2-96 contains a comprehensive list of the statutes, executive order, and regulations under which the Board now issues final agency decisions. A copy of the final procedural revisions to the regulations, 61 Fed. 19982, implementing this reorganization is also attached. The Secretary's earlier decisions and the entire record in this case have been reviewed by the Board.

[2]The 1992 amendments to the ERA do not apply to this case because the complaint was filed prior to 1992.

[3] Hydro paid Doyle for his transportation expense to the plant and a *per diem* payment for food and lodging for approximately a week. R. D. O. R. at ¶ 17.

turn, the Secretary remanded the case to the Administrative Law Judge (ALJ) for a hearing and a recommended decision on the amount of damages. *See* Sept. 7, 1994 Decision and Order of Remand.

On remand, the ALJ found that Doyle is entitled to certain affirmative action to abate the violation and to $40,000 in compensatory damages. The ALJ ordered Hydro to pay back pay with interest, from the date of its failure to hire Doyle until the date of final judgment. The ALJ further found that Doyle is not entitled to the benefit of a promotion or to payment of a *per diem* allowance as part of his back pay. In lieu of reinstatement. Doyle is to receive front pay for five years from the final judgment, according to the ALJ.

MOTION TO SUPPLEMENT THE RECORD

After the ALJ issued the Recommended Decision and Order on Remand (R. D. O. R.), Doyle twice moved to supplement the record with a letter from a Nuclear Regulatory Commission (NRC) employee. Hydro opposed both of the motions.

Under the regulations, the record closes either at the end of the hearing, or, by an ALJ order, at a later time. 29 C.F.R. § 18.54(a). In this case the ALJ held the record open for 30 days after the hearing to permit the parties to submit any additional documents. T. 16, 250. Doyle filed his motions to supplement the record some 13 or 14 months after the record closed.

The regulations also provide:

> Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to the closing of the record.

29 C.F.R. § 18.54(c). Doyle has not shown that he could not have obtained the NRC letter prior to the closing of the record. Accordingly, the motions to supplement the record are DENIED and the NRC letter is not made part of the record in this case.

DISCUSSION

Back Pay

It is well established that "the goal of back pay is to make the victim[s] of discrimination whole and restore [them] to the position that [they] would have occupied in the absence of the unlawful discrimination." *Blackburn v. Martin,* 982 F.2d 125, 129 (4th Cir. 1992), citing *Albermarle Paper Co. V. Moody,* 422 U.S. 405, 421 (1975). Thus, "the person[s] discriminated against should only recover damages for the period of time [they) would have worked but for wrongful termination; [they] should not recover damages for the time after which [the] employment would have ended for a nondiscriminatory reason." *Blackburn,* 982 F.2d at 129.

There is a dispute concerning the time at which Doyle would have ceased to be employed if he had worked for Hydro during the Autumn 1988 outage.[4] Doyle, who resided in Alabama, would have been a nonlocal employee at D. C. Cook, which is located near Chicago. T. 116, 146. Hydro contends that Doyle would have been laid off at the end of that outage, and that his back pay should be cut off at that date. Doyle argues that although the other similarly situated employees were laid off at the end of that outage, they later worked for Hydro either at D.C. Cook or at other nuclear plants. Consequently, he contends that his back pay should continue until the date of final judgment.

At the time Hydro refused to hire Doyle, it hired ten other nonlocal decontamination technicians who worked at D.C. Cook from November 21, 1988 through the end of the outage on December 31, 1988. RX-2-5; R. D. O. R. at 6 ¶ 32-33. Three of these decontamination technicians returned to work for Hydro at the D.C. Cook plant in 1989 for a period of three to ten weeks. Nine of the technicians worked for Hydro at other plants during 1989; only one of them performed no work for Hydro during the quarter that ended June 30, 1989 (or six months after the layoff from the Autumn 1988 outage at D.C. Cook). R. D. O. R. at 7 ¶ 35-39. One of the ten worked for Hydro's successor at the time the company was sold in early 1991. *Id.* At 5-6 ¶ 21-28.

Like the ALJ, we find that Hydro regularly retained or rehired other similarly situated employees, such as the technicians it hired at D. C. Cook for the Autumn 1988 outage. R. D. O. R. at 13-14. The evidence that the similar employees continued to work for Hydro, albeit intermittently and at various locations, convinces us that Doyle's employment with Hydro would have continued after the end of the outage. *See Walker v. Ford Motor Co.,* 684 F.2d 1355, 1362 (11th Cir. 1982) (in case involving fixed term contract of employment, proof that economic injury from discharge extended beyond employment term may consist of showing that contracts of similarly situated employees had been renewed).

The ALJ gave an additional reason that the back pay should continue until final judgment, that Hydro's failure to hire Doyle has prevented him from working in the nuclear industry to the present. We agree, and note that a brief explanation of the events surrounding the decision not to hire Doyle will focus the discussion.

As a condition of employment, Hydro required Doyle to sign a waiver releasing the company from "any and all liability" as a result of furnishing, or receiving information about him as part of a background screening. Secretary's March 30, 1994 Dec. at 3. The Secretary found that requiring the release as a condition of employment violated the ERA since it would have required Doyle to waive his right to file a complaint of illegal blacklisting under the ERA. *Id.* at 3-4.

Upon Doyle's refusal to sign the release, Hydro denied Doyle unescorted access to the D. C. Cook nuclear power plant. CX 8. Hydro also notified Equifax of the access denial, CX 8,

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[4] An outage is a shutdown of operations to perform maintenance at a nuclear power plant. Nonlocal decontamination technicians are hired as temporary employees to work full-time during an outage and usually are laid off at the end of that outage. R. D. O. R. at 4 ¶ 13.

which had the effect of ensuring that other employers in the field would learn about it if they sought to hire Doyle.

Soon after he lost the job with Hydro, Doyle submitted an application for employment in the nuclear industry that asked whether he had ever been denied unescorted access at a nuclear facility. T. 121-122; R. D. O. R. at 8. Doyle answered yes to that question and never heard back from that company. *Id*. Both Doyle and another witness testified that once an employee is denied such access, it is unlikely that the worker will ever be hired in the nuclear industry again, T. 92, 120-121, and Hydro introduced no evidence to the contrary.

Since the evidence shows that Hydro's denying Doyle unescorted access has prevented him from working in the nuclear industry, Doyle's back pay should continue undl final judgment. *See Blackburn V. Metric Constructors, Inc,* Case No. 86-ERA-4, Sec. Dec. on Damages and Att. Fees, Oct. 30, 1991, slip op. at 6 n.3 (respondent whose actions adversely affected the complainant's employment opportunities with third parties may be liable for any lost wages resulting from that action), *aff'd in part and rev'd on other grounds, Blackburn,* 982 F.2d 125.

In this case, calculating the back pay also requires a determination of the average number of months Doyle would have worked annually in the years following the D. C. Cook outage. The ALJ calculated back pay on the basis of six months of work per year. R. D. and O. at 13. Doyle argues that he should receive back pay for twelve months each year since he 'intended to convert his casual employment status into a full-time position at the first available opportunity." But Doyle has not established by a preponderance of the evidence that he would have had the opportunity to convert to a full time, permanent position either at D. C. Cook or at any other nuclear plant.

On the other hand, Hydro attacks the assumption that Doyle would have worked for six months per year as unjustified because the resulting annual back pay amounts near fifty percent higher than the "extrapolated average annual earnings of . . . [the] ten similarly situated employees" referred to earlier. Resp. Mem. of Law at 14-15 nn.9, 11.[5] The figure provided by Hydro is the average of the ten technicians' earnings only with Hydro. Although we have relied to some extent on the subsequent work histories of the other decontamination technicians that Hydro hired for the Autumn 1988 outage at D. C. Cook, we find that their income earned solely through Hydro during a six month period in 1989 is not a valid basis on which to calculate Doyle's back pay. The record does not reveal whether any of those technicians obtained employment in the same six month period through other companies that provide technicians to the nuclear industry. We refuse to assume that these employees earned income only through Hydro during the relevant time period.

Doyle sought work through many vendors such as Hydro that provide decontamination technicians to nuclear plants. T. 109. But for the denial of unescorted access by Hydro, we find that Doyle would have worked not only for Hydro, but also for other vendors of decontamination services during 1989 and later years. *See Lederhaus v. Donald Paschen*, Case No. 91-ERA-13,

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[5] Reference is to Respondent's Memorandum of Law in Opposition to the Administrative Law Judge's Recommended Decision and Order Regarding the Assessment of Damages.

Sec. Dec. and Ord., Oct. 26, 1992, slip op. at 10 and *Rios v. Enterprise Ass'n Steamfitters Local No. 638,* 860 F.2d 1168, 1176 (2d Cir. 1988) (any uncertainties in calculating back pay are resolved against the discriminating party).

Prior to Hydro's discriminatory refusal to hire, Doyle had worked as a local decontamination technician at the Farley nuclear plant for nearly three years. He also had worked one month as a nonlocal technician at the Wolf Creek plant prior to resigning. Since Doyle would not have had permanent status with Hydro, and does not have a significant prior history of working as a nonlocal decontamination technician, we find that evidence of the average amount of time worked annually by similar nonlocal decontamination technicians is relevant to our analysis.

One witness testified that a nonlocal decontamination technician who worked both planned and unplanned outages could work the "majority" of the year. CX 5 at 30 (McCormick deposition). Another stated that a decontamination technician who is both "in tight with the contract company," and well known by the plant personnel could work up to 11 months per year. T. 89-90 (Henderson). Hydro's witness, William Bums, testified that he worked six months or more in his second year as a decontamination technician who traveled from plant to plant. T. 161. On the basis of this evidence and Doyle's lack of a significant work history as a nonlocal decontamination technician, we find that the ALJ's recommendation of six months' back pay per year is reasonable. Accordingly, we accept the six month figure.

Doyle contends that his back pay should include the amount of *per diem* payments that he would have received for the job at D. C. Cook. The payments would have covered his living expenses while he worked at that plant, which was far from his Alabama residence. We recognize that, if he had worked at D. C. Cook, Doyle might have been able to live for less than the $48 *per diem* and he might have pocketed the difference. But Doyle did not work at that plant and did not incur the expense of living away from home. We agree with the ALJ that, to make Doyle whole, his back pay need not include the *per diem* amount. *See Doyle v. Rich Transport, Inc., Case* No. 93-STA-17, ALJ Rec. Dec., Dec. 17, 1993, slip op. at 12 (in case of discharged employee, back pay does not include *per diem* payments that "were to reimburse complainant for travel expenses"), *aff'd,* Sec. Dec. and Ord., Apr. 1, 1994 (under analogous employee protection provision of Surface Transportation Assistance Act).

Doyle also contends that his back pay amount should be increased to reflect promotions that he would have received in the years since 1988. A promotion to which the complainant was entitled should be included in calculating back pay. *See Thomas v. Arizona Public Svc. Co.,* Case No. 89-ERA-19, Sec. Final Dec. and Ord., Sept. 17, 1993, slip op. at 22, 26 (where failure to promote constituted ERA violation). We agree with the ALJ, however, that Doyle did not show that he was entitled to be promoted to health physics technician. R. D. O. R. at 17. Therefore, he is not entitled to back pay based on a "lost" promotion.

We recognize that back pay normally includes regular annual increases that an employee would have received absent the discrimination. *Creekmore v. ABB Power Systems Energy Services, Inc.*, Case No. 93-ERA-24, Sec. Dec. and Remand Order, slip op. at 21. The hourly pay of decontamination technicians has increased since Hydro failed to hire Doyle. T. 93 (Henderson); Haynes Deposition at 18-19. We find that Doyle is entitled to receive back pay

calculated according to the average hourly amount earned by decontamination technicians in the nationwide nuclear industry in each year since 1988.[6]

The amount of overtime hours the ALJ used in calculating the back pay, 32 hours per week, is supported by the record and we accept it. R. D. O. R. at 14. During the 1988 outage at D. C. Cook, Doyle would have earned $6.50 per hour straight time and $9.75 per hour overtime (time and a half). In calculating pay after 1988, the overtime shall be calculated at one and a half times the average hourly straight pay of decontamination technicians.

We also require Hydro to restore any benefits to which Doyle would have been entitled if he had not been discriminated against. *See Creekmore,* slip op. at 21-22. Hydro shall pay Doyle any out of pocket medical expenses he incurred that would have been paid by the health insurance available to him as a Hydro employee. The ALJ found that the amount of such payments through the time of the hearing was $291.15. Hydro also shall pay any such out of pocket medical expenses that Doyle has incurred since the date of the hearing.

Victims of employment discrimination have the duty to mitigate their damages by seeking suitable employment. *Booker v. Taylor Milk Co., Inc.,* 64 F.3d 860, 864 (3d Cir. 1995) (under Title VII). Back pay awards are reduced by interim earnings or by an amount earnable with reasonable diligence. *Id*. Courts recognize that "[a] person who is 'sincere about obtaining employment' can be expected to check want ads, register with employment agencies, and discuss potential opportunities with friends and acquaintances." *Helbling v. Unclaimed Salvage and Freight Co., Inc.,* 489 F.Supp. 956, 963 (E.D. Pa. 1989), quoting *Sprogis v. United Air Lines,* 517 F.2d 387, 392 (7th Cir. 1975).

Doyle diligently tried to find employment by registering with the Alabama State Employment Agency and with several temporary employment agencies, checking help wanted advertisements in several newspapers, registering with local carpentry unions in two cities, using personal contacts to find employment, and even visiting job sites to find construction jobs. T. 125-127. Because of his age and the number of dependents, the armed forces discouraged him when he inquired about rejoining. T. 128. Doyle testified that he never stopped looking for work since Hydros, actions in November 1998. T. 129. Doyle's efforts resulted in his obtaining three jobs from which he earned a total of $3091.33 between November 21, 1988 and December 14, 1994 (date of hearing on damages). R. D. O. R. at 14; CX 12; T. 151-152.

Although total earnings of $3000 in six years might suggest that a complainant has not made diligent efforts to find employment, we find that is not the case here. Doyle was unable to find work as a decontamination technician because of the access denial to a nuclear facility. In addition, his psychological state made it difficult for him to find and keep jobs in other fields. Psychologist Stephen Carter testified that Hydro's refusal to hire Doyle caused post traumatic stress, and as a result of that stress, "most employers would find that [Doyle's] not a great

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[6] In the interest of finality in this long pending case. we encourage the parties to agree on the average hourly wage for the years since 1988. If the parties cannot agree, they shall notify the Board, which will determine whether it is necessary to remand the case to the ALJ for a determination of the exact amount of back pay owed.

employee at this point in time. I think that they would find that he's very nervous, he had trouble working around supervisors, and was very suspicious of what they were doing." T. 56. In light of Carter's unrefuted testimony, we find it understandable that Doyle did not have great success in finding alternative employment.

We therefore agree with the ALJ's conclusion that Doyle mitigated his damages in this case. *Id.* at 17. In addition to deducting from back pay the amount Doyle earned in interim employment prior to the date of hearing, Respondent also shall deduct any amount that Doyle has earned in interim employment between the issuance of the R. D. O. R. and the date of final judgment.[7] We also affirm the calculation of prejudgment interest on the resulting net amount of back pay, at the rate specified in 26 U.S.C. § 6621.

Front Pay

A successful ERA complainant is entitled to reinstatement, 42 U.S.C. § 5851(b)(2)(B)(ii), which in this case would mean requiring Respondent to hire Doyle. There is a practical impediment, however. Hydro's successor, Westinghouse, divested the unit that provided decontamination services in January 1991, no longer employs decontamination technicians, and does not have any positions for which Doyle qualifies. T. 70, 174, 200-201; R. D. O. R. at 18. Where reinstatement is impractical due to changes in the discriminator's work place, courts order front pay instead. *See, e.g., Blum v. Witco Chem. Corp.,* 829 F.2d 367, 373-374 (3d Cir. 1987) and *Coston v. Plitt Theatres, Inc.,* 831 F.2d 1321, 1331 (7th Cir. 1987), *vacated on other grounds*, 486 U.S. 1020 (1988) (reinstatement may be infeasible because of reductions in force). We affirm the award of front pay since reinstatement is either impossible or impractical in this case.

Citing Doyle's age (40 years at the time of the R. D. O. R.), the ALJ found that five years of front pay is reasonable in this case. R. D. O. R. at 18. We affirm that amount of time for a different reason.

A court has opined that "to the extent a front pay award is necessary to make a discrimination victim whole, it assumes that the former employee will find no other employment during the period for which front pay is offered." *Williams v. Pharmacia Opthalmics, Inc.,* 926 F.Supp. 791 (N.D. Ind. 1996). The evidence indicates that Doyle is not likely to find permanent employment in the next five years. Psychologist Stephen Carter opined that Hydro's actions adversely affected Doyle's employability by making him anxious and uncomfortable around supervisors and unable to stay employed for long periods. T. 54-56, 70. The psychologist concluded that there was a "very, very, very low" probability of Doyle succeeding in any employment. T. 71. To make Doyle employable again, Dr. Carter recommended that he receive psychotherapy for a period of four to five years, T. 58, as well as education or training to help him enter a new employment field. T. 59. Since the evidence shows that it will take about five years to make Doyle employable again, we affirm the award of five years of front pay.

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[7] At the time of the hearing, Doyle was working in a temporary position in construction. T. 151-152.

Front pay is calculated by determining the present value of the future earnings that Doyle would have had as a nonlocal decontamination technician working in the nuclear industry. From that amount, the present value of Doyle's anticipated future earnings must be subtracted. *See Price v. Marshall Erdman & Assoc.,* 966 F.2d 320, 322 (7th Cir. 1992) (explaining front pay formula in an age discrimination case). We find that Doyle would have worked as a decontamination technician for six months per year, with a work week consisting of 40 hours of regular time and 32 hours of overtime. To calculate what Doyle would earn in five years as a decontamination technician, the average hourly wage for decontamination technicians in the nuclear industry nationwide shall be used.

Doyle's anticipated future earnings shall be estimated by using his actual past earnings. Doyle earned $3000 in the six years prior to the hearing, or an average of $500 per year. We therefore find that his anticipated future earnings for the five year period are $2500 ($500 X 5).

It is necessary to determine the present value of both streams (for decontamination technician wages and for $2500 in anticipated wages) by using an appropriate discount rate. We again encourage the parties to agree to the average hourly wage, the appropriate discount rate, and the resulting front pay award. The parties shall notify this Board if they are unable to agree on the amount of front pay, and in that event we will determine whether the case should be remanded to the ALJ for an exact calculation.

Compensatory Damages

To be entitled to compensatory damages, an ERA complainant must show that he experienced mental and emotional distress and that the respondent's adverse action caused the mental and emotional distress." *Blackburn,* 982 F.2d at 131, *citing Carey v. Piphus,* 435 U.S. 247, 263-264 & n.20 (1978). Hydro contends that, since Doyle did not regularly see a mental health professional after Hydro's failure to hire him, he did not establish that he suffered from mental or emotional distress. Resp. Mem. of Law at 17. Consulting a psychologist or a similar professional on a regular basis is not, however, a prerequisite to entitlement to compensatory damages. *See Smith v. Littenberg,* Case No. 92-ERA-52, Sec. Dec. and Ltd. Remand Ord., Sept. 6, 1995, slip op. At 7-9, *appeal dismissed,* No. 95-70725 (9th Cir. Mar. 27, 1996).

Although he did not regularly see a mental health professional, Doyle consulted physicians who prescribed medications for his anxiety and depression, R. D. O. R. at 9, as well as other medications for his chest pains. T. 50, 123.

Since Doyle had been a whistleblower while working for other employers prior to his dealings with Hydro, Respondent contends that its actions did not cause Doyle's emotional difficulties. Resp. Mem. of Law at 18-20. However, Carter testified that Doyle's emotional difficulties began at the time that doctors first prescribed medications for his anxiety and depression, T. 48-49, and that occurred shortly after Doyle's dealings with Hydro. T. 123. As Carter found:

> I feel that [Doyle] has a generalized anxiety disorder, and more specifically a post-traumatic stress disorder. I feel it is situationally related . . . and . . . it's my conclusion that this is attributable to the problems that he had with Hydro Nuclear Systems and the issue

surrounding the waiver that he was asked to sign and what happened to him as a result of that.

T. 46. See also T. 63-64: "the statement . . . that he was asked to sign as a condition of his employment is related to the previous whistle blowing activity. It's that forced signature which triggers the P[ost] T[raumatic] S[tress] D[isorder], in my opinion." Hydro did not offer any counter assessment or other evidence to cause us to question Carter's finding of causation.[8]

Moreover, even if Doyle had experienced some stress as a result of his earlier whistleblowing while employed by others, Hydro still is liable to compensate him if its discriminatory treatment aggravated that stress and caused additional pain and suffering. *See, e.g., DeFord v. Tennessee Valley Authority,* Case No. 81-ERA-1, Sec. Ord. on Remand, Apr. 30, 1984, slip op. at 2 (compensatory damages awarded where discrimination caused complication of the complainant's pre-existing condition).

Dr. Carter also interviewed Doyle's wife and children, who "noticed a radical change in [Doyle's] behavior" after Hydro refused to hire him. T. 48-49. Doyle's wife also reported a serious strain in their relationship after that time, T. 50, and they started divorce proceedings but were able to reconcile. T. 107. In light of Carter's unrefuted testimony that Hydro's actions caused Doyle's post-traumatic stress and his explanation of the effect of that stress on Doyle, we affirm the AU's conclusion that Doyle is entitled to $40,000 in compensatory damages for his pain and suffering.

Affirmative Action to Abate Violation

We agree with the remedies recommended by the ALJ to abate the ERA violation. See R. D. O. R. at 22. Therefore, Respondent shall expunge from Doyle's personnel records all derogatory or negative information related to the failure to hire him. Respondent also shall provide neutral employment references and shall not divulge any information pertaining to not hiring Doyle or to denying him unescorted access to a nuclear facility, or the reasons for it, when inquiry is made about Doyle by another employer, organization, or individual. Respondent shall correct the statement made to Equifax that Doyle was denied access to a nuclear facility. Finally, Respondent shall post this decision at the nuclear operations of Westinghouse, the successor to Hydro.

Attorney Fees and Costs

Doyle is entitled to payment of the reasonable costs of bringing his complaint, including attorney fees. In the July 16, 1996 Recommended Decision and Order Awarding Attorney's Fees (Fee Order), the ALJ found that Doyle reasonably incurred an attorney's fee of $105,181.75 and

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[8] After Dr. Carter's testimony, Hydro sought leave to have Doyle examined by an expert retained by the Respondent and to submit a report. T. 72. Although the ALJ reserved ruling on the request until the conclusion of the hearing, T. 73, the transcript does not include such a ruling. We note that Hydro has not argued before us that it was prevented from having Doyle examined.

expenses of $15,450.03 in bringing his complaint. We affirm that finding for the reasons stated in the ALJ's Fee Order.

CONCLUSION

1. Consistent with this decision, Respondent shall pay Complainant back pay plus interest at the rate specified in 26 U.S.C. § 6621 (1988),

2. Respondent shall pay Complainant any benefits to which he would have been entitled if he had not been discriminated against, including out of pocket medical expenses that would have been paid by health insurance available to him as Respondent's employee (or employee of Respondent's successor, Westinghouse) from the date of the discriminatory refusal to hire until final judgment.

3. Respondent shall pay Complainant five years' front pay, calculated according to this decision.

4. Respondent shall pay Complainant $40,000 in compensatory damages.

5. Respondent shall expunge from Complainant's personnel records all derogatory or negative information related to the failure to hire him. Respondent also shall provide neutral employment references and shall not divulge any information pertaining to not hiring Doyle or to denying him unescorted access to a nuclear facility, or the reasons for it, when inquiry is made about Doyle by. another employer, organization, or individual. Respondent shall post this decision at the nuclear operations of Westinghouse, the successor to Respondent.

6. Respondent shall pay to Complainant's attorney $120,631.78, which is the sum of an attorney's fee of $105,181.75. and expenses of $15,450.03.

SO ORDERED.

DAVID A. O'BRIEN,

Chair

KARL J. SANDSTROM,

Member

JOYCE D. MILLER,

Alternate Member