



In the Matter of:

CRISELL SEGUIN,

ARB CASE NO. 16-014

COMPLAINANT,

ALJ CASE NO. 2012-SOX-037

v.

MAY 30 2017

NORTHROP GRUMMAN SYSTEMS CORP.,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainant:

E. Patrick McDermott, Esq., *Law Office of E. Patrick McDermott, Annapolis, Maryland*

For the Respondent:

Lincoln O. Bisbee, Esq., and P. David Larson, Esq., *Morgan Lewis & Bockius LLP, Washington, District of Columbia*

Sarah E. Bouchard, Esq., *Morgan Lewis & Bockius LLP, Philadelphia, Pennsylvania*

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Administrative Appeals Judge*; and Joanne Royce, *Administrative Appeals Judge*.

**FINAL DECISION AND ORDER AFFIRMING THE ADMINISTRATIVE LAW
JUDGE'S SUPPLEMENTAL DECISION AND ORDER AWARDING ATTORNEY'S
FEES AND COSTS**

On February 27, 2015, the Administrative Law Judge (ALJ) in this matter issued a Decision and Order (D. & O.) in which the he found that Respondent Northrup Grumman Systems Corp. discharged Complainant Crisell Seguin in violation of the employee whistleblower protection provisions of the Sarbanes-Oxley Act of 2002 (SOX or Act), 18 U.S.C.A § 1514A (Thomson/West Supp. 2016). As the prevailing party, Seguin was entitled to

attorney's fees and costs, which the ALJ awarded in a Supplemental Decision and Order (S. D. & O.) on October 16, 2015. The Administrative Review Board (ARB) affirmed the ALJ's D. & O. on May 18, 2017.¹ This Order addresses Northrup Grumman's appeal of the S. D. & O.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the ARB the authority to issue final agency decisions under the SOX.² Prevailing complainants in SOX whistleblower cases are entitled to "litigation costs . . . and reasonable attorney fees."³ The ARB reviews the reasonableness of an ALJ's attorney's fees award under an abuse of discretion standard⁴ and will set aside an award only if it is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.⁵

DISCUSSION

The ARB has endorsed the lodestar method for calculating attorney's fees. This method requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate.⁶ A complainant seeking an attorney's fee award must submit evidence documenting the hours the attorney 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. In addition, the fee request must demonstrate the reasonableness of the attorney's hourly fee by producing evidence that the requested rate is in line with attorney's fees prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.⁷

¹ *Seguin v. Northrup Grumman Sys.*, ARB Nos. 15-038, -040, ALJ No. 2012-SOX-037 (ARB May 18, 2017).

² Secretary's Order No. 2-2012 (Delegation of Authority and Assignment of Responsibility to the Administrative Review Board), 77 Fed. Reg. 69,378 (Nov. 16, 2012); 29 C.F.R. § 1980.110(a).

³ 18 U.S.C.A. § 1514A(c)(2)(C); *see also* 29 C.F.R. § 1980.109(d)(1) (prevailing complainant entitled to "litigation costs, expert witness fees, and reasonable attorney fees.").

⁴ *Coates v. Grand Trunk Western R.R. Co.*, ARB No. 14-067, ALJ No. 2013-FRS-003, slip op. at 2 (ARB Aug. 12, 2015).

⁵ *Petersen v. Union Pacific R.R. Co.*, ARB Nos. 13-090, 14-025; ALJ No. 2011-FRS-017, slip op. at 3 (ARB Feb. 20, 2015).

⁶ *See, e.g., Scott v. Roadway Express*, ARB No. 01-065, ALJ No. 1998-STA-008, slip op. at 5 (ARB May 29, 2003).

⁷ *Cefalu v. Roadway Express, Inc.*, ARB Nos. 04-103, -161; ALJ No. 2003-STA-055, slip op. at 3 (ARB Apr. 3, 2008).

At the ALJ's direction, Seguin submitted an Application for Attorney's Fees and Expenses, with exhibits (fee petition). Seguin requested attorney's fees and costs she incurred as a result of her representation by the Employment Law Group, Martin Hogan, Esq., and E. Patrick McDermott, Esq. The fee petition requested \$478,266.81 in attorney's fees, and \$41,609.31 in costs for a total of \$519,876.12. The ALJ reviewed the fee petition, subtracted \$12,810.17 of supplemental expenses requested by Seguin, and ordered Northrup Grumman to pay \$507,821.12 "for litigation costs, expert witness fees, and reasonable attorney's fees." S. D. & O. at 16.

In reaching his decision, the ALJ examined the rates and tasks each of Seguin's attorneys performed. Based on that examination, the ALJ found that the legal services the attorneys rendered were adequately described and that the number of hours worked were reasonable in light of the issues litigated. The ALJ made factual findings regarding the difficulty of this case and the length of the proceedings.⁸ He held that the attorneys' hourly rates were in line with fees prevailing in the community,⁹ and that expert witness fees were sufficiently documented.¹⁰

On appeal, Northrup Grumman challenges the ALJ's fee award on several grounds. Respondent objects to the legal fees attorney McDermott requested for tasks he performed prior to entering his appearance in the case.¹¹ Notwithstanding Respondent's objection, the Board finds that the ALJ properly held that those fees were reasonable. Northrup Grumman also argues that the ALJ should have reduced the amount awarded to attorney Hogan for "failure to properly document his time and describe with particularity the issues upon which he was working."¹² Respondent charges that Hogan's submission involved "block billing," i.e., the practice of grouping multiple tasks into a single time entry. However, block billing does not necessarily deprive a court of a basis upon which to determine the reasonableness of the hours an attorney expended on specific tasks,¹³ and here the record supports the ALJ's conclusion that Hogan's

⁸ S. D. & O. at 7, 10.

⁹ *Id.* at 15 ("I find the hourly billing rates and the time expended is extremely reasonable. In fact, I find that all of her attorneys charged her less than the going rates here in Washington for people of equal experience.").

¹⁰ *Id.* at 13.

¹¹ *Id.* at 10 ("Petitioner McDermott did not try the case and did not hear the testimony. A review reveals that the hours expended to determine whether to become involved is extremely reasonable.").

¹² Respondent's Brief at 14.

¹³ *See, e.g., Evans v. Miami Valley Hosp.*, ARB Nos. 07-118, -121; ALJ No. 2006-AIR-022, slip op. at 8, n42 (ARB June 30, 2009), (citing *Imwalle v. Reliance Med. Prod., Inc.*, 515 F.3d 531, 554 (6th Cir. 2008) (affirming the district court's refusal to reduce the hours requested by ten percent because the documentation of multiple-task entries in the fee petition was of sufficient detail and probative value to determine the reasonableness of the hours)).

descriptions of his tasks were, notwithstanding any block billing, “meticulously recorded and show exactly why each item was paid.”¹⁴

Finally, Northrup Grumman argues that “the ALJ relied wholesale on the fact that Ms. Seguin paid her attorneys’ fees out-of-pocket. This reliance infected the entirety of the ALJ’s decision and caused him to treat Ms. Seguin’s attorneys’ fees as ‘compensatory’ or ‘consequential’ damages.”¹⁵ Granted the ALJ describes the difficulties Seguin faced in paying her legal bills. Nevertheless, we do not find that the ALJ relied on Seguin’s problems in calculating the attorney’s fees awarded. While the Board would not endorse any suggestion that attorney’s fees constitute compensatory damages, in the present case the ALJ’s description of Seguin’s difficulties does not negate the ALJ’s determination of her entitlement to attorney’s fees and costs as ordered in the S. D. & O.

In sum, the evidentiary record supports the ALJ’s findings that the hourly rates charged and the hours expended on this case were reasonable. Moreover, the ALJ’s ruling is sustainable as a matter of law.


CONCLUSION

Accordingly, the Board **AFFIRMS** the ALJ’s award of attorney’s fees and costs for services performed before the ALJ. Seguin’s attorney shall have thirty (30) days from receipt of this Order in which to file a fully supported statement with the ARB for costs and fees incurred contesting Northrup Grumman’s current appeal of the ALJ’s award of fees and costs, with simultaneous service on opposing counsel. Thereafter, Northrup Grumman shall have thirty (30) days from its receipt of the statement to file a response.

SO ORDERED.


E. COOPER BROWN
 Administrative Appeals Judge


PAUL M. IGASAKI
 Chief Administrative Appeals Judge


JOANNE ROYCE /
 Administrative Appeals Judge

¹⁴ S. D. & O. at 13.

¹⁵ Respondent’s Brief at 6 (citing S. D. & O. at 15).