



**In the Matter of:**

**JAMES SEEHUSEN,**

**ARB CASE NO. 12-047**

**COMPLAINANT,**

**ALJ CASE NO. 2011-STA-018**

**v.**

**DATE: March 11, 2014**

**MAYO CLINIC,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

*For the Complainant:*

**Paul O. Taylor, Esq.; Truckers Justice Center; Burnsville, Minnesota**

*For the Respondent:*

**Karen G. Schanfield, Esq.; and Lori-Ann Jones, Esq.; Fredrikson & Byron, PA; Minneapolis, Minnesota**

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

### **ORDER AWARDING ATTORNEY'S FEES**

On September 11, 2013, the Administrative Review Board issued a Final Decision and Order<sup>1</sup> affirming the Administrative Law Judge's Decision and Order in this case arising under the employee protection provisions of the Surface Transportation Assistance Act of 1982 (STAA) and its implementing regulations<sup>2</sup>. We concurred with

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<sup>1</sup> *Seehusen v. Mayo Clinic*, ARB No. 12-047, ALJ No. 2011-STA-018 (F. D. & O.).

<sup>2</sup> 49 U.S.C.A. § 31105 (Thomson/West 2011); 29 C.F.R. Part 1978 (2013).

the ALJ's finding that Complainant James Seehusen proved by a preponderance of evidence that Mayo Clinic violated the STAA's whistleblower provisions and that it failed to prove by clear and convincing evidence that it would have taken the same adverse actions against Seehusen had he not engaged in protected activity.<sup>3</sup>

In accordance with the Board's F. D. & O., Seehusen filed a petition for professional fees and costs, with service on Mayo Clinic. Mayo Clinic did not respond to Seehusen's petition. We therefore review the fee petition for compliance with applicable standards.<sup>4</sup>

The STAA provides: "If the Secretary issues an order [finding a STAA violation] and the complainant requests, the Secretary may assess against the person against whom the order is issued the costs (including attorney's fees) reasonably incurred by the complainant in bringing the complaint . . . ."<sup>5</sup> 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.<sup>6</sup>

An attorney seeking a fee award must submit 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. In addition, the attorney must demonstrate the reasonableness of his 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.<sup>7</sup>

We have reviewed the fee petition submitted and find that the legal services rendered are adequately described, and that the number of hours is reasonable in view of the issues in this case. Also, the fee petition provides evidence that the attorney and the non-attorney practitioners' hourly rates are in line with fees prevailing in the community.

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<sup>3</sup> F. D. & O., Slip op. at 3. Mayo Clinic filed a petition for review with the United States Court of Appeals for the Eighth Circuit. On November 27, 2013, the court granted the parties' Stipulation for Dismissal and dismissed Mayo Clinic's appeal in accordance with Federal Rules of Appellate Procedure 42(b). *Mayo Clinic v. U.S.D.O.L.*, ARB, No. 13-3454.

<sup>4</sup> Even though the fee petition was unopposed, we are obligated to ensure that it follows applicable standards. *Moder v. Village of Jackson*, ARB Nos. 01-095, 02-039; ALJ No. 2000-WPC-005, slip op. at 1 (ARB Oct. 28, 2003).

<sup>5</sup> 49 U.S.C.A. § 31105(a)(3)(B).

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

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

Accordingly, we **GRANT** Seehusen's petition for professional fees and expenses in the amount of \$12,601.95.

**SO ORDERED.**

**PAUL M. IGASAKI**  
**Chief Administrative Appeals Judge**

**JOANNE ROYCE**  
**Administrative Appeals Judge**

**LISA WILSON EDWARDS**  
**Administrative Appeals Judge**