U.S. Department of Labor

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

In the Matter of:

DAISY ABDUR-RAHMAN and RYAN PETTY,	**ARB CASE NOS. 12-064 12-067**
COMPLAINANTS,	**ALJ CASE NOS. 2006-WPC-002 2006-WPC-003**
v.	**DATE: October 9, 2014**
DEKALB COUNTY,	
RESPONDENT.	

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

Appearances:

For the Complainants:
Robert N. Marx, Esq. and Jean Simonoff Marx, Esq.; *Marx & Marx, L.L.C.;* Atlanta, Georgia

For the Respondent:
Randy C. Gepp, Esq.; *Taylor English Duma LLP,* Atlanta, Georgia

Before: Paul M. Igasaki, *Chief Administrative Appeals Judge*; E. Cooper Brown, *Deputy Chief Administrative Appeals Judge*; and Luis A. Corchado, *Administrative Appeals Judge.* Judge Brown concurring. Judge Corchado, concurring, in part, and dissenting, in part.

FINAL DECISION AND ORDER

Complainants Daisy Abdur-Rahman and Ryan Petty appeal (ARB No. 12-064) and Respondent Dekalb County cross-appeals (12-067) from the decision below in this case arising under the employee protection provisions of the Federal Water Pollution Control Act (FWPCA), 33 U.S.C.A. § 1367 (Thomson Reuters 2014) and the FWPCA's implementing regulations, 29

C.F.R. Part 24 (2014). Initially, a Department of Labor Administrative Law Judge heard the case and issued a decision denying the complaints, from which both parties appealed to the Administrative Review Board (ARB or Board).[1] The Board held that Complainants successfully demonstrated that their protected activity was a motivating factor in their discharge and that Dekalb County could not establish a defense to liability. Accordingly, the ARB reversed the ALJ's denial of the complaints and remanded the case to the ALJ for a determination of remedies. *Abdur-Rahman v. Dekalb County*, ARB Nos. 10-074, 08-003; ALJ Nos. 2006-WPC-002, -003 (ARB May 18, 2010); Order Denying Reconsideration (ARB Feb. 16, 2011).

On remand, the ALJ ordered reinstatement, and awarded $9,309.53 in back pay plus $11,689.14 in interest to Abdur-Rahman, and $51,928.42 in back pay plus $80,499.38 in interest to Petty. The ALJ also awarded compensatory damages to Abdur-Rahman in the amount of $6,000 for the cost of seeking other employment; $4,896 for medical expenses; and $85,000 for impairment of reputation, personal humiliation, and mental anguish and suffering; and awarded Petty $3,751 for the cost of seeking other employment and $40,000 for impairment of reputation, personal humiliation, and mental anguish and suffering. Order (ALJ Oct. 19, 2011); ALJ Decision and Order on Damages on Remand (Jan. 17, 2012) (D. &. O.). The ALJ subsequently granted Respondent's motion for reconsideration, noting that counsel for Complainants agreed with Respondent's argument that the ALJ had improperly calculated the interest owed on the back pay awards. ALJ Decision and Order on Motion for Reconsideration (Feb. 17, 2012). The ALJ subsequently denied Complainants' motion for reconsideration. ALJ Decision and Order Denying Motion for Reconsideration (Mar. 19, 2012).

Complainants appeal (ARB No. 12-064) from the ALJ's Decision and Order on Damages on Remand and from the ALJ's Decision and Order Denying Motion for Reconsideration. Respondent appeals (ARB No. 12-067) from the ALJ's Decision and Order on Damages on Remand.

JURISDICTION AND STANDARD OF REVIEW

The Secretary of Labor has delegated to the Administrative Review Board authority to issue final agency decisions under the Federal Water Pollution Control Act.[2] The ARB reviews the ALJ's findings of fact under the substantial evidence standard and conclusions of law de novo.[3]

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[1] Dekalb County appealed the ALJ's finding that Complainants engaged in FWPCA-protected activity.

[2] 29 C.F.R. § 24.110(a). *See also* 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)).

[3] 20 C.F.R. § 24.110(b), (d); *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

DISCUSSION

Legal Standards for Remedies

The FWPCA provides that no person shall fire, or in any other way discriminate against, any employee because he engaged in protected activities. The FWPCA prohibits an employer from discriminating against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee engaged in protected activities. 33 U.S.C.A. § 1367(a). As successful complainants, Abdur-Rahman and Petty have established that they engaged in activity the FWPCA protects; that they suffered an adverse employment action, namely their 2005 discharge; and that their protected activity was a motivating factor in the adverse action.

With regard to the remedies available for discrimination under the FWPCA, the statute provides: "Upon receiving the report of such investigation, the Secretary of Labor shall make findings of fact. If he finds that such violation did occur, he shall issue a decision, incorporating an order therein and his findings, requiring the party committing such violation to take such affirmative action to abate the violation as the Secretary deems appropriate, including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his former position with compensation." 33 U.S.C.A. § 1367(b).

The applicable regulation provides: "If the ALJ concludes that the respondent has violated the law, the order shall direct the respondent to take appropriate affirmative action to abate the violations, including reinstatement of the complainant to that person's former position, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and compensatory damages . . . ." At the request of the complainant, the ALJ shall assess against the respondent, all costs and expenses (including attorney fees) reasonably incurred." 29 C.F.R. § 24.109(d)(1).

Dekalb County does not challenge the ALJ's order of reinstatement but appeals from the ALJ's awards of back pay and compensatory damages (ARB No. 12-067). Complainants appeal from the ALJ's decision to limit what evidence could be submitted on remand, as well as his calculation of back pay and interest, and their compensatory damages awards (ARB No. 12-064).

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)). Pursuant to the Administrative Procedure Act, in reviewing the ALJ's initial decision, the Board acts with "all the powers [the Secretary] would have in making the initial decision . . . ." 5 U.S.C.A. § 557(b). *See also Universal Camera Corp. v. NLRB*, 340 U.S. 474 (1951).

Back Pay

A complainant who has been unlawfully discharged is entitled to back pay from the date his or her employment ended until the tender of an offer of reinstatement. *Berkman v. U.S. Coast Guard Acad.*, ARB No. 98-056, ALJ Nos. 1997-CAA-002, -009; slip op. at 28 (ARB Feb. 29, 2000) (citing *West v. Sys. Applications Int'l*, No. 1994-CAA-015, slip op. at 11-12 (Sec'y Apr. 19, 1995). The purpose of a back pay award is to make the injured employee whole. *Hobby v. Georgia Power Co.*, ARB Nos. 98-166, 98-169; ALJ No. 1990-ERA-030, slip op. at 12 (ARB Feb. 9, 2001), *aff'd sub nom. Georgia Power Co. v. United States Dep't of Labor*, 52 Fed. Appx. 490 (table) (11th Cir. 2002). An unlawfully discharged employee has the burden of mitigating his or her damages by seeking suitable employment. *See, e.g., Parrish v. Immanuel Med. Ctr.*, 92 F.3d 727, 735 (8th Cir. 1996). An employee who has been constructively discharged usually has the burden of mitigating his or her damages by seeking suitable employment. *See, e.g., id.* The respondent has the burden of establishing that the back pay award should be reduced because the complainant did not exercise diligence in seeking and obtaining other employment. *See Johnson v. Roadway Express, Inc.*, ARB No. 99-111, ALJ No. 1999-STA-005, slip op. at 14 (ARB Mar. 29, 2000) (citing *Wheeler v. Snyder Buick, Inc.*, 794 F.2d 1228, 1234 (7th Cir. 1986) (it is employer's burden to prove, as an affirmative defense, that the employee failed to mitigate damages)).

In Complainants' appeal (ARB No. 12-064), they cite to the Board's decision in *Moder v. Village of Jackson, Wis.*, ARB Nos. 01-095, 02-039; ALJ No. 2000-WPC-5, slip op. at 9 (ARB June 30, 2003) and contend that the ALJ should not have compared dollar for dollar their earnings from subsequent employers or "interim earnings," with the earnings they would have earned working for Dekalb County had it not discharged them. Complainants argue that the ALJ should have deducted from his calculation of interim earnings a percentage of their actual earnings based on the fact that they had to work additional hours for subsequent employers compared to the hours they would have worked for Dekalb County, had it not fired them. The ALJ rejected Complainants' "broad" reading of *Moder.* D. & O. at 2, 3. Rather, the ALJ construed *Moder* strictly, interpreting it as consistent with the Board's decision in *Hobby* to reject that complainant's argument that wages earned after regular working hours with a subsequent employer should not be part of the interim earnings calculation. The ALJ noted the Board's holding in *Hobby* that "these monies were nevertheless 'interim earnings' [and] we include this amount in the interim earnings calculation." *Id.* at 3 (quoting the ARB's decision in *Hobby*, ARB Nos. 98-166, 98-169, slip op. at 39). The ALJ indicated that under *Moder*, only where an employee is paid by the hour and works overtime can that overtime pay be ignored and not counted in the calculation of what a complainant earned with subsequent employers. D. & O. at 3.

It is well-settled law that a complainant has the burden to establish the amount of back pay that a respondent owes. *Pillow v. Bechtel Constr., Inc.*, No. 1987-ERA-035 (Sec'y July 19, 1993). The trial judge has broad discretion in calculating back pay awards and in considering

earnings from subsequent employment. *Steward v. General Motors Corp.,* 542 F.2d 445, 452 (7th Cir. 1976.) In this case, Complainants have submitted no records, let alone precise evidence of their earnings, to support a different amount of earnings from subsequent employers. Given this failure of proof, Complainants cannot establish any error in the ALJ's calculation of back wages by comparing earnings from subsequent employers with earnings Complainants would have earned with Dekalb County had it not fired them. Without ruling on the application of *Moder* to this case, we uphold as proper the ALJ's decision to compare Complainants' earnings with subsequent employers, with earnings they would have earned working for Dekalb County, had it not unlawfully fired them.[4]

Respondent argues in its appeal (ARB No. 12-067) that ALJ erred in awarding Abdur-Rahman back pay for 2007 even though her earnings for the years prior to and subsequent to 2007 were much greater than her 2007 earnings. Dekalb County argues that the award was erroneous because, 1) Abdur-Rahman obtained substantially equivalent employment as a manager with promotion potential earning more than she would have at Dekalb County prior to 2007; and 2) the decrease in wages reflected in her 2007 interim earnings is unexplained "and most likely the result of Abdur-Rahman's conduct or absence from her job. A review of her employment history shows that the county should not be responsible for back pay in 2007." Respondent's Brief at 2.

It is long-settled that the goal of a back pay award under the environmental acts is to place the complainant in the position he or she would have occupied but for the discrimination. *Hoffman v. Bossert*, ARB No. 96-091, ALJ No. 1994-CAA-004, slip op. at 2 (ARB Jan. 22, 1997). Dekalb County notes that Abdur-Rahman's 2007 interim earnings were $15,376 less than her 2006 interim earnings. Dekalb County supposes that this decrease in income is likely Abdur-Rahman's doing. But supposition is not proof, and Dekalb County offers none to meet its burden to show that Abdur-Rahman failed to mitigate damages in 2007. Consequently, we do not disturb the ALJ's finding that Abdur-Rahman is entitled to $9,235 in back pay for 2007. D. & O. at 4.

On the back pay issue, Respondent also notes in its appeal (ARB No. 12-067), that when this case returned to the ALJ on remand from the ARB, the ALJ limited the submission of backpay evidence to Complainants' actual and projected earnings from 2007 through 2011. Dekalb County argues that the ALJ thereby denied it an opportunity to adduce evidence to show that Petty did not mitigate his loss of earnings. Specifically, Dekalb County notes that Petty changed careers and worked as a truck driver from 2005 to 2011, which change, it argues, amounts to a failure to seek substantially equivalent employment. Dekalb County thus urges the Board not to uphold any award of backpay to Petty as of 2007.

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[4] The ALJ found Complainants entitled to interest on back pay at the rate established at 26 U.S.C. § 6621 (underpayment of federal income taxes) under the methodology set forth in *Doyle v. Hydro Nuclear Servs.,* ARB Nos. 99-041, -042, 00-012; ALJ No. 1989-ERA-022 (ARB May 17, 2000) and *Hobby,* ARB Nos. 98-166, 98-169. D. & O. at 7-10.

Respondent's argument is unavailing. Substantial evidence in the record supports the ALJ's considered determination under *Hobby* that Respondent did not meet its burden to prove that Petty failed to mitigate damages as alleged. D. & O. at 6.

Calculation of Interest on Back Pay Award

Complainants appeal from the ALJ's calculation of interest on their back pay awards. Respondent sought reconsideration of the ALJ's D. & O based on its allegation that the ALJ had erred by using annual rates instead of quarterly rates to calculate the interest due on the back pay awards. Respondent argued that the ALJ should have divided by four the interest rates he used for each quarter because the rate he used represented the annual rate and not the quarterly rate. Complainants responded and agreed with Respondent. The ALJ granted reconsideration "[g]iven that the parties are in agreement" but added, "This court may have found differently had the parties not been in agreement." The ALJ then cited to the Board's decisions in *Doyle v. Hydro Nuclear Servs.*, ARB Nos. 99-041, -042, 00-012; ALJ No. 1989-ERA-022(ARB May 17, 2000) and *Minne v. Privott*, ARB Nos. 09-066, -082;ALJ No. 2004-STA-026 (ARB Dec. 19, 2011). The ALJ explained, "These cases suggest the rates utilized in my earlier opinion were not annual rates compounded quarterly, but rather published average quarterly rates. However, absent any further dispute regarding the calculation of interest, I grant the relief sought." Decision and Order on Motion for Reconsideration (ALJ Feb. 17, 2012).

Complainants then filed a motion for reconsideration, arguing that counsel for the parties had made a mutual mistake in believing that the ALJ had calculated interest due on the back pay award using annual interest rates and not quarterly interest rates. But Respondent's counsel responded and denied any mutual mistake; counsel continued to believe that the ALJ had erred by using annual interest rates and not quarterly rates. The ALJ denied Complainants' motion under F.R.C.P. 59(e), stating, "As reconsideration is an extraordinary remedy and I have already granted reconsideration once before as to this very issue." Decision and Order Denying Motion for Reconsideration (ALJ Mar. 19, 2012).

Complainants now argue that the ALJ's original calculation of interest using the annual rate was correct and urge us to reinstate it notwithstanding, they state, Complainants' error in agreeing with Respondent's position on reconsideration that the rate the ALJ used had to be divided by four to get the appropriate quarterly rate. Dekalb County does not appeal from the ALJ's decision on reconsideration. Dekalb County does agree that Complainants are due interest compounded quarterly, but disagrees with Complainants' calculations; that Complainants multiplied each quarterly principal amount times the full interest for the year, not the interest due for the quarter. "With this mathematical error, the amount of interest is many times higher than it should be." Respondent's Brief at 12-14.

We uphold the ALJ's decision to grant Respondent's motion for reconsideration since the parties agreed, and there was no dispute for him to settle. Decision and Order on Motion for Reconsideration at 1 (Feb. 17, 2012). We note that the parties were represented by counsel at the

time. In upholding the ALJ's decision to grant reconsideration, we in no way rule on the substantive merits of the parties' agreement.

Compensatory Damages[5]

In their appeal (12-064), Complainants claim greater compensatory damages than the ALJ awarded; they claim the full amount of compensatory damages they each sought before the ALJ, namely $650,000 for Abdur-Rahman and $175,000 for Petty. In response, Dekalb County sets forth several reasons why the amounts the ALJ awarded are excessive. Respondent's Brief at 15-26. Similarly in its own appeal (ARB No. 12-067), Respondent argues that the amount of compensatory damages awarded to Complainants should be reduced because they are speculative, uncertain, and not supported by admissible evidence.

We review the ALJ's award of compensatory damages under the substantial evidence standard. *Barnum v. J.D.C. Logistics, Inc.*, ARB No. 08-030, ALJ No. 2008-STA-006 (ARB Feb. 27, 2009). Initially, we note that both parties engage in fact-finding while urging us to do the same, which is beyond the scope of our review.[6] The record plainly shows that the ALJ engaged in an exhaustive analysis of their respective claims, awarding Abdur-Rahman $85,000 in compensatory damages and Petty $40,000 in compensatory damages. D. & O. at 10-18.

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[5] Complainants argue that ALJ erred by denying their request to reopen the record for the limited purpose of adducing evidence relevant to the four years between the March 2007 hearing and the ALJ's 2012 remedies determination, pertinent to compensatory damages for emotional distress and medical expenses. Complainants urge the ARB to consider Complainants' Declarations first submitted to the ALJ. Complainants' Appendix; Complainants' Brief On Remand Regarding Award of Damages (Nov. 16, 2011). Respondent urges the Board to uphold the ALJ's ruling. In restricting the record, the ALJ noted that Complainants' medical conditions pre-existed their discharge and that they did not allege exacerbation due thereto, but rather argued that they were not able to seek proper treatment following discharge due to lack of, or inadequate, health insurance. The ALJ allowed post-hearing submission of expenses for medical conditions of record and found that Complainants' medical expenses are not so complex, unusual, or poorly understood that they could not have been properly litigated at the hearing. *See Order* at 3-4 (ALJ Oct. 19, 2011); *see also* Decision and Order On Damages On Remand, at n.9 and n.10 at 12 (ALJ Jan. 17, 2012); Order to Show Cause Why Reinstatement Order Should Not Be Issued Immediately (ALJ July 22, 2011). Granting leave to reopen the record is committed to the ALJ's sound discretion. *Dalton v. Copart, Inc.*, ARB Nos. 04-027, -138; ALJ No. 1999-STA-046 (ARB June 30, 2005). The ALJ's decision to limit the reopening of the record was not an abuse of discretion, and thus we affirm it. We do not consider the Declarations submitted. To do so would circumvent the ALJ's considerable discretionary ruling.

[6] Complainants persuasively refute, in their response to Dekalb County's brief in support of its appeal (12-067), Respondent's arguments here. *See* Complainants' Response Brief at 7-14. Further, we find no support for Respondent's assertion that the ALJ's decision was based in part on inadmissible evidence, and Respondent provides none.

Substantial evidence in the record supports the ALJ's denial of Abdur-Rahman's claim for the unpaid leave she took to attend the hearing because under *Creekmore v. ABB Power Sys. Energy Servs., Inc.,* No. 1993-ERA-024, slip op. at 14 (Dep. Sec. Feb. 14, 1996), the back pay award would cover this lost pay as the interim earnings sum would reflect any leave without pay. Therefore, the back pay award would cover this loss of pay. D. & O. at 10. The ALJ did allow, under *Creekmore,* reimbursement of Abdur-Rahman's $6,000 and Petty's $3,700 cost of finding other employment. D. & O. at 10-11. With regard to the medical expenses sought by Abdur-Rahman alone, the ALJ properly found her entitled, under *Tipton v. Indiana Michigan Power Co.,* ARB No. 04-147, ALJ No. 2002-ERA-030 (ARB Sept. 29, 2006), to recover $4,896. D. & O. at 11. After a comprehensive analysis of Complainants' claims of impairment of reputation, personal humiliation, and mental anguish and suffering, the ALJ awarded Abdur-Rahman $85,000 and Petty $40,000. *Id.* at 12-19. These ALJ findings are supported by substantial evidence in the record and are in accordance with law. Accordingly, we affirm them.

Based on the foregoing discussion, we affirm the ALJ's decision, as well as his orders below. As the prevailing parties, Complainants are also entitled to costs, including reasonable attorney's fees, for legal services performed before the ARB.[7] Complainants' attorneys shall have 30 days from receipt of this Final Decision and Order in which to file a fully supported attorney's fee petition with the ARB, with simultaneous service on opposing counsel. Thereafter, Respondent shall have 30 days from its receipt of the fee petition to file a response.

CONCLUSION

The ALJ's decision and orders below are **AFFIRMED**.

SO ORDERED.

PAUL M. IGASAKI
Chief Administrative Appeals Judge

Judge E. Cooper Brown, concurring.

The appeal (ARB No. 12-064) and cross-appeal (ARB No. 12-067) filed in this action constitute challenges by both parties, for differing reasons, to the ALJ's Decision and Order on Damages on Remand, issued January 17, 2012, as modified by the ALJ's Decision and Order on Motion for Reconsideration, issued February 17, 2012. Having thoroughly reviewed the parties' respective briefs and being fully apprised of the arguments presented on appeal, I concur in

[7] 29 C.F.R. § 110(d).

affirming the ALJ's Decision and Order of January 17, 2012, as modified by the ALJ's February 17, 2012 Decision and Order, for the reasons set forth and elaborated upon by the ALJ.

E. COOPER BROWN
Deputy Chief Administrative Appeals Judge

Judge Luis A. Corchado, concurring, in part, and dissenting, in part.

I agree with the majority's ultimate rulings on all issues except as to the amount of backpay awarded to the employees. The ALJ properly recited the fundamental principles that govern the award of backpay. First, the overarching goal is to make the employee whole for the injuries caused by the unlawful whistleblower retaliation. Second, the employee has the burden of proving the amount that should be awarded. Third, uncertainties in determining the amount owed should be resolved against the discriminating party. Lastly, the ALJ may offset a backpay award by subtracting money the employees earned after being wrongfully fired by a discriminating employee. The ALJ correctly held that in some cases the offset amount should not include overtime pay. But, in deciding the amount of the offset, the ALJ read too much into the ARB's decisions in two previous cases and, therefore, may have overstated the offset amounts in this case, but the record is unclear on this point. D. & O. at 2-3.

The ALJ understood the ARB's decisions in *Moder* and *Hobby* to say that, for employees who earned a salary from the discriminating employer, the offset must always include all earned income including overtime pay. However, neither of these cases stands for this principle. To begin with, the ARB provided very little guidance on the proper amount of an offset in these cases. In *Moder*, the ARB summarily concluded in one sentence that the offset should have been based solely on the complainant's base pay.[8] Similarly, in *Hobby*, the ARB concluded in one sentence that the $210,372.86 offset amount the complainant earned over a ten-year period properly included $717.14 earned from one employer during 1992.[9] Neither of these cases addressed the arguments raised in this case.

In this case, Complainants argue that their pre-termination earnings should be converted to a common denominator of hours worked to properly compare it to their yearly post-termination earnings. In other words, if Complainants prove that they worked 40 hours per week for Respondent and earned a certain base salary, the offset should be determined by looking only at the amounts they earned during 40 hours of work at post-termination jobs, exclusive of overtime pay. This argument adheres to the requirement that Complainants must be made whole

[8] *Moder*, ARB Nos. 01-095, 02-039, slip op. at 10.

[9] *Hobby*, ARB Nos. 98-166, 98-169, slip op. at 12.

for the injuries they suffered and, if Complainants' evidence permits this comparison, then the ALJ should disregard overtime pay in determining an offset.

In this case, following his understanding of *Hobby*, the ALJ did not compare 40-hour pre-termination earnings to 40-hour post-termination earnings because he did not think it was permissible under ARB precedent to compare a salary wage to an hourly wage. The ALJ made findings as to Complainants' base annual salaries at DeKalb County and that Complainants' post-termination earnings included overtime pay. But it is unclear whether the ALJ found that Complainants earned the pre-termination base salaries working only 40 hours per week. If Complainants earned their pre-termination salaries working only 40 hours per week, then I believe the ALJ erred in failing to reduce the offset amounts to also reflect earnings based on a 40-hour work week. For example, in my view, the ALJ should have reduced Petty's offset amount for his 2010 earnings by $2,984.62 (160.25 overtime hours), and I would modify Petty's award on this basis. Abdur-Rahman presented less clear evidence about her post-termination earnings, arguing that the ALJ should have used mathematical ratios to reduce the offset, which assumed that she worked only 40 hours per week for DeKalb County. But DeKalb County properly pointed out that Abdur-Rahman admitted to working more than 40 hours a week at DeKalb County and, understandably, this evidentiary conflict was not clearly resolved by the ALJ. In the end, I simply note that the ARB's holdings in *Moder* and *Hobby* do not change the overarching principle that victims of whistleblower retaliation must be made whole and not penalized for working more hours to earn the same pay they earned before suffering discrimination.

LUIS A. CORCHADO
Administrative Appeals Judge