



**In the Matter of:**

**MICHAEL COLLINS,**

**ARB CASE NO. 09-040**

**COMPLAINANT,**

**ALJ CASE NO. 2006-SDW-003**

**v.**

**DATE: June 30, 2009**

**THE VILLAGE OF LYNCHBURG, OHIO,**

**RESPONDENT.**

**BEFORE: THE ADMINISTRATIVE REVIEW BOARD**

**Appearances:**

*For the Complainant:*

**Paul H. Tobias, Esq., and David G. Torchia, Esq., *Tobias, Kruas & Torchia,*  
Cincinnati, Ohio**

*For the Respondent:*

**Fred J. Beery, Esq., Lynchburg, The Village Solicitor, Hillsboro, Ohio**

**FINAL DECISION AND ORDER**

On March 30, 2009, we issued a final decision and order affirming the Administrative Law Judge's (ALJ's) Recommended Decision and Order in this case.<sup>1</sup> We concurred with the ALJ that the Village of Lynchburg, Ohio, violated the employee protection provisions of the Safe Drinking Water Act when it terminated the employment

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<sup>1</sup> *Collins v. The Village of Lynchburg, Ohio*, ARB No. 07-079, ALJ No. 2006-SDW-003 (ARB Mar. 30, 2009).

of the Complainant, Michael A. Collins.<sup>2</sup> We also concurred with the ALJ's award of back pay and compensatory damages. But we reversed his award of punitive damages.

On December 11, 2008, while the Village's appeal was pending before the Board, the ALJ issued an Attorney Fee Order, awarding a total of \$69,643.84 in attorney's fees and costs for work performed before the ALJ. The Village filed a petition for review of that Order on December 31, 2008.

The Act provides that, in a case in which the Secretary issues an order in favor of a Complainant, the Secretary may order the Respondent to pay all costs and expenses, including attorney's fees, "reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued."<sup>3</sup> Generally, the lodestar method of calculation is used, which requires multiplying the number of hours reasonably expended in bringing the litigation by a reasonable hourly rate.<sup>4</sup>

Collins's attorneys filed a fee petition before the ALJ, and the Village filed an opposition. His attorneys requested \$77,165.82 in attorney's fees and costs. This amount represented 192 hours of work performed by counsel Tobias at an hourly rate of \$350, 24.25 hours of work performed by counsel Torchia at an hourly rate of \$300, and 8.25 hours of paralegal work at a rate of \$50 per hour, and \$2,278.32 in costs.

In his Attorney Fee Order, the ALJ discussed the Village's objections to Collins's fee petition and awarded a total of \$69,643.84, after reducing the hourly rate for counsel Tobias to \$300 and the hourly rate for counsel Torchia to \$275.<sup>5</sup> He also awarded the requested rate for the paralegal of \$50.<sup>6</sup> He allowed all of the hours requested.<sup>7</sup> We conclude that the rates and hours that the ALJ determined are reasonable.

Collins requested the ALJ to increase his fees to compensate him for the delay in his receipt of his attorney's fee award. The ALJ correctly calculated the fee increase based on a formula that the ARB uses for determining the amount of any fee enlargement to compensate attorneys for delay in receiving their fee awards. The ARB has held that a fee increase should be the lesser of the additions calculated as follows:

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<sup>2</sup> 42 U.S.C.A. § 300j-9(i) (West 2006).

<sup>3</sup> 42 U.S.C.A. § 300j-9(i)(2)(B)(ii).

<sup>4</sup> *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983).

<sup>5</sup> Order at 4.

<sup>6</sup> Order at 5.

<sup>7</sup> Order at 4-5.

- (1) the number of hours multiplied by the current rates of the attorneys, or
- (2) the amount of the award plus the amount of the award multiplied by the percentage change in Consumer Price Index – All Urban Consumers, U.S. city average (CPI-U).<sup>[8]</sup>

Using the second option, the ALJ increased Collins's attorney and paralegal fees by 4.15% for a total fee enlargement of \$2,684.27.

The Village argues before the Board that we should reverse the ALJ's Attorney Fee Order because the Village justifiably terminated Collins's employment and did not act in bad faith in so doing. The Village also argues that attorney's fees and costs of nearly \$70,000 are excessive:

Because the amount of the award is so large in comparison to the actual loss to Complainant at stake (he was reinstated during the pendency of the complaint), and because any action of the Mayor of the Village was in good faith an award of nearly \$70,000 is clearly excessive.<sup>[9]</sup>

In support of its argument that it was justified in firing Collins, the Village re-argues issues that it argued before the Board in its original petition for review in this case. Since we have already decided these issues, it is unnecessary for us to address them again.<sup>10</sup> We reject the Village's remaining argument that the attorney's fee award is too large in comparison with the Complainant's damages award. Like the ALJ, we find that the fee in this whistleblower case need not be proportional to the recovery for the Complainant.<sup>11</sup>

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<sup>8</sup> *Dalton v. Copart, Inc.*, ARB Nos. 04-027, 04-138, ALJ No. 1999-STA-046, slip op. at 3 (ARB June 30, 2005); *Doyle v. Hydro-Nuclear Servs.*, ARB Nos. 99-041, 99-042, 00-012; ALJ No. 1989-ERA-022, slip op. at 15-16 (ARB May 17, 2000), *overturned on other grounds*, *Doyle v. United States Sec'y of Labor*, 285 F.3d 243 (3d Cir. 2002).

<sup>9</sup> Respondent's Brief at 5.

<sup>10</sup> *Collins v. Village of Lynchburg*, ARB No. 07-079, ALJ No. 2006-SDW-003 (ARB Mar. 30, 2009).

<sup>11</sup> *See Hoffman v. W. Max Bossert & Boss Insulation & Roofing, Inc.*, ARB No. 96-091, ALJ No. 1994-CAA-004 (ARB Jan. 22, 1997); *see also Abrams v. Lightholier, Inc.*, 50 F.3d 1204, 1222 (3d Cir. 1995).

Substantial evidence supports the ALJ's adjustments. The number of compensable hours and the rates he awarded are reasonable. We **APPROVE** the recommended award of \$69,643.84 in fees and costs.

**SO ORDERED.**

**OLIVER M. TRANSUE**  
**Administrative Appeals Judge**

**WAYNE C. BEYER**  
**Chief Administrative Appeals Judge**