

**UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD**

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)	
MICHAEL B. BUCKLER,)	DOCKET NUMBER
Appellant,)	DC-0351-94-0776-A-1
)	
v.)	
)	
FEDERAL RETIREMENT THRIFT)	
INVESTMENT BOARD,)	DATE: APR 30, 1998
Agency.)	
)	
)	
)	

Peter B. Broida, Esquire, Arlington, Virginia, for the appellant.

Elizabeth S. Woodruff, Esquire, Washington, D.C., for the agency.

BEFORE

Ben L. Erdreich, Chairman
Beth S. Slavet, Vice Chair
Susanne T. Marshall, Member

OPINION AND ORDER

This case is before the Board on the appellant's petition for review and the agency's cross-petition for review of the July 3, 1997 addendum initial decision (AID) that awarded the appellant \$71,339.22 in attorney fees. For the reasons set forth below, the Board GRANTS the appellant's petition for review under 5 C.F.R. § 1201.115 and AFFIRMS the AID as modified by this Opinion and Order, awarding the appellant additional fees of \$500. The Board DENIES the

agency's cross-petition for review because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115.

BACKGROUND

The appellant's separation from the agency pursuant to a reduction in force was reversed by the Board. *See Buckler v. Federal Retirement Thrift Investment Board*, 73 M.S.P.R. 476 (1997). The appellant subsequently filed a motion for an award of attorney fees and costs in the amount of \$81,342.72. Attorney Fee File (AFF), Tabs 1, 2, 11. In a detailed initial decision, the administrative judge found that the appellant is the prevailing party, that an attorney/client relationship existed, that the appellant incurred attorney fees, and that an award of fees is warranted in the interest of justice. AFF, Tab 14. The administrative judge granted a partial award of fees in the amount of \$71,339.22. In his timely petition for review, the appellant argues that, in calculating the attorney fees amount, the administrative judge did not include \$500 in consultation fees that were part of the original fees request. Petition for Review File (PFRF), Tab 3. The appellant does not otherwise challenge the amount of the attorney fees award.*

ANALYSIS

The appellant asserts that the administrative judge did not consider an item in the fees request for \$500 for four consultations of varying lengths regarding the appellant's claims that occurred between the appellant and his attorney before the attorney was retained by the appellant. PFRF, Tab 3, at 3-4; AFF, Tab 2, at 18-19. The appellant's attorney generally charged a flat fee of \$100 per consultation; in addition, if the consultation were much more than an hour in length, as occurred with regard to at least one of the consultations at issue here, the

* The appellant indicates that there may be an additional \$12 error in the administrative judge's calculations. PFRF, Tab 3, at 4, n.**. However, the

appellant's attorney charged a fee for that session "that approximates the number of consults covered by the time spent" with the appellant. AFF, Tab 2, at 18.

The agency asserts in its cross-petition for review that, although it raised no objection below with regard to this particular portion of the attorney fees request, this claim should be remanded to the administrative judge. PFRF, Tab 4, at 21, n.5. Remand is unnecessary in this case. The Board has determined that fees for consultations are compensable. *See generally Johnson v. Department of Interior*, 24 M.S.P.R. 209, 212-13 (1984) (initial, pre-retainer consultation fee qualifies as a fee "incurred" within the meaning of 5 U.S.C. § 7701(g)(1)).

A review of the record reveals that the administrative judge did not consider the request for \$500 in his calculation of the fees award. In consideration of the complexity of the appellant's case, we find that the amount of the request is reasonable and that the amount of the attorney fees awarded should therefore be adjusted to reflect these additional fees. *Cf. Naekel v. Department of Transportation*, 32 M.S.P.R. 497, 502 (1987) (consultation fees awarded to two attorneys for \$200 and \$75, respectively; the Board will not deny attorney fees when they are warranted in the interest of justice unless record suggests that hourly rate was unreasonable or that the hours claimed were excessive), *aff'd in part and modified in part on other grounds*, 845 F.2d 976 (Fed. Cir. 1988).

ORDER

The addendum initial decision is AFFIRMED AS MODIFIED above. This is the final order of the Merit Systems Protection Board in this appeal. *See* 5 C.F.R. § 1201.113(c).

We ORDER the agency to pay the attorney of record \$71,839.22 in fees. The agency must complete this action within 20 days of the date of this decision. *See generally* 5 U.S.C. § 1204(a)(2).

appellant states that, given the de minimus nature of the alleged discrepancy, he

We also ORDER the agency to inform the appellant and the attorney of all actions taken to comply with the Board's order and the date on which it believes it has fully complied. *See* 5 C.F.R. § 1201.181(b). We ORDER the appellant and the attorney to provide all necessary information that the agency requests in furtherance of compliance. The appellant and the attorney should, if not notified, inquire as to the agency's progress. *Id.*

Within 30 days of the agency's notification of compliance, the attorney may file a petition for enforcement with the regional office to resolve any disputed compliance issue or issues. The petition should contain specific reasons why the attorney believes that there is insufficient compliance, and should include the dates and results of any communications with the agency about compliance. *See* 5 C.F.R. § 1201.182(a).

NOTICE TO THE APPELLANT REGARDING
FURTHER REVIEW RIGHTS

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. *See* 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

will not contest it.

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. *See* 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Robert E. Taylor
Clerk of the Board

Washington, D.C.