

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

MADALYNN A. SHEPLEY,)
)
 Petitioner,)
)
 vs.) Case No. 05-1906
)
 LAZY DAYS RV CENTER, INC.,)
)
 Respondent.)
 _____)

RECOMMENDED ORDER ON BACK PAY
AND ATTORNEY'S FEES

On November 7, 2006, an administrative hearing in this case was held in Tampa, Florida, before William F. Quattlebaum, Administrative Law Judge, Division of Administrative Hearings.

APPEARANCES

For Petitioner: Craig L. Berman, Esquire
Berman Law Firm, P.A.
111 Second Avenue Northeast, Suite 810
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For Respondent: Richard C. McCrea, Jr., Esquire
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STATEMENT OF THE ISSUES

This matter was returned to the Division of Administrative Hearings (DOAH) by the Florida Commission on Human Relations (FCHR) to determine the extent to which the Petitioner is entitled to back pay and lost benefits and to identify attorney's fees and costs to be awarded to the Petitioner's legal representation.

PRELIMINARY STATEMENT

On February 6, 2006, the FCHR issued a Final Order Awarding Relief from an Unlawful Employment Practice (Final Order) in this case. In relevant part, the Final Order awarded a monetary remedy to the Petitioner and directed that the parties attempt to stipulate to the amount of the remedy. The Final Order stated that in the event the parties were unable to do so, the matter would be remanded to the Administrative Law Judge (ALJ) to make the determination.

On July 24, 2006, the FCHR returned the dispute to the DOAH after the parties were unable to resolve the issue of the monetary award. The matter was scheduled for hearing on October 2, 2006, and, upon a joint motion from the parties, was re-scheduled to commence on November 7, 2006.

At the hearing, the Petitioner presented the testimony of six witnesses and had Exhibits numbered 1a, 1b, 2a, 2b, 3a, 4a, and 4b admitted into evidence. The Respondent presented the

testimony of one witness and had Exhibits numbered 1, 2a, 2b, 2c, 3a, 3e, 4c, 6g, 6i, 6j, 6k, 7a, 7d, 8a, 8b, 13-16, and 18 admitted into evidence. A Transcript was filed on December 1, 2006. Proposed orders were filed on January 3, 2007. On February 1, 2007, the Respondent filed a Notice of Supplemental Authority. By Order dated February 13, 2007, the Petitioner was provided an opportunity to file a response to the Notice, but no response was filed. On March 1, 2007, the Respondent filed a second Notice of Supplemental Authority. No response was filed by the Petitioner.

The Final Order required that the ALJ determine "appropriate remedy amounts" for back pay and lost benefits, including statutorily established interest on such back pay and benefits. The Order also directed the ALJ to determine the amount of "reasonably incurred" attorney's fees and costs to be awarded the Petitioner.

FINDINGS OF FACT

Back Pay and Lost Benefits

1. The Respondent terminated the Petitioner's employment as a recreational vehicle (RV) mechanic on January 7, 2002, at which time the Petitioner was earning an hourly wage of \$16.50, plus health and life insurance benefits.

2. During the Petitioner's employment with the Respondent, the Petitioner received hourly wage increases of 50 cents annually, based on performance reviews.

3. There is no credible evidence that the Petitioner's performance was unsatisfactory at any time during the Petitioner's employment with the Respondent. It is reasonable to presume that the Petitioner would have received additional wage increases during continued employment as an RV mechanic by the Respondent, and prospective wage increases have been included in the award set forth in this Order.

4. The Petitioner also worked various overtime assignments, approximately ten hours bi-weekly, while employed with the Respondent. The evidence is insufficient to establish that "overtime" employment would have continued on a routine basis.

5. On April 1, 2002, the Petitioner began employment as an amusement ride mechanic for "One Source" earning an hourly wage of \$14.00. One Source was a company responsible for operating rides at the Busch Gardens amusement park in Tampa. Included among the Petitioner's responsibilities for One Source were safety inspections and related maintenance of amusement park rides.

6. While employed with One Source, the Petitioner's hourly wages increased to \$14.70 on July 1, 2002, and to \$15.14 on

April 1, 2003. During the period of employment with One Source, the Petitioner was eligible for, and enrolled in, insurance benefits, including health, life, dental, and disability.

7. The Petitioner's employment with One Source was terminated on August 1, 2003, for unsatisfactory job performance.

8. Prior to the One Source termination, the Petitioner was subjected to a series of disciplinary actions related to job performance. In March 2003, the Petitioner received a verbal warning related to a ride safety issue. In July 2003, the Petitioner received a written warning related to a ride safety issue. Approximately two weeks after the written warning, the Petitioner received a one-day suspension, again related to a ride safety issue. The Petitioner did not challenge any of the disciplinary actions.

9. After a fourth incident related to ride safety, the Petitioner was terminated by One Source. The Petitioner had discovered a faulty wheel bearing on one of the rides, had reported the issue, and then "against my better judgment" attempted to repair the problem by repacking the bearing with grease. The Petitioner was off from work the next day, when another inspector again discovered the faulty bearing, and reported the problem.

10. Based on the continuing issues related to job performance, One Source terminated the Petitioner's employment on August 1, 2003. The Petitioner did not protest the termination.

11. After the One Source employment ended, the Petitioner decided to seek employment as an office worker, believing that such work was more compatible with the Petitioner's gender identification.

12. On August 14, 2003, the Petitioner became employed as a telemarketer with "Forefront Direct" at a weekly wage of \$280 plus a five percent commission, but the employer terminated the employment four days later.

13. On October 27, 2003, the Petitioner became employed as a telemarketer with "Progressive Employer" but the Petitioner voluntarily left the job after two days.

14. Beginning at some point in 2004, the Petitioner attended school for approximately two years.

15. From February 14 to September 18, 2004, the Petitioner was employed as a hotel maintenance worker by Crum Resources at an hourly wage of \$8.00 and left to accept the next employment position.

16. On September 23, 2004, the Petitioner became employed in a data entry position by The Hospice at an hourly wage of

\$8.50. The Petitioner voluntarily left employment at The Hospice effective on April 25, 2005.

17. On April 18, 2005, the Petitioner became employed in a data entry position by West Care at an hourly wage of \$12.02. The Petitioner voluntarily left employment with West Care on May 12, 2006, at which time the Petitioner was earning an hourly wage of \$12.38. The Petitioner did not have health benefits during the West Care employment.

18. Although the Petitioner expressed experiencing stress regarding concerns about the treatment being provided to West Care clients, there is no credible evidence that the treatment provided by West Care to clients was inappropriate or unethical, and, in any event, the Petitioner was not involved in actually providing any treatment to West Care clients.

19. In September of 2006, the Petitioner became employed by a private staffing company and was placed to work at a restaurant, Moe's Southwest Grill, at an hourly wage of \$8.00. At the time of the hearing on damages, the Petitioner had become a supervisor at the restaurant earning \$9.25 per hour and had a long-term goal of owning and operating a restaurant.

20. For purposes of determining the appropriate amount of back pay, the Petitioner's potential annual income has been calculated as if the Petitioner continued employment with the

Respondent and are based on 2002 hourly wages with annual increases consistent with the Petitioner's wage history.

21. The Petitioner's 2002 earnings are projected at \$34,320, based on an hourly wage of \$16.50 for a 40-hour work week (totaling \$660) multiplied by 52 weeks (\$34,320). The Petitioner's actual total reported adjusted gross income for the year 2002 was \$29,217, a difference of \$5,103.

22. The Petitioner's 2003 earnings are projected at \$35,360, based on an hourly wage of \$17.00 for a 40-hour work week (\$680) multiplied by 52 weeks (\$35,360). The Petitioner's actual total reported adjusted gross income for the year 2003 was \$23,330, a difference of \$12,030.

23. The Petitioner's 2004 earnings are projected at \$36,400, based on an hourly wage of \$17.50 for a 40-hour work week (\$700) multiplied by 52 weeks (\$36,400). The Petitioner's actual total reported adjusted gross income for the year 2004 was \$14,805, a difference of \$21,595.

24. The Petitioner's 2005 earnings are projected at \$37,440, based on an hourly wage of \$18.00 for a 40-hour work week (\$720) multiplied by 52 weeks (\$37,440). The Petitioner's actual total reported adjusted gross income for the year 2005 was \$23,997, a difference of \$13,443.

25. The Petitioner's 2006 earnings are projected at \$38,480, based on an hourly wage of \$18.50 for a 40-hour work

week (\$740) multiplied by 52 weeks (\$38,480). Although the Petitioner worked for West Care during the first five months of 2006, no income records were offered into evidence for that time period. Based on the Petitioner's testimony, the Petitioner's actual income for 2006 is projected as \$5,600, reflecting employment at Moe's Grill at a starting hourly wage of \$8.00 for a 40-hour work week (\$320) for eight weeks (\$2,640) and an increased hourly wage of \$9.25 for a 40-hour work week (\$370) for the remaining eight weeks through year end (\$2,960). The difference between \$38,480 and \$5,600 is \$32,800.

26. The evidence offered at hearing was insufficient to make any determination related to insurance or other employment benefits, and this Order makes no recommendation in this regard.

Attorney's Fees

27. The FCHR Final Order references DOAH Case Nos. 04-1019 and 05-1906.

28. On March 19, 2004, the FCHR forwarded a Petition for Relief filed by the Petitioner against the Respondent to the DOAH. The case (DOAH Case No. 04-1019) was assigned to ALJ Daniel Manry. At all times material to DOAH Case No. 04-1019, the Petitioner was represented by Karen Doering, Esquire. The complaint was the subject of an administrative hearing conducted on May 17, 2004. A Recommended Order was entered on June 22, 2004. The FCHR issued a Final Order

November 12, 2004, which dismissed a portion of the complaint, but which remanded the remainder of the complaint to FCHR staff to conduct an investigation.

29. On May 24, 2005, the FCHR forwarded a second Petition for Relief by the Petitioner against the Respondent to DOAH. The case (DOAH Case No. 05-1906) was assigned to the undersigned ALJ. At the time the Petition was filed with DOAH, and until June 24, 2005, the Petitioner was represented by Nicholas E. Karatinos, Esquire. Beginning on June 24, 2005, the Petitioner retained Craig Berman, Esquire, who represented the Petitioner throughout the proceedings conducted by the undersigned ALJ.

30. No evidence was offered in support of any award of fees or costs related to the Petitioner's representation by Nicholas E. Karatinos, and this Order makes no findings regarding this representation.

31. Ms. Doering is senior counsel for the National Center for Lesbian Rights (NCLR), a non-profit organization working to expand the legal rights of lesbian, gay, bisexual, and transgendered persons. Ms. Doering is a salaried employee of the NCLR. She has substantial experience in employment discrimination, specifically directed towards issues of sexual orientation and gender identification.

32. Ms. Doering graduated from Stetson University College of Law in 1995. She has been a member of the Florida Bar since

1995 and was licensed to practice in the U.S. District Court, Middle District of Florida, in 1995 and the Eleventh Circuit Court of Appeals in 1998.

33. Following a period of time in private practice, she became employed by the NCLR since 2002 as senior legal counsel and is responsible for operating the organization's Florida office.

34. She was lead legal counsel in the case of Fishbaugh v. Brevard County Sheriff's Department wherein the FCHR determined that transgendered employees are entitled to legal protection based on sex stereotyping.

35. In 2002, Ms. Doering agreed to assist the Petitioner in finding legal representation, but was unsuccessful and subsequently undertook the representation on her own.

36. Neither the NCLR nor Ms. Doering had any fee or retainer agreement with the Petitioner. As a salaried NCLR employee, Ms. Doering was not at risk for non-payment by the Petitioner, but believed that she would be able to receive any subsequent fee award on behalf of the NCLR.

37. Ms. Doering is seeking an award of \$18,960 in fees. Ms. Doering's time records indicate that a total of 65.4 hours were expended in representing the Petitioner in this dispute.

38. The Respondent asserts that approximately 13 hours attributed to the preparation of a brief in response to a motion

to dismiss in this case was excessive because much of the material in the response was similar or identical to a brief previously filed in the Fishbaugh case. A review of the two documents supports the assertion. The billing attributed to preparation of the document in the instant case is reduced with 8 hours attributed to time reasonably spent reviewing and updating the existing document for use in this case.

39. Review of Ms. Doering's time records indicate that some matters recorded were of a clerical nature, including filing and calendaring. The Respondent asserts that time expended by Ms. Doering in editing written work product should be excluded, but editing is an essential part of the writing process and as such may be properly compensated. The following tasks totaling 8.7 hours appear to be primarily clerical and are excluded:

10/16/2002 File charge with FCHR (.3 hours)

3/17/2004 Finalize and file Petition for Relief (1.9 hours)

4/16/2004 Review and calendar Notice of Hearing (.3 hours)

4/28/2004 Prepare and file response to Defendant's motion to dismiss (2.5 hours.)

5/6/2004 Gather supplemental materials and file Plaintiff's supplemental materials (2.3 hours)

5/6/2004 File corrected cover page (.3 hours)

7/7/2004 Finalize exceptions and file
(1.1 hours)

40. At the hearing, the Petitioner offered the expert testimony of Ms. Catherine Kyres on the issue of the fees sought. Ms. Kyres was admitted to the Florida Bar in 1991 and is a board-certified in labor and employment law. Ms. Kyres reviewed the files and records relevant to this proceeding, and, as set forth herein, her testimony is credited.

41. Ms. Kyres testified that a reduction of 7.6 hours was appropriate to reflect the Petitioner's lack of success before the FCHR on prosecuting the claim of discrimination on the basis of an alleged disability, and the testimony is credited.

42. Accounting for the exclusions and reductions as set forth herein, Ms. Doering's expenditure of 65.4 hours is reduced by a total of 21.3 hours, leaving a total of 44.1 hours reasonably expended by Ms. Doering in her representation of the Petitioner in this matter.

43. In 2002, Ms. Doering charged hourly rates of \$250. In 2003 and 2004, Ms. Doering charged hourly rates of \$300. The Respondent asserts that a reasonable hourly rate in the Tampa, Florida, area for lead counsel in similar cases ranges from \$150 to \$245 per hour. Review of the cases cited by the Respondent indicates that as of 2002, the reasonable hourly rate was as high as \$245.

44. The issues in this case were relatively novel. At the time Ms. Doering began her representation of the Petitioner in this case, the FCHR position regarding the agency's jurisdiction in cases involving discrimination against transgendered persons was uncertain, and the likelihood of success was marginal. Nonetheless, Ms. Doering has, to this point, been successful in establishing that transgendered persons could prosecute discrimination claims through the FCHR on the basis of gender stereotyping. Although Ms. Doering, as a NCLR attorney, bore no financial risk in this case, her knowledge and experience regarding issues of legal protection related to sexual orientation and gender identification, and her responsibilities as lead counsel during the first phase of this litigation, warrants a finding that an hourly rate of \$250 is reasonable.

45. Based on the hours expended and the appropriate hourly rate, Ms. Doering is entitled to a fee award of \$11,025.

46. Ms. Doering was assisted by attorney Shannon Minter, another salaried NCLR attorney, during the time Ms. Doering represented the Petitioner. Mr. Minter is a resident of San Francisco, California. As a salaried NCLR employee, Mr. Minter was not at risk for non-payment by the Petitioner.

47. Mr. Minter graduated from Cornell law School in 1993, at which time he was admitted to the California Bar. He has litigated issues related to discrimination against transgendered

persons for more than ten years. He is the author of a book on the subject, has written extensively on the issues, and has made numerous related presentations to various legal groups.

48. Mr. Minter is seeking an award of \$3,335 for 9.6 hours at an hourly rate of \$300 in 2002 and \$350 in 2003.

Mr. Minter's affidavit states that those rates are "common for similarly situated attorneys in San Francisco Bay area firms practicing LGBT civil rights law in federal and state court."

Mr. Minter acknowledged during the hearing that such rates are higher than those appropriate for the Tampa area.

49. Mr. Minter testified that the area of gender discrimination is rapidly evolving. Although the NCLR maintains an assortment of legal materials to assist in litigation efforts, the research requires continual updating as legal strategies are revised.

50. Some of the time identified by Mr. Minter appears duplicative of time also expended by Ms. Doering, specifically 4.8 hours identified as "review and study" or "review and edit" related to the previously-addressed motion to dismiss, and is not appropriately awarded.

51. An additional 3.3 hours were expended in conferencing with Ms. Doering. Conferencing time has been included within Ms. Doering's compensable hours. Duplicative billings are not

appropriately awarded and, therefore, have been excluded from the award to Mr. Minter.

52. Accounting for the exclusions and reductions set forth herein, Mr. Minter's expenditure of 9.6 hours is reduced to 1.5 hours reasonably expended in this matter.

53. Although Mr. Minter has substantial expertise and assistance, Ms. Doering was the lead counsel and attorney of record while the NCLR was involved in the dispute. Based on the hourly rate determined to be reasonable for Ms. Doering and with due regard to Mr. Minter's qualifications, an hourly rate of \$225 is reasonable as to Mr. Minter's work.

54. Based on the hours expended and the appropriate hourly rate, Mr. Minter is entitled to an award of \$337.50 in fees.

55. Ms. Doering was also assisted by Attorney Jody Marksamer, another salaried NCLR attorney, during the time Ms. Doering represented the Petitioner. Mr. Marksamer, a resident of Los Angeles, California, was a first-year lawyer at the time he worked on the case. As a salaried NCLR employee, Mr. Marksamer was not at risk for non-payment by the Petitioner.

56. Mr. Marksamer is seeking an award of \$5,000 for 25 hours at a rate of \$200.

57. Of the 25 hours, 4.3 hours is attributed to research related to the motion to dismiss and a pre-hearing stipulation. As set forth herein, Ms. Doering has been credited for the time

spent reviewing and updating a document prepared for the Fishbaugh case, and no additional compensation is reasonable.

58. The remainder of the time expended by Mr. Marksamer is identified as document drafting and editing, which appears to be duplicative of time billed by Ms. Doering and which has been included within the Doering award. No additional compensation is reasonable.

59. As to Mr. Marksamer's hourly rate, Ms. Kyres testified that a reasonable hourly rate in the Tampa area for Mr. Marksamer would be \$175. In the Respondent's Proposed Recommended Order, the Respondent identifies an hourly rate of \$175 to Mr. Marksamer, a rate which is adopted for purposes of this Order as reasonable, based upon the testimony of Ms. Kyres.

60. Based on the foregoing, Mr. Marksamer is not entitled to an award of attorney's fees in this case.

61. Beginning on June 24, 2005, the Petitioner retained attorney Craig Berman who represented the Petitioner in DOAH Case No. 05-1906.

62. Mr. Berman graduated from the University of South Carolina School of Law in 1992. He became a member of the Florida Bar in 1995. Although not board-certified, his practice since graduating from law school has focused exclusively in labor and employment law.

63. Mr. Berman claims 82.2 hours of work on the Petitioner's case at an hourly rate of \$300 and seeks a fee award of \$24,660 and costs of \$647.76.

64. The Petitioner paid Mr. Berman a non-refundable retainer of \$800. The Petitioner and Mr. Berman entered a contract in which the Petitioner agreed to pay Berman 40 percent of any judgment obtained or attorney's fees as awarded, whichever was greater. The agreement provided that Mr. Berman could elect to receive an attorney's fee award in lieu of the contingent amount.

65. Mr. Berman's Notice of Appearance in this case was filed on June 24, 2005. At the time Mr. Berman agreed to represent the Petitioner, the legal issue of whether the Petitioner had grounds as a transgendered person to pursue her complaint against the Respondent through the FCHR had been addressed by the FCHR. Mr. Berman's task was to establish that the Petitioner had been terminated and that such termination was on the basis of sex stereotyping.

66. The evidentiary hearing was completed in a few hours. Mr. Berman presented the testimony of the Petitioner and one additional witness and offered no documentary evidence into the record of the hearing.

67. Mr. Berman's records are accepted as an accurate reflection of the time expended in representing the Petitioner

during the period subsequent to June 23, 2005. The time expenditure is reasonable, save for 3.25 hours attributed to "Preparation of Fee Petition," which are not compensable.

68. Additionally, 2.5 hours are attributed to preparing the pretrial stipulation prior to the hearing on the remedy and acquiring the expert who testified regarding the fees. Because the hearing included issues related to back pay and attorney's fees, the 2.5 hours are discounted by 50 percent to 1.25 compensable hours. Accounting for the deductions, a total of 77.7 hours is determined to be a reasonable expenditure of time.

69. Ms. Kyres testified that an hourly rate of \$300 was reasonable and consistent with the prevailing local market rate. There is no credible evidence that any court has awarded attorney's fees based on a \$300 hourly rate in the Tampa area in any similar proceeding. Ms. Kyres herself, a board-certified employment law attorney, has not received such an award. Recent fee awards in similar cases range upwards of \$245 per hour.

70. Obtaining legal representation was difficult for the Petitioner because the case was perceived to be a "loser." Ms. Doering undertook the representation herself after failing in her attempts to obtain counsel for the Petitioner. Mr. Berman agreed to take the case after another attorney, who initially agreed to represent the Petitioner, decided otherwise. Although one of the legal issues (whether the Petitioner had any

legal rights under Florida Civil Rights Laws) had been resolved during Ms. Doering's representation, Mr. Berman was responsible for establishing the record which formed the basis for the FCHR determination that the Petitioner was entitled to prevail on the issue of sex stereotyping. Based on the foregoing, an hourly rate of \$225 is reasonable.

71. Based on the hours expended and the appropriate hourly rate, Mr. Berman is entitled to an award of \$17,482.50 in fees.

72. Mr. Berman's costs of \$647.76 include costs related to discovery depositions and certain transcripts, in addition to \$9.76 in overnight shipping costs. The evidence fails to establish that the overnight shipping was necessary, and the \$9.76 is excluded. The remaining costs are regarded as appropriate expenses related to discovery and for hearing transcriptions, and costs are accordingly awarded in the amount of \$638.

CONCLUSIONS OF LAW

73. Pursuant to the FCHR Final Order dated February 6, 2006, the DOAH has jurisdiction over the parties to and the subject matter of the proceeding.

74. The Petitioner bears the burden of establishing by a preponderance of the evidence the damages to be awarded in this case. Department of Transportation v. J.W.C. Company, 396

So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

75. The burden includes establishing that the Petitioner attempted to mitigate the damages by exercising reasonable diligence in seeking suitable employment after the improper discharge, and in maintaining the employment once it was secured. Richardson v. Tricom Pictures & Prods., 334 F. Supp. 2d 1303, 1311 (S.D. Fla. 2004), citing Brady v. Thurston Motor Lines, Inc., 753 F.2d 1269, 1277 (4th Cir. 1985).

76. A Title VII plaintiff is required to mitigate damages by accepting a substantially equivalent employment if available and then make a reasonable and good faith effort to maintain the employment once it is obtained. A litigant who fails to do so has removed herself from the job market and forfeited the right to back pay. Ford Motor Co. v. EEOC, 458 U.S. 219 (U.S. 1982); Edwards v. School Bd., 658 F.2d 951 (4th Cir 1981).

77. On August 1, 2003, the Petitioner was terminated from employment with One Source after a series of performance-related disciplinary actions. The Petitioner is not entitled to back pay after the date upon which the Petitioner was involuntarily terminated from the subsequent employment based on poor job performance, because the Petitioner failed to make a reasonable attempt to maintain the employment with One Source.

78. The Petitioner is entitled to an award of back pay from the date of termination by the Respondent through the date of termination by One Source, in the amount of \$6,160.

79. Back pay for 2002 is \$5,103 as identified in the Findings of Fact.

80. Back pay for 2003 is projected to reflect the 31-week period from January 1, 2003, through the One Source termination date of August 1, 2003.

81. The Petitioner's projected 2003 earnings through the 31-week period are \$21,080, based on an hourly wage of \$17.00 for 40-hour work week (\$680) multiplied by 31 weeks (\$21,080). According to the Petitioner's W-2 form for tax year 2003, the Petitioner earned wages of \$20,023, a difference of \$1,057.

82. The sum of \$5,103 and \$1,057 is \$6,160, the total back pay to which the Petitioner is entitled.

83. The evidence is insufficient to identify the value of any lost employment benefits, and no award related to benefits has been calculated.

84. As to the issue of attorney's fees, the Petitioner bears the burden to establish by a preponderance of the evidence the amount of reasonable attorney's fees to be awarded.

Department of Transportation v. J.W.C. Company, 396 So. 2d 778 (Fla. 1st DCA 1981); Balino v. Department of Health and Rehabilitative Services, 348 So. 2d 349 (Fla. 1st DCA 1977).

85. In Florida Patient's Compensation Fund v. Rowe, 472 So. 2d 1145, 1150 (Fla. 1985), the Florida Supreme Court adopted the federal lodestar approach to determining reasonable attorney's fees. The lodestar figure is the reasonable number of hours expended on the litigation multiplied by a reasonable hourly rate.

86. As set forth in the Findings of Fact, billing records of the NCLR attorneys reflect time spent in internal conferences about the case. Duplicative time charged by multiple attorneys working on the case is not compensable. N. Dade Church of God, Inc. v. JM Statewide, Inc., 851 So. 2d 194, 196 (Fla. 3rd DCA 2003). Conferencing time reported by Ms. Doering has been included within the fee award made to Ms. Doering and has been otherwise excluded from further compensation. Duplicative research and editing time billings have also been excluded from compensation.

87. Certain factors must be considered in order to determine the reasonableness of the fee award. Rowe, 472 So. 2d at 1150. Such factors include the following:

- (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
- (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.

- (3) The fee customarily charged in the locality for similar legal services.
- (4) The amount involved and the results obtained.
- (5) The time limitations imposed by the client or by the circumstances.
- (6) The nature and length of the professional relationship with the client.
- (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
- (8) Whether the fee is fixed or contingent.

88. Consideration of such factors has been specifically set forth in the Findings of Fact and has formed the basis for the determination of the reasonableness of the fee award.

RECOMMENDATION

Based on the foregoing, it is hereby RECOMMENDED that the Petitioner receive an award of back pay in the amount of \$6,160, plus pre-judgment interest.

It is further RECOMMENDED that Karen Doering receive \$11,025 in fees, Shannon Minter receive \$337.50 in fees, and Craig Berman receive \$17,482.50 in fees and \$638.00 for costs.

DONE AND ENTERED this 5th day of June, 2007, in
Tallahassee, Leon County, Florida.

S

WILLIAM F. QUATTLEBAUM
Administrative Law Judge
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Filed with the Clerk of the
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this 5th day of June, 2007.

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.