

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

KATHLEEN L. LYONS, et al., )  
 )  
 Plaintiffs )  
 )  
 v. ) Civil No. 95-0194-B  
 )  
 JESSE BROWN, et al., )  
 )  
 Defendants )

**MEMORANDUM OF DECISION ON PLAINTIFFS'  
MOTION TO ALTER OR AMEND JUDGMENT,  
AND MOTION FOR ATTORNEY'S FEES<sup>1</sup>**

Judgment having entered in her favor on her claims against Defendant Jesse Brown on May 4, 2000, Plaintiff now moves to alter or amend the judgment to provide for an award of interest and costs, and attorney's fees with interest, all pursuant to 42 U.S.C. § 2000e-16. The Motion to Alter or Amend Judgment [Docket No. 206] is hereby DENIED in part and GRANTED in part, Motion for Attorney's Fee [Docket No. 208] is GRANTED IN PART.

***1. Motion to Alter or Amend Judgment.***

Plaintiff's Motion to Alter or Amend Judgment requests that an award of "interest and costs" be added to the Judgment entered on May 4, 2000. Plaintiff is unclear in her Motion about whether she seeks prejudgment or post-judgment interest, or both.

The decision whether to award prejudgment interest is within the Court's discretion. *Criado v. IBM Corp.*, 145 F.3d 437, 446 (1<sup>st</sup> Cir. 1997) (citing *Hogan v. Bangor & Aroostook R. Co.*, 61 F.3d 1034, 1038 (1<sup>st</sup> Cir. 1995)). I decline, in this case, to award Plaintiff prejudgment

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<sup>1</sup> Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

interest. I am satisfied that Plaintiff has been made whole by the judgment already entered. The Motion to Alter or Amend Judgment with respect to prejudgment interest is DENIED.

The Motion is GRANTED to the extent Plaintiff seeks an award of post-judgment interest and costs. The judgment shall be AMENDED accordingly.

**2. Motion for Attorney's Fee.**

Plaintiff's Motion for Attorney's Fee is also GRANTED IN PART. Plaintiff's request for attorney's fee, and an expert witness fee, is made pursuant to 42 U.S.C. § 2000e-5(k), which permits compensation for these fees "as part of the costs." Again, the questions whether to award fees, and in what amount, are within the Court's "broad" discretion. *Nelson v. University of Maine Sys.*, 944 F. Supp. 44, 48 (1996) (quoting *Phetosomphone v. Allison Reed Group, Inc.*, 984 F.2d 4, 6 (1<sup>st</sup> Cir. 1993) (other citation omitted)). The fee award must be supported by a clear explanation for the award, but need not be explained hour by hour. *Id.* (citations omitted). The method for computing fees involves multiplying the number of hours "productively expended by counsel," by a reasonable hourly fee. *Id.* (citation omitted). Both of these determinations are made with the input of both parties, and the Court's own experience with the local legal market and the needs of the particular case.

Plaintiff requests expert witness expenses in the amount of \$4,060. Plaintiff has presented no details upon which I can determine whether the witness expenses are reasonable. Indeed, there is no description of the witness with whom they were incurred. To the extent the Motion for Attorney's Fee seeks \$4,060 in reimbursement for expert expenses, the Motion is DENIED.

Plaintiff has supported her attorney's fee request with the affidavit of counsel setting forth the total number of hours spent on the matter through April, 1998.<sup>2</sup> Attached to that affidavit are the contemporaneous time records generated by counsel during the pendency of this case. I have carefully reviewed those records, and I am satisfied that the time spent by counsel on the various tasks is reasonable, and appropriate in light of the history of this case. The time records include, however, time spent in prosecution of Plaintiff's claims against Defendant Beaupre, who was granted judgment as a matter of law on January 7, 1997, and Defendant Pathak, who received a verdict in his favor on Plaintiff's claims on May 4, 2000.

Defendant argues that Plaintiff has not met her burden on the issue of fees because the time records are insufficiently detailed to determine the time spent on her case against the Government. I disagree. The amount of detail presented in these records is typical in this Court, and the Court has been capable in the past of making an appropriate allocation for purposes of the fee award. *See Nelson*, 944 F. Supp. at 49 (reducing the fee award "to more accurately reflect a realistic apportionment between [the two defendants'] cases"). Nor do I believe such records could ever separate entirely the time spent in pursuit of claims against two or more defendants that are based on the same operative facts.

Plaintiff also requests an award that reflects the delay in payment, either by an award of interest on the fees, or by awarding counsel payment at his current hourly rate. In this case, counsel's hourly rate as of the last date included in the time records was \$150, which I find reasonable in light of counsel's experience and abilities, and my familiarity with the market rate for attorneys of similar experience and ability. I agree that this is an appropriate case for an

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<sup>2</sup> Plaintiff's only successful claims were completed by the time Plaintiff first sought an award of fees. Her pending Motion refers to that earlier submission in its entirety.

adjustment, and elect to make that adjustment by calculating the fee award on the basis of counsel's hourly rate as of July, 1997.<sup>3</sup>

Plaintiff's counsel's affidavit summarizes the hours reflected in the time records. Counsel has also presented an adjustment summary for which he seeks compensation. Calculating lead counsel's hours at \$150, and an associate's hours at \$75, her rate as of the last recorded time spent on this matter in November, 1995, the total fees reflected in the billing records are \$116,482.50, and the total as adjusted by counsel is \$106,807.50. I have carefully reviewed the actual time records in an attempt to redact time appropriately allocated to Plaintiff's unsuccessful claims against Defendants Beaupre and Pathak, and have arrived at a figure, calculated at those same rates, of \$83,677.50.

Plaintiff seeks an adjustment to the fee award on the basis of the quality of representation. As Plaintiff notes, the Supreme Court has indicated that such an adjustment might be appropriate where "the quality of service rendered was superior to that one reasonably should expect in light of the hourly rates charged" and the degree of success. *Blum v. Stenson*, 465 U.S. 886, 899 (1984) (citation omitted). Under *Blum*, however, the question of adjustment need not be addressed unless the "basic standard of reasonable rates multiplied by reasonably expended hours results in a fee that is either unreasonably low or unreasonably high." *Id.* at 897. I am satisfied that this fee award is neither. Further, while the quality of service rendered by counsel in this case is indisputable, to the extent counsel's fees in 1995 failed to reflect his experience and ability, that deficiency has been corrected by recalculating the fee using 1997 rates. *See, id.*

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<sup>3</sup> I decline to award interest because much of the delay since the verdict against the Government in 1997 was necessitated by Plaintiff's pursuit of her claims against Defendant Pathak, which proved to be unsuccessful.

(noting that the "quality of representation" . . . generally is reflected in the reasonable hourly rate"). I decline to enhance the fee award on this basis.

Plaintiff also seeks reimbursement for costs incurred during this litigation. The request for costs shall be made to the Clerk of Court pursuant to Federal Rule of Civil Procedure 54(b).

***Conclusion***

For the foregoing reasons, is it hereby ORDERED AS FOLLOWS:

1. The Judgment entered in this matter on May 4, 2000 shall be AMENDED to reflect that Plaintiff is entitled to post-judgment interest and costs.
2. Plaintiff's request for prejudgment interest is DENIED.
3. Plaintiff's request for expert witness expenses in the amount of \$4,060 is hereby DENIED.
4. Plaintiff's request for attorney's fees is GRANTED in the amount of \$83,677.50.
5. Plaintiff shall present her request for costs to the Clerk of Court pursuant to Federal Rule of Civil Procedure 54(b).

***SO ORDERED.***

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Margaret J. Kravchuk  
United States Magistrate Judge

Dated: July 26, 2000

CLOSED STNDRD

U.S. District Court  
District of Maine (Bangor)

CIVIL DOCKET FOR CASE #: 95-CV-194

LYONS, et al v. VETERANS AFFAIRS SEC, et al Filed: 08/30/95  
Assigned to: MAG. JUDGE MARGARET J. KRAVCHUK ury demand: Plaintiff  
Demand: \$400,000 Nature of Suit: 442  
Lead Docket: None Jurisdiction: US Defendant  
Dkt# in other court: None

Cause: 42:2003 Job Discrimination

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Docket as of August 4, 2000 8:49 am

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Proceedings include all events.

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