

SHERRY DYER, CHAIR
IDAHO PERSONNEL COMMISSION
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IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

)	
)	
DAVID WIKSE,)	
)	
Appellant-Respondent,)	
)	IPC NO. 96-12
)	
vs.)	
)	DECISION AND ORDER ON
IDAHO DEPARTMENT OF)	REQUEST FOR ATTORNEY
HEALTH AND WELFARE,)	FEES AND COSTS
)	
)	
Respondent-Petitioner.)	
_____)	

THIS MATTER comes before the Commission on Respondent David Wikse's (Wikse) Request for Attorney Fees and Costs. The Commission entered its decision on the Department of Health and Welfare's (DHW) petition for review in favor of David Wikse on April 28 1998. Respondent Wikse was represented by Jim Jones, Esq.. Petitioner DHW was represented by Jeanne T. Goodenough, Deputy Attorney General.

Having reviewed Wikse's request, supporting affidavit, and the record, the Commission **HEREBY ORDERS AS FOLLOWS:**

1. In the Commission's decision on the petition for review, entered on April 28, 1998, the Commission affirmed the hearing officer's decision in favor of respondent Wikse, including the hearing

officer's finding that DHW acted without a reasonable basis in fact or law and the resulting award of reasonable attorney fees and costs. (Commission's Decision and Order, p. 19).

2. Accordingly, Wikse is entitled to an award of reasonable attorney fees and costs in the proceedings before the Commission on DHW's petition for review.

3. Within ten (10) days of the Commission's decision, Wikse filed a request for an award of fees and costs together with a supporting verified memorandum. *See* IDAPA 28.01.01.202.08.

4. DHW filed a written objection to Wikse's request, disputing any entitlement to fees and costs, and objecting to Wikse's request that the base amount of the fees be doubled. DHW did not object to the base amount of the fees or costs claimed.

5. IPC Rule 202.08 (IDAPA 28.01.01.202.08) directs the Commission, in awarding reasonable fees and costs, to take into account factors set forth in IPC Rule 201.11 (IDAPA 28.01.01.201.11). To this end, the Commission finds:

a. Time and Labor Required: The Commission finds that the time and labor spent representing Wikse was reasonable and not excessive. Wikse's counsel had to respond to a lengthy petition for review and accompanying memorandum, both of which raised numerous issues and arguments before the Commission. The time and labor spent by Wikse's counsel in preparing for the oral argument and defending against DHW's petition for review was reasonable.

b. Experience and Ability of the Attorney: Wikse's attorney has practiced law in the state of Idaho for over thirty (30) years. His abilities were amply demonstrated by successfully representing his client before the hearing officer and the Commission.

c. Prevailing Charges for Like Work: The hearing officer found that a fee of \$150.00 per hour exceeds the rates previously approved in appeals to the Commission, but was not unreasonable under the circumstances of this case which involved difficult factual matters occurring

over an extended period of time. (Hearing Officer's Order Awarding Attorney Fees and Expenses, pp. 2-3). We find likewise.

d. Amount Involved and Results Obtained: Wikse claims \$5475.00 in base fees. Wikse was successful in obtaining complete relief at both stages of the Personnel Commission process.

e. Awards in Similar Cases: Based upon the amount awarded before the hearing officer, the reasonable rate of \$150.00 per hour, the Commission finds that the total amount of the base fees is reasonable. The Commission declines to apply a multiplier of two (2) to the base fees. There is no statutory or historical support for applying a multiplier to the base fees.

6. Wikse claims total costs in the amount of \$291.00. We find this amount (along with the items charged) reasonable except with respect to the charge for photocopying. The Commission has usually determined that a reasonable fee for photocopying is ten cents (\$.10) per copy. Wikse has not provided any evidence to support a charge of \$3.00 per page. The total adjusted cost award, which we find reasonable, is \$231.00, which includes \$219.00 for the transcript of Russ Liddell's testimony and copying of 120 pages at ten cents per page for a total of \$12.00.

IT IS HEREBY ORDERED that Wikse is awarded attorney fees in the amount of \$5475.00 and costs in the amount of \$231.00 for a total award of \$5,906.00.

STATEMENT OF APPEAL RIGHTS

Either party may appeal this decision to the District Court. A notice of appeal must be filed in the District Court within forty-two (42) days of the filing of this decision. Idaho Code § 67-5317(3). The District Court has the power to affirm, or set aside and remand the matter to the Commission upon the following grounds, and shall not set the same aside on any other grounds:

- (1) That the findings of fact are not based on any substantial, competent evidence;

(2) That the commission has acted without jurisdiction or in excess of its powers;

(3) That the findings of fact by the commission do not as a matter of law support the decision. Idaho Code § 67-5318.

DATED this 17th day of June, 1998.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Sherry Dyer, Chair

/s/ _____
Peter Boyd

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

Dale Tankersley

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON REQUEST FOR FEES AND COSTS in Wikse v. Idaho Dep't of Health and Welfare, IPC No. 96-12, was delivered to the following parties by the method stated below on the 17th day of June, 1998.

FIRST CLASS MAIL

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STATEHOUSE MAIL

Jeanne Goodenough
Deputy Attorney General
Chief - Legal Division
Department of Health and Welfare
Statehouse Mail

/s/ _____
Val E. Rodriguez