

MIKE BRASSEY, CHAIR
IDAHO PERSONNEL COMMISSION
P. O. Box 83720
Boise, Idaho 83720-0066
Phone: (208) 334-3345

IDAHO PERSONNEL COMMISSION

STATE OF IDAHO

DEPARTMENT OF CORRECTION,)	
)	
Petitioner/Respondent,)	IPC NO. 95-21
)	
vs.)	DECISION AND ORDER ON
)	REQUEST FOR ATTORNEY
LARRY MORRISS,)	FEES AND COSTS
)	
Respondent/Appellant.)	
_____)	

THIS MATTER comes before the Commission on Respondent Larry Morriss' (Morriss) Motion for Award of Attorney Fees and Costs. The Commission entered its decision on the Department of Correction's (DOC) petition for review in favor of Morriss on August 9, 1999. Brian Benjamin, Esq. Represented Respondent Morriss. Ronald Christian, Deputy Attorney General, represented Petitioner DOC.

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

1. In the Commission's decision on the petition for review, entered August 9, 1999, the Commission affirmed the hearing officer's decision in favor of respondent Morriss, including the hearing officer's finding that DOC acted without a reasonable basis in fact or law and the award of reasonable attorney fees and costs. (Commission's Decision and Order, p. 14).

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

3. Within ten (10) days of the Commission's decision, Morriss filed a Motion for an Award of Attorney Fees and Costs together with a supporting Affidavit. *See* IDAPA 15.04.01.202.08.

4. DOC filed a written objection to Morriss' request, disputing any entitlement to fees and costs. DOC did not object to the amount of fees and costs sought by Morriss.

5. IPC Rule 202.08 (IDAPA 15.04.01.202.08) directs the Commission, in awarding reasonable fees and costs, to take into account factors set forth in IPC Rule 201.11 (IDAPA 15.04.01.201.11). To this end, the Commission finds:

a. Time and Labor Required: The Commission finds that the time and labor spent representing Morriss was reasonable and not excessive. Morriss' counsel had to respond to a lengthy memorandum, and review an extensive record. A significant amount of time was required to prepare Morriss' response to the Department's Petition for Review, read the transcripts from both the first hearing and the hearing on remand, and attend the oral argument in Boise before the Commission.

b. Experience and Ability of the Attorney: Morriss' attorney has practiced law in the state of Idaho for three (3) 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 eighty dollars per hours (\$80.00) per hour was reasonable under the circumstances of this case (Hearing Officer's Order Awarding Attorney Fees and Expenses). We find likewise.

d. Amount Involved and Results Obtained: Morriss claims two thousand two hundred thirty-two dollars (\$2,232.00). Morriss 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, and the determination that the rate of eighty dollars (\$80.00) per hour is reasonable for Mr. Benjamin's services, the Commission finds that the total amount of the requested fees is reasonable and consistent with previous awards made by this Commission.

6. Morriss claims total costs in the amount of three hundred eighty-three dollars and twenty-three cents (\$383.23). We find this amount (along with the items charged) reasonable.

IT IS HEREBY ORDERED that Morriss is awarded attorney fees in the amount of two thousand three hundred twenty-eight dollars (\$2,328.00) and costs in the amount of three hundred eighty-three dollars and twenty-three cents (\$383.23) for a total award of two thousand seven hundred eleven dollars and twenty-three cents (\$2,711.23).

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 24th day of September, 1999.

BY ORDER OF THE
IDAHO PERSONNEL COMMISSION

/s/ _____
Mike Brassey, Chair

/s/ _____
Clarisse Maxwell

/s/ _____
Ken Wieneke

/s/ _____
Don Miller

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the DECISION AND ORDER ON REQUEST FOR ATTORNEY FEES AND COSTS in *Morriss v. Dep't of Correction*, IPC No. 95-21, was delivered to the following parties by the method stated below on the 24th day of September, 1999.

FIRST CLASS MAIL

Brian B. Benjamin
Randall, Blake And Cox, P.A.
P.O. Box 446
Lewiston, ID 83501

STATEHOUSE MAIL

Ronald D. Christian
Deputy Attorney General
Department of Correction
Statehouse Mail

/s/ _____
Val E. Rodriguez