

MIKE BRASSEY, CHAIR  
IDAHO PERSONNEL COMMISSION  
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**IDAHO PERSONNEL COMMISSION**

**STATE OF IDAHO**

KIM LAFFERTY,	)	
	)	
Appellant,	)	IPC No. 98-08
	)	
vs.	)	<b>DECISION AND ORDER</b>
	)	<b>ON REQUEST FOR</b>
IDAHO DEPARTMENT OF	)	<b>ATTORNEY FEES</b>
HEALTH AND WELFARE,	)	
	)	
Respondent.	)	
_____	)	

THIS MATTER comes before the Commission on Appellant Kim Lafferty's (Lafferty) Request for Attorney Fees. The Commission entered its decision on the Idaho Department of Health and Welfare's (DHW) petition for review in favor of Lafferty on December 28, 1999. Jim Jones, Esq. represented Appellant Lafferty. Mary Jo Beig, Deputy Attorney General, represented Respondent DHW.

Having reviewed Lafferty'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 December 28, 1999, the Commission affirmed the hearing officer's decision in favor of Appellant Lafferty, 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. (Decision and Order on Petition for Review, p. 12.)

2. Accordingly, Lafferty 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, Lafferty filed a Motion for an Award of Attorney Fees and Costs together with a supporting Affidavit. *See* IDAPA 15.04.01.202.08.

4. DHW did not file a written objection to Lafferty's request.

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 Lafferty was reasonable and not excessive. Lafferty's counsel had to respond to a lengthy memorandum, and review an extensive record. A significant amount of time was required to prepare Lafferty's response to the Department's Petition for Review, read the transcripts from the hearing, and prepare for and attend the oral argument before the Commission.

b. Experience and Ability of the Attorney: Lafferty's attorney has practiced law in the State of Idaho for thirty-two (32) 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 made no specific finding as to hourly rates but, noting that no objection had been filed by DHW, awarded fees in the amount of thirteen thousand one hundred twenty-five dollars (\$13,125.00). This fee had been requested based on an hourly rate of one hundred fifty dollars (\$150.00). Implicit in the award is a finding that one hundred fifty dollars (\$150.00) an hour is reasonable for an attorney

with the amount of experience that Mr. Jones holds. (Hearing Officer's Order Awarding Attorney Fees and Costs.) We find likewise. In a 1998 case involving the same attorney who is now representing Lafferty, this Commission held that while one hundred fifty dollars (\$150.00) per hour exceeded the rates previously approved in appeals to the Commission, it was reasonable in light of the complexity of that case. *Wikse v. Dep't of Health and Welfare*, IPC No. 96-12 (Decision and Order on Request for Attorney Fees, June 17, 1998). This Commission has never awarded an hourly rate in excess of one hundred fifty dollars (\$150.00) and has only rarely awarded hourly rates equal to that amount. In the Affidavit of Jim Jones in Support of Kim Lafferty's Request for Attorney Fees, Lafferty's attorney indicates "prior to July 29, I increased my normal hourly billing rate from one hundred fifty dollars (\$150.00) per hour to one hundred sixty-five dollars (\$165.00) per hour." This rate increase was after the proceedings before the hearing officer and prior to the proceedings before this Commission. Accordingly, the hearing officer made no findings as to whether or not one hundred sixty-five dollars (\$165.00) per hour is a reasonable rate. Given the complexity of this case and the experience of the attorney involved, the Commission holds that one hundred fifty dollars (\$150.00) remains a reasonable rate, and finds that the rate of one hundred sixty-five dollars (\$165.00) is not reasonable.

d. Amount Involved and Results Obtained: Lafferty claims five thousand five hundred sixty-eight dollars and seventy-five cents (\$5,568.75). This figure results from multiplying 33.75 hours at one hundred sixty-five dollars (\$165.00) per hour. Lafferty 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 one hundred fifty dollars (\$150.00) per hour is reasonable for Mr. Jones' services, the Commission finds that the total amount of time

billed by Mr. Jones multiplied by said rate is reasonable and consistent with previous awards made by this Commission. Lafferty's attorney listed 33.75 hours in the service of his client before this Commission. The rate of one hundred fifty dollars (\$150.00) per hour multiplied by 33.75 hours equals five thousand sixty-two dollars and fifty cents (\$5,062.50).

6. Lafferty does not claim any costs.

IT IS HEREBY ORDERED that Lafferty is awarded attorney fees in the amount of five thousand sixty-two dollars and fifty cents (\$5,062.50).

### **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 6th day of June, 2000.

BY ORDER OF THE  
IDAHO PERSONNEL COMMISSION

/s/ \_\_\_\_\_  
Mike Brassey, Chair

/s/ \_\_\_\_\_  
Clarisse Maxwell

/s/ \_\_\_\_\_  
Ken Wieneke

/s/ \_\_\_\_\_  
Don Miller

/s/ \_\_\_\_\_  
Pete Black

**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 *Lafferty v. Dep't of Health and Welfare*, IPC No. 98-08, was delivered to the following parties by the method stated below on the 6<sup>th</sup> day of June, 2000.

**FIRST CLASS MAIL**

Jim Jones  
Jim Jones & Associates  
1275 Shoreline Lane  
Boise, ID 83702-6870

**STATEHOUSE MAIL**

Mary Jo Beig  
Deputy Attorney General  
Idaho Department of Health and Welfare  
Statehouse Mail

/s/ \_\_\_\_\_  
Val E. Rodriguez