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**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D. C. 20548**

**FILE:** B-203716

**DATE:** May 25, 1982

**MATTER OF:** Julian C. Patterson -- Claim for attorney fees

- DIGEST:**
1. Employee, who was named as an alleged discriminating official in discrimination complaint, claims reimbursement of attorney fees incurred during investigation of complaint. Claim is denied since, in the absence of express statutory authority, attorney fees are not reimbursable. Neither regulations regarding alleged discriminating officials nor Civil Rights Act or its implementing regulations provide authority for reimbursement of attorney fees in this situation.
  2. Employee, who was issued letter of reprimand for discrimination against subordinate employee, filed grievance under agency grievance procedures and claims attorney fees incident to favorable grievance decision. Claim is denied since, in the absence of express statutory authority, attorney fees are not reimbursable. Grievance was not before Merit Systems Protection Board, which has authority to award attorney fees, and grievance did not involve reduction in pay or allowances which is necessary to bring it within scope of Back Pay Act, as amended.

**ISSUE**

The issues in this decision are whether an employee may be reimbursed for two separate claims for attorney fees incurred incident to his being named as an alleged

discriminating official in a discrimination complaint. We hold that there is no authority for the reimbursement of attorney fees incurred by an alleged discriminating official during the investigation and processing of a discrimination complaint. We also find no authority to reimburse the employee for attorney fees incurred during grievance proceedings he initiated in order to rescind a letter of reprimand he received as a result of the discrimination complaint.

#### BACKGROUND

This decision is in response to a request from Mr. Conrad R. Hoffman, Controller, Veterans Administration (VA), concerning the claim of Mr. Julian C. Patterson, a VA employee, for reimbursement of attorney fees.

In January 1979, Mr. Patterson was named as an alleged discriminating official in a discrimination complaint filed by Mrs. Toni H. Solomon. Following an investigation into Mrs. Solomon's complaint, a letter of reprimand was issued to Mr. Patterson on June 27, 1980, for discriminating against Mrs. Solomon on the basis of sex. Mr. Patterson filed a grievance under the agency grievance procedures, and the grievance examiner concluded that the letter of reprimand was not justified in view of guidance contained in Federal Personnel Manual (FPM) Letter 713-42, March 13, 1978, concerning the participation of alleged discriminating officials in discrimination proceedings. The grievance examiner found that, contrary to the guidance in FPM Letter 713-42, Mr. Patterson was not given the opportunity to respond to various statements, charges, and innuendos raised in an investigation which went beyond the original complaint.

The agency accepted the grievance examiner's recommendation and rescinded the letter of reprimand. The agency, after further consideration, also concluded that there was insufficient evidence of discrimination against Mrs. Solomon on the basis of sex or national origin.

Mr. Patterson has claimed reimbursement of attorney fees in the amount of \$470 for hiring an attorney to review the discrimination file and investigative report, and \$500 for hiring an attorney incident to the grievance proceedings. The VA denied Mr. Patterson's claims, but the agency has forwarded the claims to our Office for our determination.

#### DISCUSSION

Our Office has held that the hiring of an attorney is a matter between the attorney and the client and that, absent express statutory authority, reimbursement of attorney fees may not be allowed. See Norman E. Guidaboni, 57 Comp. Gen. 444 (1978); and Manzano and Marston, 55 Comp. Gen. 1418 (1976).

With respect to discrimination complaints, the Equal Employment Opportunity Commission has issued regulations implementing the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-16 (1976), to allow for the payment of attorney fees by administrative agencies in settlement of discrimination complaints. 29 C.F.R. § 1613.271(c) (1981). However, these regulations limit the award of attorney fees to employees or applicants for employment who prevail on their discrimination complaints. We find no indication that this authority extends to persons who are named in discrimination complaints as alleged discriminating officials.

As noted in the grievance examiner's report, agencies are instructed to follow certain procedures during the investigation of a discrimination complaint with respect to alleged discriminating officials. See FPM Letter 713-42. Generally, the alleged discriminating officials should be interviewed and advised of any allegations of discrimination, be allowed the opportunity to respond to charges or allegations, be allowed to have a representative present when giving testimony, and be given a copy of the agency's final decision on the complaint. However, there is nothing in the guidance contained in FPM Letter 713-42 which authorizes the hiring or reimbursement of fees charged by a private attorney who is representing an alleged discriminating official.

With respect to the grievance filed by Mr. Patterson, we know of no authority under which employees may be reimbursed for the fees of a private attorney in connection with filing a grievance. See 52 Comp. Gen. 859 (1973).

The only other authority for the payment of attorney fees is contained in the Civil Service Reform Act of 1978, Pub. L. No. 95-454, 92 Stat. 1111, October 13, 1978, which provides authority for the payment of attorney fees on (1) matters before the Merit Systems Protection Board, and (2) matters arising under the Back Pay Act.

Under the authority of 5 U.S.C. § 7701(g)(1) (Supp. III 1979), the Merit Systems Protection Board may award reasonable attorney fees under certain conditions to employees who prevail on appeals before the Board. Since Mr. Patterson's grievance was handled under agency grievance procedures and was not before the Merit Systems Protection Board, his attorney fees cannot be paid under this authority.

The Civil Service Reform Act amended the Back Pay Act, 5 U.S.C. § 5596, to provide for the payment of "reasonable attorney fees" related to an unjustified or unwarranted personnel action. 5 U.S.C. § 5596(b)(1)(A)(ii) (Supp. III 1979). However, the Back Pay Act refers to an unjustified or unwarranted personnel action "which has resulted in the withdrawal or reduction of all or part of the pay, allowances, or differentials of the employee." 5 U.S.C. § 5596(b)(1). The final regulations implementing the Back Pay Act also limit the payment of attorney fees to cases that led to the correction of personnel actions that resulted in withdrawal, reduction, or denial of all or part of the employee's pay, allowances, or differentials. See 46 Fed. Reg. 58271, 58276, December 1, 1981 (to appear in 5 C.F.R. Part 550, Subpart H).

Since the letter of reprimand which was the subject of Mr. Patterson's grievance did not involve any withdrawal, reduction, or denial of pay or allowances, his

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grievance was not subject to the Back Pay Act, and his claim for attorney fees would not be allowable under that authority.

Accordingly, we conclude that there is no authority for the payment of Mr. Paterson's attorney fees.

*for* Milton J. Auer  
Comptroller General  
of the United States