



In the Matter of:

**KIRTLEY CLEM and
MATTHEW SPENCER,**

COMPLAINANTS,

v.

**COMPUTER SCIENCES
CORPORATION,**

RESPONDENT.

ARB CASE NO. 2020-0025

**ALJ CASE NO. 2015-ERA-00003
2015-ERA-00004**

DATE: June 11, 2021

Appearances:

For the Complainants:

**Stephani L. Ayers, Esq.; *Law Offices of S.L. Ayers*; Medford, Oregon;
Nikolas F. Peterson, Esq.; *Hanford Challenge*; Seattle, Washington**

For the Respondent:

**Rachel Linzy, Esq. and Joseph R. Ward, III, Esq.; *The Kullman Firm*;
Birmingham, Alabama**

**Before: James D. McGinley, *Chief Administrative Appeals Judge*; Thomas
H. Burrell and Randel K. Johnson, *Administrative Appeals Judges***

ORDER AWARDING ATTORNEYS' FEES

PER CURIAM. This case arises under the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. § 5851 (2005), as implemented by regulations codified at 29 C.F.R. Part 24 (2020). Kirtley Clem and Matthew Spencer (Complainants) filed complaints alleging that their former employer, Computer Sciences Corporation (CSC), violated the whistleblower protection provisions of the ERA.

Consolidating the appeals, the Administrative Law Judge (ALJ) found for Clem and Spencer and awarded damages.¹ CSC appealed the ALJ's decision, and the Administrative Review Board (Board) vacated and remanded with instructions for the ALJ.² On remand, the ALJ again found for Complainants and awarded damages.³ CSC appealed the ALJ's decision. On March 10, 2021, the Board affirmed the ALJ's decision.⁴

On April 9, 2021, counsel for Complainants submitted to the Board a Petition for Attorneys' Fees. The petition seeks \$112,120 in attorneys' fees for work before the Board.

DISCUSSION

If the Secretary of Labor determines that a respondent has violated the ERA, "the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued."⁵ The Board has jurisdiction to assess reasonably incurred attorneys' fees against the respondent upon petition of the complainant.⁶

¹ *Clem v. Comput. Scis. Corp.*, ALJ Nos. 2015-ERA-00003, -00004 (OALJ Sept. 12, 2016).

² *Clem v. Comput. Scis. Corp.*, ARB No. 2016-0096, ALJ Nos. 2015-ERA-00003, -00004 (ARB Sept. 17, 2019).

³ *Clem v. Comput. Scis. Corp.*, ALJ Nos. 2015-ERA-00003, -00004 (OALJ Jan. 9, 2020).

⁴ *Clem v. Comput. Scis. Corp.*, ARB No. 2020-0025, ALJ Nos. 2015-ERA-00003, -00004 (ARB Mar. 10, 2021).

⁵ 42 U.S.C. § 5851(b)(2)(B) (2005).

⁶ 29 C.F.R. § 24.110(d) (2021) ("At the request of the complainant, the ARB will assess against the respondent all costs and expenses (including attorney's fees) reasonably incurred.").

The Board uses the “lodestar method” to calculate attorneys’ fees.⁷ This requires multiplying the number of hours reasonably expended by a reasonable hourly rate.⁸ The attorney requesting fees bears the burden of proof that the claimed hours of compensation are adequately demonstrated and reasonably expended.⁹ The burden is also on the attorney to demonstrate the reasonableness of his hourly fee by showing that the requested rate is in line with fees prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.¹⁰ The “petition must include ‘adequate evidence concerning a reasonable hourly fee for the type of work the attorney performed and consistent [with] practice in the local geographic area,’ as well as records identifying the date, time, and duration necessary to accomplish each specific activity, and all claimed costs.”¹¹

Complainants’ attorneys request a total of \$112,120 in attorneys’ fees for work performed from September 23, 2016 through March 10, 2021. The fee request represents 304.8 hours of work performed by three attorneys at rates varying between \$275 and \$500 an hour.¹² CSC does not object to the attorneys’ hourly rates or the hours billed for work before the Board.¹³

⁷ *Tipton v. Indiana Michigan Power Co.*, ARB No. 2004-0147, ALJ No. 2002-ERA-00030, slip op. at 2 (ARB Dec. 18, 2008).

⁸ *Scott v. Roadway Express*, ARB No. 2001-0065, ALJ No. 1998-STA-00008, slip op. at 5 (ARB May 29, 2003).

⁹ *Cefalu v. Roadway Express, Inc.*, ARB Nos. 2004-0103, -0161; ALJ No. 2003-STA-00055, slip op. at 2 (ARB April 3, 2008).

¹⁰ *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 1999-0116, ALJ No. 1998-ERA-00019, slip op. at 11 (ARB Nov. 13, 2002).

¹¹ *Gutierrez v. Regents of the Univ. of Cal.*, ARB No. 1999-0116, ALJ No. 1998-ERA-00019, slip op. at 2 (ARB Feb. 6, 2004).

¹² Stephani Ayers claims 198.95 hours at \$400 an hour. Nikolas F. Peterson claims 90.6 hours at \$275 an hour. Thad Guyer claims 15.25 hours at \$500 an hour.

¹³ CSC did file an “Opposition to Complainants’ Petition for Attorneys’ Fees and Bill of Costs” with the Board. However, the response does not discuss or contest any of the fees claimed by counsel for Complainants for their work before the Board. Rather, CSC opposes several attorneys’ fees and costs incurred in the litigation before the ALJ. Because CSC fails to address any of the fees requested by counsel in the petition, we deem the petition to be unopposed.

We find the level of detail in the descriptions of the services provided in the fee petition to be adequate and the claimed hours of compensation to be reasonably expended. We further find that the requested rates are in line with fees prevailing in the community for similar services by comparable lawyers.

Accordingly, we grant the Petition for Attorneys' Fees and order CSC to pay total attorneys' fees of \$112,120.

SO ORDERED.