UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER

September 17, 1997

ALEXANDER KOSATSCHKOW,)
Complainant,)
)
v.) U.S.C. §1324b Proceeding
) OCAHO Case No. 97B00025
ALLEN-STEVENS CORP.,)
Respondent.)
)

ORDER GRANTING RESPONDENT'S REQUEST FOR ATTORNEY'S FEES

MARVIN H. MORSE, Administrative Law Judge

Appearances: *John B. Kotmair, Jr.,* on behalf of Complainant.
Richard M. Miettinen, Esq.; Daniel J. Dulworth, Esq.; Karen H. Rader, Esq., Timmis & Inman, L.L.P., for Respondent.

I. *Procedural History*

Alexander Kosatchkow (Kosatschkow or Complainant), a German-born naturalized citizen residing in or near Nuremberg, Pennsylvania, sought redress against his employer, Allen-Stevens Corp. (Allen-Stevens or Respondent) of West Hazelton, Pa., a manufacturer of zinc die castings. Kosatchkow worked for Allen-Stevens as a Trimmer/Melter for more than thirty-two (32) years. Kosatchkow charged that Allen-Stevens discriminated against him in violation of 8 U.S.C. §1324b by withholding taxes from his paycheck in compliance with an IRS wage levy, and by deducting social security (FICA) contributions from his wages. His Complaint was dismissed as untimely, for failure to state a claim upon which relief could be granted, and for lack of subject matter jurisdiction.

Pursuant to the June 18, 1997, Final Decision and Order Granting Respondent's Motion to Dismiss the Complaint, 7 OCAHO 938 (1997), Allen-Stevens timely filed a Motion for Attorney Fees (Application). Allen-Stevens requests $4,490 in attorney's fees and related expenses, and on August 20, 1997, provided an itemized statement in support.

Kosatchkow neither contests nor otherwise responds to the Application. Kosatschkow does not question the reasonableness of either the time or hourly rates claimed in the Application.

II. *Discussion*

Allen-Stevens bears the burden of proving that the requested attorney's fees are reasonable. Allen-Stevens "'must submit evidence supporting the hours worked and the rates claimed.'" *Rode v. Dellarciprete*, 892 F.2d 1177, 1183 (3d Cir. 1990) (*quoting Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983)). Kosatchkow bears "the burden to challenge, by affidavit or brief with sufficient specificity to give fee applicants notice, the reasonableness of the requested fee." *Id.* (*citing Bell v. United Princeton Properties, Inc.,* 884 F.2d 713 (3d Cir. 1989)). This Kosatchkow has not done.

A. *Test for Awards of Attorney's Fees Under 8 U.S.C. §1324b*

Title 8 U.S.C. §1324b(h) provides in pertinent part that

> an administrative law judge, in the judge's discretion, may allow a prevailing party, other than the United States, a reasonable attorney's fee, if the losing party's argument is without reasonable foundation in law and fact.

As acknowledged in OCAHO jurisprudence,

> [T]he Supreme Court has held that a . . . [c]ourt may, in its discretion, award attorney's fees to a prevailing Defendant in a [discrimination] case upon a finding that the plaintiff's action was frivolous, unreasonable, groundless and without foundation, even though not brought in subjective bad faith.

Jasso v. Danbury Hilton & Towers, 3 OCAHO 566, at 6 (1993), 1993 WL 544051, at *10–11 (O.C.A.H.O.), citing *Christiansburg Garment Co. v. EEOC*, 434 U.S. 412, 421 (1978).

An award of attorney's fees depends on satisfaction of a two-part test:

(1) the party claiming attorney's fees must prevail, and

(2) the complainant must have been unreasonable in filing the underlying action.

Id.

1. *Allen-Stevens Is the Prevailing Party*

The Supreme Court in *Hensley v. Eckerhart*, 461 U.S. 424, 433 (1983) (discussing fee awards under Civil Rights Attorney's Fees Awards Act, 42 U.S.C. §1988)[1] and *Texas State Teachers Ass'n v. Garland Indep. Sch. Dist.*, 489 U.S. 782, 793 (1989) (discussing fee awards under 42 U.S.C. §§1983, 1988), defined the prevailing party as the one who succeeds or prevails "on a significant issue in the litigation" and achieves "some of the relief they sought. . . ." In *Texas State Teachers*, the Court found that "[t]he touchstone of the prevailing party inquiry must be the material alteration of the legal relationship of the parties in a manner which Congress sought to promote in the fee statute." 489 U.S. at 792–93. Those "who prevailed on a significant issue in the litigation and . . . obtained some of the relief sought . . . are thus 'prevailing parties' within the meaning of [the statute]." *Id.* at 793.

Allen-Stevens "succeeded" on significant claims set forth in its Answer, *i.e.,* failure to state a claim upon which relief can be granted because (1) withholding of taxes and social security contributions is not discrimination under 8 U.S.C. §1324b, (2) an employer action which affects all employees is not discriminatory, (3) the Complaint was untimely under 8 U.S.C. §1324b(d)(3), (4) the Complaint was barred by 8 U.S.C. §1324b(a)(2)(B) and (C) exceptions, and (5) Complainant has sued the wrong party, when I dismissed

[1]The *Lindy* approach to attorney's fees, long employed by the United States Court of Appeals for the Third Circuit, the court with appellate jurisdiction in this case, 8 U.S.C. §1324b(i)(1), is consistent with *Hensley*. *See Lindy Brothers Builders, Inc., of Philadelphia v. American Radiator & Standard Sanitary Corp. ("Lindy I")*, 487 F.2d 161, 167 (3d Cir. 1973), *appeal following remand, "Lindy II,"* 540 F.2d 102, 111 (3d Cir. 1976). Utilizing the *Lindy* approach, a court multiplies the number of compensable hours by a reasonable hourly rate, as defined by such factors as the relevant market, and the individual attorney's qualifications, experience, reputation, and practice, as well as the nature of services provided. This produces a presumptively reasonable "lodestar" figure. For an analysis of Third Circuit practice regarding attorney's fees through 1985 *see* COURT-AWARDED ATTORNEY FEES: REPORT OF THE THIRD CIRCUIT TASK FORCE, 108 F.R.D. 237, 242 , 245 , 259 (1985) ("[T]he *Lindy* lodestar approach . . . received the Supreme Court's imprimatur . . . in *Hensley v. Eckerhart*").

Kosatschkow's Complaint with prejudice for failure to state a cause of action cognizable under §1324b(g)(3), thus affording Allen-Stevens the "relief sought," and "materially altering" Allen-Stevens' and Kosatschkow's legal relationship. To similar effect, Allen-Stevens' legal relationship with Kosatschkow was "materially altered" when I dismissed his Complaint for lack of timeliness and for want of subject matter jurisdiction. Allen-Stevens, therefore, satisfies the first of this two-part test; it is the prevailing party.

I find that Respondent meets the prevailing party test of *Texas State Teachers*, *i.e.*, (1) it prevailed on a significant issue in the litigation by demonstrating that Kosatschkow failed to state a cause of action, and (2) it obtained the relief it sought in its Answer when I dismissed Kosatschkow's Complaint.

2. *Kosatschkow's Complaint, Without Reasonable Foundation in Law and Fact, Is Frivolous*

Fee shifting turns on a determination that the prevailing party has established that "the losing party's argument is without reasonable foundation in law and fact." 8 U.S.C. §1324b(h). *See Lareau v. US Airways,* 7 OCAHO 963, at 3 (1997); *Horne v. Hampstead*, 7 OCAHO 959, at 6 (1997); *Jasso*, 3 OCAHO 566, at 5, 1993 WL 544051, at *2 (citing *Jones v. Dewitt Nursing Home*, 1 OCAHO 1235, 1268 (1990)).

Kosatschkow continued to press his frivolous 8 U.S.C. §1324b claims—*i.e.,* he did not withdraw his Complaint as well he might have in light of unanimous OCAHO precedent dismissing discrimination claims predicated on an employer's refusal to accept self-styled tax-exemption documents.[2] Kosatschkow was, therefore, on notice that his claims were without foundation in fact and law.

[2]*See*—to recite a litany of cases decided before *Allen-Stevens*—*Werline v. Public Serv. Elec. & Gas Co.*, 7 OCAHO 935 (1997); *Cholerton v. Robert M. Hadley Co.*, 7 OCAHO 934 (1997); *Lareau v. USAir*, 7 OCAHO 932 (1997); *Jarvis v. AK Steel,* 7 OCAHO 930 (1997); *Mathews v. Goodyear Tire & Rubber Co.,* 7 OCAHO 929 (1997); *Winkler v. West Capital Fin. Servs.*, 7 OCAHO 928 (1997); *Lee v. Airtouch Communications, Inc.,* 7 OCAHO 926, at 4–5 (1997); *Smiley v. City of Philadelphia*, 7 OCAHO 925 (1997); *Austin v. Jitney-Jungle Stores of Am., Inc.*, 6 OCAHO 923 (1997), 1997 WL 235918 (O.C.A.H.O.); *Wilson v. Harrisburg Sch. Dist.*, 6 OCAHO 919 (1997), 1997 WL 242208 (O.C.A.H.O.); *Costigan v. NYNEX*, 6 OCAHO 918 (1997), 1997 WL 242199 (O.C.A.H.O.); *Boyd v. Sherling*, 6 OCAHO 916 (1997), 1997 WL 176910 (O.C.A.H.O.); *Winkler v. Timlin Corp.*, 6 OCAHO 912 (1997), 1997 WL 148820 (O.C.A.H.O.); *Horne v. Town of Hampstead* (*Horne II*), 6 OCAHO 906 (1997), 1997 WL

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On the core issue of *Kosatschkow v. Allen-Stevens*, 7 OCAHO 938, whether or not an employee may successfully sue an employer for withholding federal taxes from the worker's wages in satisfaction of a wage levy, 26 U.S.C. §6331(a), as interpreted by 26 C.F.R. §301.6331–1(a) ("Levy and Distraint"), provides that:

> If any person liable to pay any tax neglects or refuses to pay the tax within 10 days after notice and demand, the district director to whom the assessment is charged . . . may proceed to collect the tax by levy. The district director may levy upon any property, or rights to property, whether real or personal, tangible or intangible, belonging to the taxpayer. . . . [T]he term tax includes any interest, additional amount, addition to tax, or assessable penalty, together with costs and expenses. . . . Levy may be made by serving a notice of levy on any person in possession of, or obligated with respect to . . . salaries, wages, commissions, or other compensation.
>
> A levy on salary or wages has continuous effect from the time the levy originally is made until the levy is released pursuant to §6343. . . . The levy attaches to both salary and wages earned but not yet paid at the time of the levy, advances on salary or wages made subsequent to the date of the levy, and salary or wages earned and becoming payable subsequent to the date of the levy, until the levy is released pursuant to §6343.[3]

Employers who comply with IRS wage levies are immune from suit because their compliance is statutorily mandated:

Continued—
131346 (O.C.A.H.O.); *Lee v. Airtouch Communications, Inc.,* 6 OCAHO 901 (1996), 1996 WL 780148 (O.C.A.H.O.), *appeal filed*, No. 97–70124 (9th Cir. 1997); *Toussaint v. Tekwood Associates*, 6 OCAHO 892 (1996), 1996 WL 670179 (O.C.A.H.O.), *appeal filed*, No. 96–3688 (3d Cir. 1996). Complainant's representative, John B. Kotmair, Jr. (Kotmair), as Director, National Worker's Rights Committee (Committee), represented all but the *Tekwood* complainant. Although varying in detail, these precedents share a common factual nucleus: rejection by the employer of an employee's or applicant's tender of improvised, unofficial documents purportedly exempting the offeror from taxation, both withholding and levy. The documents are all self-styled "Affidavit(s) of Constructive Notice" (that the offeror is tax-exempt) and "Statement(s) of Citizenship" (exempting the offeror from social security contributions). In every case, the complaint was dismissed.

[3]Title 26 U.S.C. §6334(a)(9), (d), as interpreted by 26 C.F.R. §404.6334(d)–1(c), provides a minimum exemption from levy for $50 of wages if the taxpayer is paid weekly; $100, if paid biweekly; $108.33, if paid semimonthly, and $216.67, if paid monthly. Additional monetary exemptions for dependents are allowed where a taxpayer submits to "his employer for submission to the district director [a properly verified statement] specifying the facts necessary to determine the standard deduction and the aggregate amount of the deductions for personal exemptions allowed the taxpayer under §151 in the taxable year in which the levy is served." 1997 Stand. Fed. Tax Rep. (CCH) ¶39,114.

> Section 6332(a) of the Internal Revenue Code provides that "any person in possession of . . . property or rights to property subject to levy upon which a levy has been made shall, upon demand of the Secretary, surrender such property or rights. . . ." A person who fails to surrender the property subject to the levy upon demand of the Secretary "shall be liable in his own person and estate to the United States in a sum equal to the value of the property or rights not so surrendered . . . together with costs and interests on such sum . . ." and shall also be liable for a penalty equal to 50 percent of that amount. 26 U.S.C. §6332(d). On the other hand, one who complies with the Secretary's demand and surrenders the property is immune from any legal action by the delinquent taxpayer with respect to such property or rights to property arising from surrender or payment. 26 U.S.C. §6332(e).

Miller v. United States, 817 F. Supp. 1493, 1497 (E.D. Wash. 1992).

An employer's compliance with a levy properly asserted is a complete defense to an employee's action because

> Section 6332(d) of the Internal Revenue Code states that one who complies with a levy "shall be discharged from any obligation or liability to the delinquent taxpayer with respect to such property or rights to property arising from such [compliance with the levy]."

Pawlowske v. Chrysler Corp., 623 F. Supp. 569, 570 (N.D. Ill. 1985), *aff'd*, 799 F.2d 753 (7th Cir. 1986) (unpublished order). Complaints against employers stemming from employer compliance with IRS levies must therefore be dismissed for failure to state a claim upon which relief can be granted. *Miller*, 817 F. Supp. at 1497.

Furthermore, the Court of Appeals for the Seventh Circuit has held that:

> Employees have no cause of action against employers to recover wages withheld and paid over to the government in satisfaction of federal income tax liability.

Edgar v. Inland Steel Co., 744 F.2d 1276, 1278 (7th Cir. 1986) (such lawsuits represent "yet another disturbing example of a patently frivolous appeal by abusers of the tax system merely to harass the collection of public revenue"). *See also Kaucky v. Southwest Airlines*, 109 F.3d 350, 353 (7th Cir. 1997) ("Money collected in error by a lawful agent [such as an employer] . . . can be recovered only from the government, because a claim or suit to collect such money is a claim or suit for a tax refund"), *petition for cert. filed,* July 14, 1997, No. 97–137; *Webb v. United States,* 66 F.3d 691, 697–98 (4th Cir. 1995), *cert. denied*, 117 S. Ct. 1079 (1997).

Christiansburg Garment Co. v. EEOC, 434 U.S. 412, *supra,* addressed fee-shifting. In *Christiansburg*, the Supreme Court applied the prevailing party standard to civil rights defendants, holding that a court "may in its discretion award attorney's fees to a prevailing defendant in a Title VII case upon a finding that the plaintiff's action was frivolous, unreasonable, or without foundation, even though not brought in bad faith." 434 U.S. at 421. Subsequently, in *Hensley v. Eckerhart*, the Court explained that "[a] prevailing defendant [in a 42 U.S.C. §1988 civil rights action] may recover an attorney's fee only where the suit was vexatious, frivolous, or brought to harass or embarrass the defendant. See H.R. Rep. No. 94–1558, p. 7 (1976)." 461 U.S. at 429 n.2.

Kosatschkow's Complaint was summarily dismissed for failure to state a claim upon which relief could be granted, lack of subject matter jurisdiction, and untimeliness. "[T]he *Christiansburg* standard is . . . likely to have been met where ***the plaintiff's case is dismissed for failure to state a claim on which relief could be granted. . . .***"[4] Kosatschkow maintains that his employer discriminated against him by refusing to accept self-styled, gratuitously tendered documents,[5] subjecting him to the universal demands of the Internal Revenue Code and the Social Security Act, the legality of which are undisputed and long-settled,[6] and, presumably, exempting

[4]1 Court Awarded Attorney Fees (MB) ¶10.04, at 10–77—10–78 (May 1997) (footnote omitted) (emphasis added). *See, e.g., Patton v. County of Kings*, 857 F.2d 1379 (9th Cir. 1988) (upholding attorney's fees awarded to prevailing defendant where action dismissed for plaintiff's failure to state a cause of action and where plaintiff's action found frivolous); *Harbulak v. County of Suffolk*, 654 F.2d 194, 197 (2d Cir. 1981) (reversing and remanding for award of attorney's fees to defendant after finding "no basis whatsoever for a suit against" the defendant and plaintiff's claim "unreasonable and groundless, if not frivolous."); *Riviera Carbana v. Cruz*, 588 F. Supp 80 (D.P.R. 1980) (holding that plaintiff failed to allege or state a cause of action and stating that even if plaintiff had stated a cause of action, "'federal courts are without power to entertain claims if they are so attenuated and unsubstantial as to be absolutely devoid of merit' or if they are obviously, as in the instant case, frivolous") (citation omitted), *aff'd sub nom. Carbana v. Cruz*, 767 F.2d 905 (1st Cir. 1985) (unpublished table decision).

[5]*See* Complaint, at ¶16a (identifying the documents which Respondent refused to accept as "Statement of Citizenship" and "Affidavit of Constructive Notice" which Kosatschkow presented to prove tax exemption and social security secession). *See also* OSC Charge, wherein Kosatschkow characterizes as an "unfair employment practice" Allen-Stevens' refusal to act upon his self-styled and gratuitously proferred Statement of Citizenship and Affidavit of Constructive Notice that he had repudiated his social security number by exempting him from the Internal Revenue Code and the Social Security Act.

[6]All employees residing in the United States are subject to withholding taxes and social security (FICA) contributions, which employers must collect "at the source"—i.e., in the workplace, through payroll deductions. 26 U.S.C. §§3101, 3102, 3402(a)(1), 3403. *See Helvering v. Davis*, 301 U.S. 619, 644 (1937); *Charles C. Steward Mach. Co. v. Davis*, 301 U.S. 548, 590 (1937).

him from the wage levy discussed above. Similar to its obligation to comply with wage levies is Allen-Stevens' statutory mandate to withhold income taxes[7] and social security contributions.[8] Allen-Stevens is immunized from legal liability for withholding by 26 U.S.C. §3102(b),[9] 26 U.S.C. §3403,[10] and the Anti-Injunction Act, 26 U.S.C. §7421(a),[11] which has been interpreted to prohibit suits against employers who withhold taxes. *See United States v. American Friends Serv. Comm.*, 419 U.S. 7, 10 (1974).

Where an employer is statutorily immunized from liability, an action brought against the employer for the performance of that duty is frivolous *per se*. "A complaint lacks an arguable basis in law if it is based on an indisputably meritless legal theory. . . ." *Siglar v. Hightower*, 112 F.3d 191, 193 (5th Cir. 1997). "A claim is based upon an indisputably meritless legal theory if the defendants are immune from suit." *Graves v. Hampton*, 1 F.3d 315, 317 (5th Cir. 1993) (citing *Neitzke v. Williams*, 490 U.S. 319, 327 (1989)); *Austin v. Jitney-Jungle Stores, of Am., Inc.*, 6 OCAHO 923, at 22 (1997), 1997 WL 235918, at *17 (O.C.A.H.O.) (citing *Neitzke*, 490 U.S. at 325, *cited in Graves*, 1 F.3d at 317). "[T]o take a position which indicates a desire to impede the administration of tax laws is a legally frivolous action." *McKee v. United States*, 781 F.2d 1043, 1047 (4th Cir.), *cert. denied*, 477 U.S. 905 (1986). Because Allen-Stevens, "an employer who in compliance with statutory obligations . . . deducts withholding tax and social security contributions . . . is statutorily immunized from suit[,]" Kosatschkow's action is frivolous and meritless. *Austin*, 6 OCAHO 923, at 22, 1997 WL 235918, at *17.

Therefore, I find that there is "no legal or factual basis for any of [Kosatschkow's] allegations," and I award Allen-Stevens **$4,474.00** in attorney's fees and related expenses, the computation of which is explained at **II, B.**, below. *Lee v. Airtouch Communications*, 7 OCAHO 926, at 6. Respondent's prevailing party status and Kosatschkow's action against an employer legally immunized from liability satisfy both requirements of the 8 U.S.C. §1324b(h) two-part test for award of attorney's fees.

[7]26 U.S.C. §3402(a).

[8]26 U.S.C. §3102(a).

[9]26 U.S.C. §3102(b) ("Every employer . . . shall be indemnified against the claims and demands of any person. . . .").

[10]26 U.S.C. §3403 ("The employer . . . shall not be liable to any person. . . .")

[11]26 U.S.C. §7421(a) ("[N]o suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person. . . .").

B. *Reasonableness of Attorney's Fees Request*

"Any application for attorney's fees shall be accompanied by an itemized statement from the attorney or representative, stating the actual time expended and the rate at which fees and other expenses were computed." 28 C.F.R. §68.52(c)(2)(v). Counsel for Allen-Stevens supplies the following facts and figures to support its $4,490.00 attorney's fees request:

1. *Attorney Richard Miettinen*

Qualifications: Partner, Timmis & Inman, LLP; 1985 graduate of Wayne State University Law School; twelve (12) years' experience.[12]

Rate Charged:	$180
Number of Hours:	x 3.5
Total:	**$603.00**

2. *Attorney Daniel J. Dulworth*

Qualifications: Attorney, 1988 graduate of University of Detroit Mercy School of Law; nine (9) years' experience.[13]

Rate:	$160.00
Number of Hours:	x 15.20
Total:	**$2,432.00**

3. *Attorney Karen H. Rader*

Qualifications: Attorney

***Rate*:**	$95.00
Number of Hours:	x 15.00
Total:	**$1,425.00**

4. *Expenses:*

—Total Attorney Fees:	$4,460.00
—Lexis:	$14.00
Total Charges:	**$4,474.00**

[12] *See* WEST'S LEGAL DIRECTORY-PRIVATE PRACTICE (WLD-PRI).

[13] *Id.*

Allen-Stevens requests **$4,490.00**.[14] "The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services." *Hensley*, 461 U.S. at 433. The *Hensley* calculation is the "lodestar" amount. "The courts may then adjust this lodestar calculation by other factors. . . . [I]n *Hensley* and in subsequent cases, [the Supreme Court has] adopted the lodestar approach as the centerpiece of attorney's fee awards." *Blanchard v. Bergeron*, 489 U.S. 87, 94 (1989).

To similar effect:

> The most familiar formula courts in this [the Third Circuit] use to calculate attorneys' fees is undoubtedly the "lodestar" approach . . . [under which] a court first establishes a reasonable hourly rate (corresponding to the value of the services and the cost of comparable services . . . for each set of compensable services) and then multiplies each rate by the reasonable number of hours of compensable work included in each respective set.

In re Busy Beaver Building Centers, Inc., 19 F.3d 833, 849 n.21 (3d Cir. 1994).

> The . . . court should exclude hours that are not reasonably expended. . . . Hours are not reasonably expended if they are excessive, redundant, or otherwise unnecessary . . . The court can also deduct hours when the fee petition inadequately documents the hours claimed.

Rode, 892 F.2d at 1183 (*citing Hensley,* 461 U.S. at 433).

> [T]he court should assess the experience and skill of the prevailing party's attorneys and compare their rates to the rates prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation. . . . Once the court determines the reasonable hourly rate, it multiplies that rate by the reasonable hours expended to obtain the lodestar. The lodestar is presumed to be the reasonable fee.

Id.

"The product of reasonable hours times a reasonable rate does not end the inquiry. There remain other considerations that may lead

[14]Allen-Stevens' computation is in error. For example, the itemized statement supporting Allen-Stevens' application for attorney's fees wrongly computes the 7/30/97 charge for Dulworth's services for .60 hours at $160 an hour as $112; however, .60 hours x $160 is $96.

the . . . court to adjust the fee upward or downward, including the important factor of the 'results obtained.'" *Hensley*, 461 U.S. at 434. "Attorney's fees awarded under [fee-shifting] statute[s] are to be based on market rates for the services rendered." *In re Busy Beaver*, 19 F.3d at 849 (*quoting Missouri v. Jenkins*, 491 U.S. 274, 283 (1989)).

Utilizing this approach, the Application is a reasonable request for attorney's fees. In *Allen Stevens,* counsel billed Allen-Stevens a total of **33.7** attorney's hours for: reviewing statutes, procedures, and documents sent by the client; legal research; drafting its Answer; consulting with client regarding facts of case; assembling exhibits; and reviewing the opinion dismissing this case. I determine that $180 per hour is a reasonable fee for a partner with twelve (12) years' experience; $160 an hour, a reasonable fee for an attorney with nine (9) years' experience; and $95 an hour, a reasonable fee for a junior attorney, in the relevant Pennsylvania market. The hourly total, **33.7** hours, which represents less than a week's work, is a modest amount of time.

These hourly rates are reasonable in light of recent OCAHO caselaw in which ALJs awarded attorney's fees ranging from $75 per hour to $284 per hour: *Lareau v. US Airways*, 7 OCAHO 963 (1997) (awarding $5,296.47 in attorney's fees at rates ranging from $284.75 an hour for work by a senior partner with twenty-six (26) years' experience, $243 for "Of Counsel" with thirteen (13) years' tax experience, and $207 an hour for "Of Counsel" with ten (10) years' experience, to $30 an hour for work performed by a law clerk at a major Washington, DC law firm); *Horne v. Hampstead,* 7 OCAHO 959 (1997) (awarding $630 in attorney's fees at $150 an hour for work by a partner and an associate in Towson, MD, a suburb of Baltimore); *Werline v. Public Service Electric & Gas Company*, 7 OCAHO 955 (1997) (awarding $512.50 in attorney's fees at $125 per hour for work by an associate attorney general for respondent in Cedarville, NJ); *Jarvis v. AK Steel*, 7 OCAHO 952 (1997) (awarding "legal fees" in the amount of $1,833.75, with compensation for attorneys in Pittsburgh, PA, at rates of $275 per hour and $240 per hour); *Lee v. Airtouch*, 7 OCAHO 926 (1997) (awarding $7,531.26 for attorney's fees including $15.70 in costs billed for the San Diego, CA, market at rates of $155 per hour for in-house counsel and $216.75 per hour for outside counsel); and *Wije v. Barton Springs/Edwards Aquifer Conservation District*, 5 OCAHO 785 (1995), 1995 WL 626204 (O.C.A.H.O.) (awarding "legal fees" of $51,530.34 in the Austin, TX,

market at the rate of $185 per hour for a partner and the rates of $120 per hour and $75 per hour for associate attorneys).[15] I find attorney's fees of **$4,474.00,** representing $180 dollars an hour for a senior partner with twelve (12) years' experience; $160 an hour for an attorney with nine (9) years' experience, and $95 for a junior attorney, reasonable. Accordingly, I award a total of **$4,474.00** in attorney's fees and related expenses, as follows:

Charge	***Amount***
Attorney's fees	$4,460.00
Expenses	14.00
Total Award:	**$4,474.00**

III. *Conclusion*

Respondent is the prevailing party and the Complaint is without reasonable foundation in law and fact. Kosatschkow is directed to pay Allen-Stevens **$4,474.00** in attorney's fees and related expenses.

SO ORDERED.

Dated and entered this 17th day of September, 1997.

MARVIN H. MORSE
Administrative Law Judge

[15]As this is not a fee award under the Equal Access to Justice Act (EAJA), 5 U.S.C. §504, I am not bound by the generally applicable EAJA statutory limit of $125 per hour. 5 U.S.C. §504(b)(1)(A)(ii) ("attorney or agent fees shall not be awarded in excess of $125 per hour. . . .") or by the failure of EAJA to address the award of other fees and expenses.