

Case No. VWX-0014

November 29, 1999

DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Supplemental Order

Name of Case: Frank E. Isbill

Date of Filing: November 4, 1999

Case Number: VWX-0014

This Decision supplements an Initial Agency Decision, dated September 27, 1999, issued by the undersigned Hearing Officer of the Office of Hearings and Appeals (OHA) of the Department of Energy in a case involving a "whistleblower" complaint filed by Frank E. Isbill (the complainant) under 10 C.F.R. Part 708. See [Frank E. Isbill](#), 27 DOE ¶ 87,529 (1999). In the Decision, I found that NCI Information Systems, Inc. (the contractor), a DOE contractor, had violated the provisions of 10 C.F.R. § 708.5 by removing the complainant's supervisory duties in reprisal for his making protected disclosures related to a possible abuse of authority. The Decision further determined that the complainant should be awarded reimbursement for all costs and expenses reasonably incurred by him in bringing his complaint. The complainant submitted a request for reimbursement of these costs and expenses on November 4, 1999. The contractor submitted a response to the November 4 submission on November 15, 1999. This Supplemental Order awards the complainant a total of \$546 in costs and expenses.

In the complainant's request, he seeks reimbursement for the contractor for the work he did representing himself, totaling \$6,061. I reject these charges because it is well-settled that a pro se litigant is not entitled to attorney's fees. See *Kay v. Ehrler*, 499 U.S. 432, 435 (1991) (civil rights case); *Wolfel v. United States*, 711 F.2d 66, 68 (6th Cir. 1983) (Freedom of Information Act case). The complainant also requests that he be reimbursed for telephone and fax charges, process service charges (since he had subpoenas served on two of the witnesses) and a consultation fee with an attorney, totaling \$358. I have examined these expenses and in the context of this case, these charges seem reasonable and are specified in sufficient detail. I will therefore order the contractor to pay all of these charges. The complainant also requests reimbursement for mileage incurred in traveling both to the Office of the Inspector General (OIG) and to the hearing, at the rate of 30 cents a mile. Since Section 708.36 provides for reimbursement of essentially all reasonable costs and expenses, it is appropriate for the contractor to pay charges incurred in connection with the OIG investigation of the complaint filed under Part 708. However, the mileage rate used by the complainant was incorrect, as the government generally only permits mileage to be reimbursed at the rate of 23.5 cents a mile. See 41 C.F.R. § 301-10.310. I have therefore reduced the mileage reimbursement total from \$240 to \$188. For these reasons, the contractor must pay to the complainant \$546 in reimbursement for costs and expenses in accordance with the provisions of 10 C.F.R. § 708.36.

It Is Therefore Ordered That:

(1) NCI Communications, Inc. shall pay Frank E. Isbill \$546 in reimbursement for expenses and costs incurred by him in bringing his complaint under 10 C.F.R. Part 708, in compensation for actions taken against him in violation of 10 C.F.R. § 708.5.

(2) This is a Supplemental Order to the Initial Agency Decision issued on September 27, 1999, which shall become a Final Decision of the Department of Energy unless, within 15 days of its receipt, a Notice of Appeal is filed requesting review of this Supplemental Order by the Director of the Office of Hearings and Appeals with the Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, D.C. 20585-0107, telephone number (202) 426-1566, fax number (202) 426-1415.

Dawn L. Goldstein

Hearing Officer

Office of Hearings and Appeals

Date: November 29, 1999