



Ohio Revised Code

Section 119.092 Attorney fees.

Effective: March 27, 1991

Legislation: House Bill 615 - 118th General Assembly

(A) As used in this section:

(1) "Eligible party" means a party to an adjudication hearing other than the following:

(a) The agency;

(b) An individual whose net worth exceeded one million dollars at the time he received notification of the hearing;

(c) A sole owner of an unincorporated business that had, or a partnership, corporation, association, or organization that had, a net worth exceeding five million dollars at the time the party received notification of the hearing, except that an organization that is described in subsection 501(c)(3) and is tax exempt under subsection 501(a) of the Internal Revenue Code, shall not be excluded as an eligible party under this division because of its net worth;

(d) A sole owner of an unincorporated business that employed, or a partnership, corporation, association, or organization that employed, more than five hundred persons at the time the party received notification of the hearing.

(2) "Fees" means reasonable attorney's fees, in an amount not to exceed seventy-five dollars per hour or a higher hourly fee that the agency establishes by rule and that is applicable under the circumstances.

(3) "Internal Revenue Code" means the "Internal Revenue Code of 1954," 68A Stat. 3, 26 U.S.C. 1, as amended.

(4) "Prevailing eligible party" means an eligible party that prevails after an adjudication hearing, as reflected in an order entered in the journal of the agency.



(B)(1) Except as provided in divisions (B)(2) and (F) of this section, if an agency conducts an adjudication hearing under this chapter, the prevailing eligible party is entitled, upon filing a motion in accordance with this division, to compensation for fees incurred by that party in connection with the hearing. A prevailing eligible party that desires an award of compensation for fees shall file a motion requesting the award with the agency within thirty days after the date that the order of the agency is entered in its journal. The motion shall do all of the following:

(a) Identify the party;

(b) Indicate that the party is the prevailing eligible party and is entitled to receive an award of compensation for fees;

(c) Include a statement that the agency's position in initiating the matter in controversy was not substantially justified;

(d) Indicate the amount sought as an award;

(e) Itemize all fees sought in the requested award. This itemization shall include a statement from any attorney who represented the prevailing eligible party, that indicates the fees charged, the actual time expended, and the rate at which the fees were calculated.

(2) Upon the filing of a motion under this section, the request for the award shall be reviewed by the referee or examiner who conducted the adjudication hearing or, if none, by the agency involved. In the review, the referee, examiner, or agency shall determine whether the fees incurred by the prevailing eligible party exceeded one hundred dollars, whether the position of the agency in initiating the matter in controversy was substantially justified, whether special circumstances make an award unjust, and whether the prevailing eligible party engaged in conduct during the course of the hearing that unduly and unreasonably protracted the final resolution of the matter in controversy. The referee, examiner, or agency shall issue a determination, in writing, on the motion of the prevailing eligible party, which determination shall include a statement indicating whether an award has been granted, the findings and conclusions underlying it, the reasons or bases for the findings and conclusions, and, if an award has been granted, its amount. The determination shall be entered in



the record of the prevailing eligible party's case, and a copy of it mailed to the prevailing eligible party.

With respect to a motion under this section, the agency involved, through any representative it designates, has the burden of proving that its position in initiating the matter in controversy was substantially justified, that special circumstances make an award unjust, or that the prevailing eligible party engaged in conduct during the course of the hearing that unduly and unreasonably protracted the final resolution of the matter in controversy. A referee, examiner, or agency considering a motion under this section may deny an award entirely, or reduce the amount of an award that otherwise would be payable, to a prevailing eligible party only as follows:

(a) If the determination is that the agency has sustained its burden of proof that its position in initiating the matter in controversy was substantially justified or that special circumstances make an award unjust, the motion shall be denied;

(b) If the determination is that the agency has sustained its burden of proof that the prevailing eligible party engaged in conduct during the course of the hearing that unduly and unreasonably protracted the final resolution of the matter in controversy, the referee, examiner, or agency may reduce the amount of an award, or deny an award, to that party to the extent of that conduct;

(c) If the determination is that the fees of the prevailing eligible party were not in excess of one hundred dollars, the referee, agency, or examiner shall deny the motion.

(3) For purposes of this section, decisions by referees or examiners upon motions are final and are not subject to review and approval by an agency. These decisions constitute final determinations of the agency for purposes of appeals under division (C) of this section.

(C) A prevailing eligible party that files a motion for an award of compensation for fees under this section and that is denied an award or receives a reduced award may appeal the determination of the referee, examiner, or agency to the same court, as determined under section 119.12 of the Revised Code, as the party could have appealed the adjudication order of the agency had the party been adversely affected by it. An agency may appeal the grant of an award to this same court if a referee or examiner made the final determination pursuant to division (B)(3) of this section. Notices of



appeal shall be filed in the manner and within the period specified in section 119.12 of the Revised Code.

Upon the filing of an appeal under this division, the agency shall prepare and certify to the court involved a complete record of the case, and the court shall conduct a hearing on the appeal. The agency and the court shall do so in accordance with the procedures established in section 119.12 of the Revised Code for appeals pursuant to that section, unless otherwise provided in this division.

The court hearing an appeal under this division may modify the determination of the referee, examiner, or agency with respect to the motion for compensation for fees only if the court finds that the failure to grant an award, or the calculation of the amount of an award, involved an abuse of discretion. The judgment of the court is final and not appealable, and a copy of it shall be certified to the agency involved and the prevailing eligible party.

(D) Compensation for fees awarded to a prevailing eligible party under this section may be paid by an agency from any funds available to it for payment of such compensation. If an agency does not pay compensation from such funds or no such funds are available, upon the filing of a referee's, examiner's, agency's, or court's determination or judgment in favor of the prevailing eligible party with the clerk of the court of claims, the determination or judgment awarding compensation for fees shall be treated as if it were a judgment under Chapter 2743. of the Revised Code and be payable in accordance with the procedures specified in section 2743.19 of the Revised Code, except that interest shall not be paid in relation to the award.

(E) Each agency that is required to pay compensation for fees to a prevailing eligible party pursuant to this section during any fiscal year shall prepare a report for that year. The report shall be completed no later than the first day of October of the fiscal year following the fiscal year covered by the report, and copies of it shall be filed with the general assembly. It shall contain the following information for the covered fiscal year:

- (1) The total amount and total number of the awards of compensation for fees required to be paid by the agency;
- (2) The amount and nature of each individual award that the agency was required to pay;



(3) Any other relevant information that may aid the general assembly in evaluating the scope and impact of awards of compensation for fees.

(F) The provisions of this section do not apply when any of the following circumstances are involved:

(1) An adjudication hearing was conducted for the purpose of establishing or fixing a rate;

(2) An adjudication hearing was conducted for the purpose of determining the eligibility or entitlement of any individual to benefits;

(3) A prevailing eligible party was represented in an adjudication hearing by an attorney who was paid pursuant to an appropriation by the federal or state government or a local government;

(4) An adjudication hearing was conducted by the state personnel board of review pursuant to authority conferred by section 124.03 of the Revised Code, or by the state employment relations board pursuant to authority conferred by Chapter 4117. of the Revised Code.