

May 28, 2003

In Re:

[Redacted]

Claimant

Claims Case No. 01121301

CLAIMS APPEALS BOARD DECISION

DIGEST

In *quantum meruit/quantum valebant* cases the amount paid to a claimant may not exceed the reasonable value of the benefit received by the government.

DECISION

This is in response to a remand of DOHA Claims Case No. 01121301, dated May 8, 2002, by the Deputy General Counsel (Fiscal) for determination of the amount to be paid to a claimant in a *quantum meruit/quantum valebant* case.

Background

In Settlement Certificate No. 00102018, dated January 3, 2001, our Office denied relief in this case under *quantum meruit/quantum valebant* because the claimant's services were of a personal service nature and, therefore, not a permissible procurement. That decision was affirmed by the Claims Appeals Board in DOHA Claims Case No. 01121301, dated May 8, 2002, and the claimant appealed to the Deputy General Counsel (Fiscal). (The factual circumstances underlying the claim were set forth in detail in the aforesaid Claims Appeals Board decision.) On October 21, 2002, the Deputy General Counsel (Fiscal) reversed the decision of the Claims Appeals Board and remanded the case for the sole purpose of determining the amount of compensation. By letter dated October 25, 2002, our Office returned the case to the Rhode Island Army National Guard (RIANG) for the preparation of an administrative report addressing

the issue of compensation. On April 3, 2003, our Office received the requested administrative report⁽¹⁾ from the RIANG Contracting Officer, a supervisory contract specialist. By letter dated April 4, 2003, a copy of that report was provided to the claimant's counsel. Claimant's counsel provided his response to the RIANG administrative report to our Office by letter dated May 19, 2003.

Discussion

The terms *quantum meruit/quantum valebant* stand for "as much as he deserves" and "as much as they are worth," respectively. See Blacks Law Dictionary, 1119 (5th Ed. 1979). The concept evolved from common law for the purpose of allowing restitution for contracts implied in law or fact. The criteria for payment under *quantum meruit/quantum valebant* principles normally include four elements. First, there must be a threshold determination that the goods or services at issue would have been a permissible procurement had the proper procedures been followed. Second, the U.S. Government must have received and adopted a benefit. Third, the entity seeking payment must have acted in good faith. Fourth, the amount to be paid must not exceed the reasonable value of the benefit received. See Comptroller General Decision B-249075, Sept. 16, 1992; see also 69 Comp. Gen. 13 (1989).

In her October 21, 2002 decision, the Deputy General Counsel (Fiscal) determined that the goods or services at issue would have been a permissible procurement had the proper procedures been followed. It was concluded at the Settlement Certificate stage of the proceedings that the government had received a benefit and that the individual seeking reimbursement had acted in good faith. The only issue left for determination at this juncture is the amount to be paid to the claimant based upon the value of the benefit received by the government.

The claimant contends that for her services she should receive \$500 a day for her 19 days of service in 1999 and her 28 days of service in 2000--for a total of \$20,500. In its administrative report, the agency states that had it chosen to perform the claimant's services in-house, it would have hired a Computer Specialist at the GS-11 grade to do the work. In 1999, the annual salary for a GS-11 (Step 1) in the agency's area was \$39,960, equating to \$153.68 for an 8-hour day.⁽²⁾ In 2000, the annual salary for a GS-11 (Step 1) in the agency's area was \$41,834, equating to \$161.04 per 8-hour day.⁽³⁾ Therefore, based upon the agency's calculations, the value of the claimant's services to them was \$2,919.92 in 1999 and \$4,509.12 in 2000--for a total amount of \$7,429.04.

In his May 19, 2003 letter, claimant's counsel argued that the services provided by his client were different and more extensive than those described in the position description for a GS-11 Computer Specialist. However, he offered no actual evidence of either a different and/or more appropriate Office of Personnel Management position classification, or of a more appropriate and higher grade.⁽⁴⁾ Also, the record is devoid of any evidence of the salaries offered in the private sector for similar skills. Absent such evidence, we must defer to the agency's expertise with respect to its own personnel and program requirements. Further, we have repeatedly held that we are bound by the agency's version of factual events as set forth in their administrative report, absent clear and convincing contrary evidence from the claimant. See DOHA Claims Case No.02092001 (January 30, 2003) citing 57 Comp. Gen. 415, 419 (1978). No such evidence has been presented here. Accordingly, we allow the claimant \$7,429.04 with respect to the services portion of her claim.

The claimant also contends that she should receive \$566.25 in interest on the amount she was owed for her services. However, the statute a claim is made under must specifically provide for the payment of interest, in order for interest to be paid. In this case, there are no provisions in 31 U.S.C. § 3702 for the payment of interest. See DOHA Claims No. 98090309 (November 17, 1998); and compare 72 Comp. Gen. 1 (1992). Accordingly, her claim for \$566.25 in interest is disallowed.

Finally, the claimant contends that she should receive \$1,503 for expenses. This figure included various amounts for airfare, hotels, meals, parking, shuttles, baggage tips, fees and materials for three trips,⁽⁵⁾ as well as a \$300 charge for web site design by a student. The expenditures for hotels and meals appear to be within the average of the applicable *per diem* rates. Likewise, the expenditures for airfare, parking, shuttles, baggage tips, fees and materials appear to be

typical, reasonable charges for those types of services and/or items. Finally, the \$300 for web site design also appears to be reasonable and the agency does not take issue with it in its administrative report. Accordingly, we allow the claimant \$1,503 for the expenses related to the three trips and the web site design.

Conclusion

We allow the claimant \$7,429.04 for her services and \$1,503 for her expenses, for a total amount of \$8,932.04.

_____/s/
Michael D. Hipple
Chairman, Claims Appeals Board

_____/s/
Jean E. Smallin
Member, Claims Appeals Board

_____/s/
William S. Fields
Member, Claims Appeals Board

1. The administrative report was dated March 28, 2003.
2. The figure was provided by the Contracting Officer. Claimant's counsel did not take issue with this calculation in his response to the administrative report.
3. *See* note 2.
4. Claimant's counsel essentially argues that the computer specialist classification calls for a technical specialist, while his client is an educational professional possessing a masters degree in adult education with an emphasis on technology and distance learning. He contends that his client was hired based on the fact that no personnel in RIANG had the education, expertise or "unique" skills necessary in the area of "synchronous distance learning capabilities." However, even if he had offered evidence of a more appropriate position classification, the grade level of GS-11 still appears to be an appropriate measure of value. We note, for instance, that a recent vacancy announcement for an Assistant Professor of Engineering Mechanics at the United States Air Force Academy (No. 03-21EM) offered a salary of \$45,486--the approximate equivalent of a GS-10(Step 2)(\$45,568). That position involves the "use of computers and advanced technology to enhance education" and requires an earned doctorate. We also note that the salary for a GS-15 (Step 10) in 1999 was \$102,907, equating to approximately \$395 per 8-hour day. That is still considerably below the \$500 a day requested by the claimant.

5. For an October 16-19, 1999 trip to Washington, D.C.: Airfare, \$98; Baggage Tips, \$10, Shuttle \$24, Meals, \$117 (Total: \$249). For a December 6-8, 1999 trip to Tennessee: Airfare, \$336; Conference Fee, \$20; Hotel, \$135, Parking and Tips, \$18, Bus, \$29, and Meals, \$100 (Total \$638). For a February 29-March 3, 2000 trip to Washington, D.C.: Airfare, \$149, Parking and Tips, \$15, Shuttle, \$24, Book for RIARNG, \$43, Meals, \$85 (Total: \$316). *See* Enclosure 8 (Request for Payment) of the administrative report of August 23, 2000.