

VBX-0042

April 20, 2001

DEPARTMENT OF ENERGY

OFFICE OF HEARINGS AND APPEALS

Supplemental Order

Name of Case: Richard R. Sena

Date of Filing: April 3, 2001

Case Number: VBX-0042

This Decision supplements an [Initial Agency Decision](http://www.oha.energy.gov/cases/whistle/vbh0042.htm), dated March 1, 2001, in which I found that Sandia Corporation had retaliated against Richard R. Sena in violation of Title 10, Part 708 of the Code of Federal Regulations. 10 CFR Part 708; <http://www.oha.energy.gov/cases/whistle/vbh0042.htm>. That determination found that Sandia should be required to compensate Sena in the amount of \$342,324.77. In addition, the Decision noted that Sena is entitled to reasonable attorneys fees and costs, and that Sena claims that he should be compensated for the amount he has removed from his retirement plan for living expenses while this matter has been pending. The Decision required that Sena submit a report as to the amount claimed within 30 days after receipt of the Decision, and that Sandia provide comments or objections within 10 days of the Sena filing, after which I would issue a supplemental order establishing Sandia's total liability in this matter.

On March 30, 2001, counsel for Mr. Sena submitted an affidavit along with supporting schedules requesting \$22,663 in fees. Those fees cover 160 hours of work at rates of \$140 and \$160 an hour. In addition, counsel submitted bills for expenses totaling \$2,682.92. These expenses include \$700.93 for court reporter fees for depositions, \$1,819.99 for expert witness fees, and \$162.00 for copying costs. Copies of bills for the expert witnesses and court reporter fees have been submitted.

On April 17, 2001, Sandia Corporation submitted comments on the March 30th submission. In its comments, Sandia points out discrepancies between the time records submitted and the stated total amount of attorney fees requested. Sandia notes that pursuant to its calculations the actual amount is \$18,768 for attorney fees through March 2001 rather than the \$22,663 requested.

In response to Sandia's comments, counsel for Sena submitted new billing records indicating that the total amount of fees earned is \$22,086. The difference between the first set of billings and the second set appears to be mainly the result of one week of billings, right before the hearing, that was omitted from the first set of billing records.

As a result of Sandia's comments, I have reviewed the materials submitted in support of the request for fees and costs. Sandia's analysis appears to be correct. However, the newly submitted billing supports an award of \$22,086 in legal fees. As for the costs requested, there appears to be an overstatement of \$5.00 for the cost of court reporting services. I will therefore approve \$2,677.92 in costs.

With respect to the issue of compensation for withdrawals from retirement accounts, Sena has provided two submissions indicating that he has in fact made withdrawals from his retirement accounts while this matter has been pending. The March 9th and 14th submissions neither indicate nor suggest that Mr. Sena

suffered any loss, such as adverse tax consequences or the payment of penalties, when he made withdrawals from his retirement accounts. The amount I indicated I would require Sandia Corporation to remit to Mr. Sena includes funds that cover the period in question and can be used to replenish those retirement accounts. To make an award on the withdrawal of funds from these accounts as well would be double counting the amount of loss that Mr. Sena experienced during this period.

This decision and order has been reviewed by the National Nuclear Security Administration (NNSA), which has determined that, in the absence of an appeal or upon conclusion of an unsuccessful appeal, the decision and order shall be implemented by each affected NNSA element, official, or employee, and by each affected contractor.

It Is Therefore Ordered That:

(1) Sandia Corporation shall pay Richard R. Sena \$367,088.69 within 30 days of the date of this order.

(2) This is a Supplemental Order to the Initial Agency Decision issued on March 1, 2001, in the matter of Richard R. Sena and shall be subject to review by the Director of the Office of Hearings and Appeals.

Roger Klurfeld

Hearing Officer

Office of Hearings and Appeals

Date: April 20, 2001