

Joseph (Joe) Carson, PE - "Eight Time Prevailing" Whistleblower, written in 2001

By Federal Law, all "prevailing" has to mean in a whistleblower appeal is that the whistleblower's legal fees are paid by the government. It's a very unaccountable system that allows the government to grind down, repeatedly, without being found at fault, any concerned federal employee.

How?

By MSPB precedent, it will dismiss any whistleblower appeal if the government unilaterally corrects the personnel action appealed and pays the whistleblower legal fees. So the government can take repeated personnel action against a whistleblower, forcing him to pay ten of thousands of dollars in legal costs to prepare a case against the government (a good whistleblower attorney can cost \$300+/dollars an hour, deposition transcripts are about \$2.50/page, etc) and then get the case dismissed, without a finding of fault, by unilaterally correcting the action and paying the attorney fees, then starting all over the next day with another retaliatory personnel action.

Carson alleges that most of the reprisal he's experienced for the past six years has been motivated to cause him to quit so the Department of Energy (DOE) could evade compliance with a February 1994 settlement agreement that called for an independent "fault-determining mechanism" for his allegations.

So how has Carson prevailed an astounding EIGHT TIMES?

- 1) February 1994 - Carson "prevailed" for purposes of attorney fees in a settlement agreement that ended his first whistleblower appeal. DOE paid nearly \$25,000 in Carson's legal bills and costs. Carson v. Department of Energy, docket no. SL-1221-94-0179-W-1 (unpublished).
- 2) December 1995 - Carson "prevailed" when DOE unilaterally withdrew the retaliatory personnel action and paid nearly \$35,000 in Carson's legal bills and costs. Carson v. Department of Energy, docket no. AT-1221-95-1197-W-1 (unpublished).
- 3) April 1997 - Carson "prevailed" when DOE was found in "material breach" with the February 1994 Settlement Agreement in an MSPB "Recommendation." Carson v. Department of Energy, docket no. SL-1221-94-0179-C-1 (unpublished).
- 4) January 1998 and September 1998 - Following DOE's appeal, Carson "prevailed" when DOE was again found in "material breach" with the February 1994 Settlement Agreement in a FINAL MSPB decision. DOE paid nearly \$12,000 in legal fees and costs. Carson v. Department of Energy, 77 MSPR 453 (1998) and 79 MSPR 502 (1998) (published).
- 5) April 1999 - Carson "prevailed" in another MSPB initial decision in a whistleblower appeal. Carson v. Department of Energy, docket nos. AT-1221-96-0948-W-3; AT-1221-98-0250-W-1;

and AT-1221-98-0623-W-1 (unpublished).

6) February 2000 - Following DOE's appeal of the initial decision, Carson again "prevailed" in a FINAL, UNAPPEALABLE MSPB decision. In July 2000 DOE paid \$260,000 to some of Carson's attorneys to settle their legal fees. In September 2000 DOE paid Carson \$17,000 for his legal costs. In October 2000 DOE paid another \$9000, believe it or not, for the time attorneys spent preparing the billing for the \$260,000. In February 2001, MSPB awarded another \$22,000 in attorney fees, while about \$60,000 more remains in litigation. In March 2001, MSPB awarded Carson about \$50,000 in consequential damages, with about \$30,000 remaining in litigation. Carson v. Department of Energy, 85 MSPR 171 (2000) (published).

7) October 5th 2000 - MSPB finds DOE in non-compliance with the MSPB's February 2000 order restoring Carson to his job. Carson v. Department of Energy, docket nos. AT-1221-96-0948-C-3; AT-1221-98-0250-C-3; and AT-1221-98-0623-C-3 (unpublished).

8) April 2001 - MSPB affirms its October 2000 finding of non-compliance, DOE becomes liable for another \$20,000 in attorney fees. October 2001, MSPB Orders DOE to pay Carson's attorney over \$23,000.00. Carson v. Department of Energy, 88 MSPR 260 (2001). (published)

DOE has now paid nearly \$400,000 in legal fees for Joe Carson, with over \$100,000 in legal fees and his consequential damages still in litigation.