

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

AMANDA MCMILLAN

Plaintiff,

v.

DONALD E. POWELL

Chairman, Federal Deposit Insurance  
Corporation

Defendant.

Civil Case No. 05cv208 (RJL)

MEMORANDUM OPINION

(July 9<sup>th</sup>, 2008)

Plaintiff Amanda McMillan sued defendant Donald E. Powell in his capacity as chairman of her former employer, the Federal Deposit Insurance Corporation ("FDIC"), for employment discrimination in violation of Title VII. Defendant prevailed on its summary judgment motion on November 30, 2007. Currently before the Court is defendant's bill of costs, consisting of the court reporter's fee for a single deposition. For the following reasons, defendant's request for costs is GRANTED.

ANALYSIS

Barring statutory restrictions, prevailing parties, including the United States, are entitled to recover costs as a matter of course. Fed. R. Civ. P. 54(d); *Baez v. United*

*States Dep't of Justice*, 684 F.2d 999, 1004 (D.C. Cir. 1982). Courts rarely deny costs to a prevailing party unless 1) the prevailing party's conduct has been vexatious, and 2) the losing party is incapable of paying the costs. *Baez*, 684 F.2d at 1004. Neither situation is present here. Defendant prevailed on its summary judgment motion through the typical methods employed by attorneys everywhere; there was nothing vexatious about its conduct. Also, while plaintiff is appearing *pro se*, she is not proceeding *in forma pauperis* and has provided no evidence that \$2,475 would be beyond her means. Therefore, granting the defendant's request for costs is appropriate in this case.

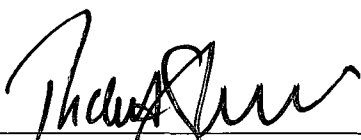
Plaintiff argues that this outcome is barred by 42 U.S.C. § 2000e-5(k), which states, in relevant part, "the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs." 42 U.S.C. § 2000e-5(k). This statute bars the United States, including defendant as chairman of the FDIC, from recovering reasonable *attorneys' fees* in a Title VII litigation, but places no restriction on its ability to recover *costs* as the prevailing party.<sup>1</sup> By the plain language of this statute, it is clear that Congress did not intend to alter the general rule that the United States, as a prevailing party, can recover costs, including the court reporter's fee requested in this case. Plaintiff's argument is therefore without merit.

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<sup>1</sup> Plaintiff also argues that costs can only be awarded if the plaintiff's actions were "frivolous or unreasonable." Pl. Mem. at 4. Plaintiff again inaccurately conflates attorneys' fees and costs. As the cases cited by plaintiff plainly indicate, the "frivolous or unreasonable" standard applies only to attorneys' fees, not to costs. *See, e.g., Christiansburg Garment Co. v. EEOC*, 434 U.S. 412 (1978) ("the question in this case is under what circumstances an *attorney's fee* should be allowed when the defendant is the prevailing party.") (emphasis added).

### CONCLUSION

For the foregoing reasons, the defendant's request for \$2,475 in costs is  
GRANTED.



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RICHARD L. LEON  
United States District Judge