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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
ANDREW JOHNSON,	)	OEA Matter No. 1601-0215-11AF21
Employee	)	
	)	Date of Issuance: January 14, 2021
v.	)	
	)	JOSEPH E. LIM, ESQ.
D.C. PUBLIC SCHOOLS,	)	Senior Administrative Judge
<u>Agency</u>	)	
Lynette Collins, Esq., Agency Representative		
Andrew Johnson, Employee <i>Pro se</i>		

**ADDENDUM DECISION ON ATTORNEY FEES<sup>1</sup>**

PROCEDURAL HISTORY

On September 9, 2011, Andrew Johnson ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting the District of Columbia Public Schools' ("DCPS" or "Agency") final decision to remove him from his position as a School Psychologist due to two (2) consecutive years of a "Minimally Effective" IMPACT rating.<sup>2</sup> Employee's termination was effective August 12, 2011. This matter was assigned to the undersigned on June 26, 2013. On May 20, 2014, I issued an Initial Decision ("ID") dismissing the matter for lack of jurisdiction due to Employee's voluntary retirement.<sup>3</sup>

Employee subsequently filed a Petition for Review with OEA's Board on June 26, 2014. On February 16, 2016, the OEA Board issued an Opinion and Order on Petition for Review denying Employee's petition. It held that OEA had no jurisdiction over his appeal because the evidence supported a finding that Employee's decision to retire was of his own volition and was not a result of incorrect or misleading information on Agency's part.

Thereafter, Employee appealed to the Superior Court of the District of Columbia ("Superior Court"). On February 21, 2017, the Superior Court affirmed OEA's decision and denied Employee's appeal.<sup>4</sup> Employee's Motion for Reconsideration was also denied on April 11, 2017.

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1 This decision was issued during the District of Columbia's Covid-19 State of Emergency.  
2 IMPACT is the effectiveness assessment system Agency uses to rate the performance of school-based personnel.  
3 *Andrew Johnson v. D.C. Public Schools*, OEA Matter No. 1601-0215-11 (May 20, 2014).  
4 *Johnson v. D.C. Public Schools, et al.*, Case No. 2016 CA 001551 (D.C. Super. Ct. February 21, 2017).

Employee then appealed to the District of Columbia Court of Appeals ("CA"). On August 9, 2018, the Court of Appeals vacated the ID on the issue of jurisdiction and remanded the case to the Superior Court to remand to OEA. The Superior Court then remanded the matter to OEA on February 8, 2019, with instructions to proceed with the matter. I held a Status Conference on February 11, 2019, and I issued an Initial Decision on Remand upholding Agency's termination of Employee's employment on June 14, 2019.<sup>5</sup> Employee appealed and on May 19, 2020, the OEA Board upheld the legality of IMPACT but remanded the matter to the undersigned for the purpose of conducting an evidentiary hearing.<sup>6</sup> Specifically, the Board determined that a hearing was needed to address Employee's allegations of procedural errors in Agency's removal of Employee as it pertained to his IMPACT scores. Subsequently, I held a Prehearing Conference on February 10, 2020, and held an Evidentiary Hearing on July 23, 2020.<sup>7</sup> On October 15, 2020, I issued a Second Initial Decision on Remand wherein I reversed Agency's termination of Employee's employment.<sup>8</sup>

On November 12, 2020, Agency filed a Petition for Review to the OEA Board seeking review of the reversal of the termination.<sup>9</sup> This appeal to the OEA Board is still pending. On January 1, 2021, Employee filed a Motion for Attorney Fees in the amount of \$5,660 in attorney's fees and \$566 in costs. Agency submitted its response to the Fee petition on January 4, 2021. The record is closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

### ISSUE

Whether Employee's motion for attorney fees should be dismissed as being premature.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.8 provides that: "[An Administrative Judge of this Office] may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice." *See also* OEA Rule 634.1, 59 D.C. Reg. 2129 (2012). In his motions related to attorney fees, Employee indicates his intention to seek attorney fees in this matter. Here, Agency has appealed the decision with the OEA Board. That petition is currently pending before the OEA Board. Thus, at this point the question of whether Employee is

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<sup>5</sup> *Johnson v. D.C. Public Schools*, OEA Matter No. 1601-0215-11R18, *Initial Decision on Remand* (June 14, 2019).

<sup>6</sup> *Johnson v. D.C. Public Schools*, OEA Matter No. 1601-0215-11R18, *Opinion and Order on Remand* (May 19, 2020).

<sup>7</sup> Due to the District of Columbia's Covid-19 State of Emergency, the Evidentiary Hearing was held virtually via WebEx.

<sup>8</sup> *Andrew Johnson v. D.C. Public Schools*, OEA Matter No. 1601-0215-11R20, *Second Initial Decision on Remand* (October 15, 2020). However, the IMPACT score for school year 2010-2011 was upheld.

<sup>9</sup> Agency mistakenly captioned this as OEA Matter No. 1601-0215-11R18 instead of OEA Matter No. 1601-0215-11R20.

a prevailing party has not been finally determined. Consequently, I find that the Motion for Attorney Fees is premature and must now be dismissed. In addition, Agency points out that the attorney fees sought were incurred in D.C. Superior Court, not before this Office. Agency also alleges that one of Employee's attorneys is dead and the other had his law license suspended for three years. These issues are not yet ripe for review at the moment. However, I further find that the dismissal will be without prejudice, since Employee may yet become a prevailing party. If this occurs, he may then resubmit his motion for attorney fees.

ORDER

It is hereby **ORDERED** that Employee's Motion for Attorney Fees is **DISMISSED without Prejudice**.

*s/ Joseph Lim*

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JOSEPH E. LIM, ESQ.

Senior Administrative Judge