

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE)	OEA Matter No. 1601-0027-18AF22
)	
v.)	Date of Issuance: June 28, 2022
)	
METROPOLITAN POLICE DEPARTMENT)	Joseph E. Lim, Esq.
<u>Agency</u>)	Senior Administrative Judge
Marc Wilhite, Esq., Employee Representative		
Stephen Milak, Esq., Agency Representative		

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On March 10, 2017, the Metropolitan Police Department (“Agency” or “MPD”) issued a Notice of Proposed Adverse Action (“Proposed Action Notice”) to remove Employee from his Police Officer position with the Agency. On June 13, 2017, an Adverse Action Panel (“Panel”) was convened for an Evidentiary Hearing to hear evidence, make findings of fact, and determine conclusions of law. The Adverse Action Panel found Employee guilty on all charges and recommended termination as the penalty for the charges. On Employee’s issue that Agency violated the 90-Day Rule, the Panel denied Employee’s Motion to Dismiss. The August 1, 2017, Notice informed Employee that his removal would be effective on September 29, 2017.

On February 1, 2018, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting Agency’s action of terminating him from his position as a Police Officer. Agency filed its response to Employee’s Petition for Appeal on March 5, 2018.

This case was assigned to me on May 5, 2018. After discussion, the parties agreed that this matter would be adjudicated based on the standard outlined in *Elton Pinkard v. D.C. Metropolitan Police Department*.¹ Accordingly, the parties submitted their briefs and on December 6, 2018, I issued an Initial Decision (“ID”) wherein I upheld Agency’s action.

Employee appealed the ID, and on December 3, 2019, the OEA Board granted Employee’s

¹ 801 A.2d 86 (D.C. 2002).

Petition for Review and reversed the ID.² Agency appealed, and on February 3, 2022, the Superior Court of the District of Columbia denied Agency's Petition for Review.³ Subsequently, Agency reinstated Employee to his position and paid his back pay and benefits.

On May 16, 2022, Employee submitted a Motion for Award of Attorney's Fees. On June 9, 2022, Agency indicated that it had obtained Employee's consent for an extension. Agency submitted its response on June 21, 2022. The record is now closed.

JURISDICTION

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

ISSUE

What are the appropriate Attorney Fees to be awarded to Employee, the prevailing party, that are warranted in the interest of justice.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

“[F]or an employee to be a prevailing party, he must obtain all or a significant part of the relief sought. . . .” *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88AF92 (May 14, 1993). *See also Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980). In this case, both parties agree that Employee is a prevailing party in that Agency's adverse action was reversed and he was reinstated to his position. Agency also concedes that Employee is entitled to an award of attorney fees in the interest of justice.

The party seeking an award of attorney fees bears the burden of proving that the requested fees are reasonable. *Joyce v. Department of the Air Force*, 74 M.S.P.R. 112 (1997). Employee's submission was detailed and included the specifics of the services provided on Employee's behalf. Employee requested an award of \$10,292.50 in attorney fees and costs for services performed from December 14, 2018, through February 18, 2019. These covered legal services provided before this Office and before the Superior Court of the District of Columbia. Employee claims that his counsel expended approximately 34.3 hours at the hourly rate ranging from \$275.00 to \$375.00. Employee points out that the hourly rate that he seeks is below market rate and is based on the fee agreement he made with counsel.

In its response, Agency states that it does not oppose the award of attorney fees in the amount Employee requested. Based on the documents submitted and the parties' statements, I therefore find that an attorney fee award of \$10,292.50 is warranted in the interest of justice in this matter.

² *Employee v Metropolitan Police Department*, OEA Matter No. 1601-0027-18, *Opinion and Order on Petition for Review* (December 3, 2019).

³ *Metropolitan Police Department v. OEA and Employee*, Case No. 2019 CA 8420 (D.C. Super. Ct. February 3, 2022).

ORDER

It is hereby ORDERED that Agency pay Employee, within thirty (30) days from the date on which this addendum decision becomes final, \$10,292.50 in attorney fees and costs.

FOR THE OFFICE:

s/ Joseph Lim

JOSEPH E. LIM, Esq.

Senior Administrative Judge