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

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0040-20A22
	)	
v.	)	Date of Issuance: January 6, 2023
	)	
DEPARTMENT OF FOR-HIRE VEHICLES,	)	JOSEPH E. LIM, ESQ.
<u>Agency</u>	)	Senior Administrative Judge
Ann-Kathryn So, Esq., Employee Representative	)	
Conner Finch, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES**

PROCEDURAL HISTORY

Employee, a Human Resources Specialist<sup>1</sup> in the Department of For-Hire Vehicles (“Agency”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on April 9, 2020, appealing the Department of For Hire Vehicles’ (“DFHV” or “Agency”) decision to terminate her from service effective March 13, 2020. Employee was terminated for: 1) Unauthorized absence of one (1) workday or more, but less than five (5) days, (2) Any on-duty or employment related reason for corrective or adverse action that is not arbitrary or capricious, (3) Knowing submission (or causing or allowing the submission) of falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents, and (4) Knowingly and willfully reporting false or misleading material information to a superior.<sup>2</sup> On June 16, 2020, OEA requested that Agency submit an Answer to Employee’s Petition for Appeal. Agency submitted its Answer on or about August 28, 2020.

After Agency declined mediation on March 26, 2021, this matter was assigned to the undersigned on March 30, 2021. I held a Prehearing Conference on May 3, 2021, and a virtual Evidentiary Hearing via WebEx<sup>3</sup> on July 7 and 8, 2022. On October 3, 2021, I

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<sup>1</sup> Employee Exhibit 27.

<sup>2</sup> Agency Exhibit 14.

<sup>3</sup> WebEx is a software program that enables participants to engage in a hearing or meeting remotely via an electronic device.

issued an Initial Decision (“ID”) reversing Agency’s removal of Employee after I found that none of Agency’s charges against Employee were warranted. On December 7, 2022, Agency filed a Petition for Review to the Superior Court of the District of Columbia seeking review of the reversal of the termination.<sup>4</sup> This appeal to the D.C. Superior Court is still pending.

On December 7, 2022, Employee filed a Motion for Attorney Fees in the amount of \$135,223.70 in attorney’s fees and costs. Agency submitted its response to the Fee petition on December 29, 2022. 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 639.1, 68 DCR 012473 (December 27, 2021), 6-B DCMR Ch. 600. In her motions related to attorney fees, Employee indicates her intention to seek attorney fees in this matter. Here, Agency has appealed the decision with the Superior Court of the District of Columbia. That petition is currently pending before the Court as Case No. 2022 CAB 005771. Thus, at this point the question of whether Employee is a prevailing party has not been finally determined. Consequently, the motion for attorney fees is premature and must now be dismissed. However, the dismissal will be without prejudice, since Employee may yet become a prevailing party. If this occurs, she may then resubmit her motion for attorney fees.

### ORDER

It is hereby **ORDERED** that Employee’s Motion for Attorney Fees is **DISMISSED without prejudice**.

S/Joseph Lim  
JOSEPH E. LIM, ESQ.  
Senior Administrative Judge

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<sup>4</sup> *Dept. of For Hire Vehicles v. DC OEA & Employee*, Case Number 2022 CAB 005771.