

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,	)	
Employee	)	OEA Matter No. 1601-0015-20-AF24
	)	
v.	)	Date of Issuance: March 4, 2024
	)	
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
_____	)	
John Cook, Esq., Employee Representative	)	
Lynette Collins, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES AND COSTS**

**INTRODUCTION AND PROCEDURAL HISTORY**

Employee was hired by District of Columbia Public Schools (“DCPS” or the “Agency”) as a teacher on or about June 29, 2002. Thereafter, on or about August 15, 2009, Employee was separated from the Agency based on performance related issues. In response to his termination, the Washington Teachers Union (Hereinafter “WTU”) filed a grievance on his behalf. The grievance went to arbitration. On or about July 18, 2018, the Arbitrator issued his opinion reversing the termination and ordering DCPS to reinstate Employee. Employee was reinstated on or about April 10, 2019. However, prior to reinstatement, Employee was required to complete Agency’s mandatory onboarding process, which included completing a background check, drug and alcohol testing, Tuberculous Test (Hereinafter “TB”) and submitting proof of licensure to teach. Thereafter, Agency sought to appeal the Arbitrator’s decision reversing Employee’s termination.<sup>1</sup> Despite filing the Appeal, Agency began requesting that Employee start with the onboarding process.

On October 18, 2019, DCPS issued a Notice of Termination. Specifically, the Notice outlined that Employee was found ineligible for employment based on his failure to comply with

<sup>1</sup> The grievance and its dictate were not under consideration or review in the ID.

onboarding and licensure requirements. The Notice further outlined that the termination would become effective November 4, 2019. In response, on or about December 3, 2019, Employee filed an appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting Agency’s final decision terminating him. Thereafter, OEA requested a response and Agency submitted its response. After an unsuccessful attempt at mediation, this matter was first assigned to Administrative Judge (“AJ”) Arien Cannon. AJ Cannon then left OEA’s employ, and this matter was then reassigned to the Undersigned on March 5, 2020. Several prehearing conferences were held over a three-year period because Employee had multiple attorneys and the holding of an Evidentiary Hearing in this matter was further delayed due to constraints imposed by the District of Columbia State of Emergency caused by the Coronavirus Covid-19 pandemic. Finally, an evidentiary hearing was held on March 6, 2023.

An Initial Decision (“ID”) was issued on September 13, 2023. The ID reversed the Agency’s removal action and required Agency to reinstate Employee and awarded him backpay and benefits lost as a result of the removal action. On October 13, 2023, Agency filed a Petition for Review with the Board of the Office of Employee Appeals contesting the ID. On January 4, 2024, the Board of the Office of Employee Appeals issued an Opinion and Order that denied Agency’s Petition for Review. On February 2, 2024, Employee, through counsel, filed a Motion for Attorney Fees. In response, Agency filed a Motion to Mitigate Damages. In Agency’s motion, it argued that Employee had a duty to mitigate damages and sought a limited Evidentiary hearing on this issue. On February 15, 2024, the Undersigned issued an Order to Employee’s counsel that required him to address, *inter alia*, whether Agency had fully complied with the ID. On February 27, 2024, Employee’s counsel timely responded to the Order and noted that compliance was incomplete and ongoing. After reviewing the party’s submission, I have determined that no further proceedings are warranted at this time regarding Employee’s Motion for Attorney Fees and DCPS’ response.

### JURISDICTION

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

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUE

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

ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.08 provides that an Administrative Judge of this Office may require payment by the agency of reasonable attorney fees if the appellant is: 1) the prevailing party; and 2) payment is warranted in the interest of justice. *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320. An employee is considered the "prevailing party," if he or she received "all or significant part of the relief sought" as a result of the decision.<sup>2</sup> Employee herein is the prevailing party. However, he has not been reinstated; Agency has not recompensed him backpay that is owed; and he has not been brought back to the *status quo ante* anticipated by the ID. It is self-evident that the process of doing so will require the usage of additional legal resources that would become a part of the evolving attorney fees tab.

Consequently, I find that the motion for attorney fees is premature and must now be dismissed. However, the dismissal is without prejudice, since the process of bringing Employee back to the *status quo ante* is ongoing. Employee's counsel may resubmit a motion for attorney fees to this Office once this process has been completed.<sup>3</sup>

ORDER

Based on the aforementioned, it is hereby **ORDERED** that Employee's Motion for Attorney Fees and Costs is **DISMISSED** without Prejudice.

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.

SENIOR ADMINISTRATIVE JUDGE

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<sup>2</sup> *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1601-0138-88AF92 (May 13, 1993).

<sup>3</sup> Agency's Motion to Mitigate Damages is misplaced as a response to the Motion for Attorney Fees. This Motion is denied. However, it may be resubmitted if Employee opts to contest the Agency's efforts (or lack thereof) complying with the ID.