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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0017-21AF24
)	
v.)	Date of Issuance: February 28, 2024
)	
D.C. DEPARTMENT OF CONSUMER)	
AND REGULATORY AFFAIRS ² ,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Samuel Bailey, Jr., Employee's Representative)	
Karl Carter, Employee's Representative)	
Stephen Milak, Esq., Agency's Representative)	

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL HISTORY

On March 11, 2021, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Consumer and Regulatory Affairs’ (“DCRA” or “Agency”) decision to terminate him from his position as an Elevator Inspector³, effective February 13, 2021. Employee was charged with: “Unavailability for work due to medical reasons. Unauthorized absence of five (5) workdays or more.”⁴

On April 18, 2023, I issued an Initial Decision (“ID”), reversing Agency’s decision to terminate Employee. Agency appealed the ID to the OEA Board. On November 16, 2023, the OEA Board issued an Opinion and Order on Petition for Review (“O&O”) dismissing Agency’s Petition for Review. The O&O directed Agency to “reimburse Employee for all back pay and

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² This Agency no longer exists as it was split into two (2) separate agencies in 2022 - Department of Licensing and Consumer Protection and the Department of Buildings.

³ The Notice of Proposed Removal and the Final Agency Decision listed Employee’s position as a Housing Code Inspector. However, Agency conceded that Employee was an Elevator Inspector and not a Housing Code Inspector.

⁴ 6B District of Columbia Municipal Regulation (“DCMR”) §§ 1605.4(f)(2) and 1607.2(f)(4).

benefits lost as a result of his termination, consistent with the April 18, 2023, Initial Decision.”⁵ Agency did not appeal the Board’s decision.

On December 18, 2023, Employee’s representatives filed a Motion for Attorneys’ Fees.⁶ Employee’s representatives (Mr. Bailey and Mr. Carter) noted that Employee was the prevailing party and was entitled to an award of attorney fees. On January 10, 2024, Agency filed a Motion for Extension of Time to File Opposition to Employee’s Motion for Attorney’s Fees. Subsequently, on January 17, 2024, Employee filed an Opposition to Agency’s January 10, 2024, Motion for Extension of Time. Thereafter, on January 24, 2024, Agency filed a Motion to Hold Employee’s Motion for Attorney’s Fees in Abeyance and Opposition to Employee’s Petition for Attorneys’ Fees. Subsequently, on February 5, 2024, Employee filed an Opposition to Agency’s Motion to Hold Employee’s Motion for Attorney’s Fees in Abeyance and Opposition to Employee’s Petition for Attorneys’ Fees. Thereafter, Agency filed a Motion to Strike Employee’s Filing or, Alternatively, Agency’s Motion for Leave to file a Reply with Employee’s Filing. Employee filed an Opposition to Agency’s Motion to Strike Employee’s Filing or, Alternatively, Agency’s Motion for Leave to file a Reply with Employee’s Filing on February 16, 2024. The record is now closed.

JURISDICTION

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

ISSUES

- 1) Whether Employee is a prevailing party for the purpose of determining whether the award of attorney fees is warranted; and
- 2) Whether the payment of attorney fees is warranted, if so, how much.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW⁷

D.C. Official Code §1-606.08 provides that an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party and payment is “warranted in the interest of justice.”⁸ The goal, in awarding attorney fees, is to attract competent counsel to represent individuals in civil rights and other public interest cases, where it might be otherwise difficult to retain counsel.⁹

⁵ *Employee v. D.C. Department of Consumer and Regulatory Affairs*, OEA Matter No. 1601-0017-21, Opinion and Order on Petition for Review (November 16, 2023).

⁶ See Employee’s Motion for Attorneys’ Fees (December 18, 2023).

⁷ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).

⁸ See also OEA Rule 639.1, 59 DCR 2129 (March 16, 2012).

⁹ *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968).

Prevailing Party

As noted above, D.C. Official Code §1-606.08 provides that an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party. OEA has previously relied on its ruling in *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88AF92 (May 13, 1993) and the Merit Systems Protection Board’s (“MSPB”)¹⁰ holding in *Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980) which held that, “for an employee to be a prevailing party, he must obtain all or a significant part of the relief sought...” However, the decision in *Hodnick* was overruled by the MSPB in *Ray v. Department of Human and Health Services*, 64 M.S.P.R. 100 (1994). In *Ray*, the MSPB adopted the U.S. Supreme Court’s holding in *Farrar v. Hobby*, 506 U.S. 103 (1992) in determining the prevailing party in the context of the Civil Service Reform Act of 1978. Pursuant to *Ray*, “... to qualify as a prevailing party, a ... plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgement against the defendant from whom fees are sought ... or comparable relief through a consent decree or settlement.” In addition, the District of Columbia Court of Appeals in *Settemire v. D.C. Office of Employee Appeals*, 898 A.2d 902 (D.C. 2006), noted that, “[g]enerally speaking the term ‘prevailing party’ is understood to mean a party ‘who had been awarded some relief by the court’ (or other tribunal) ...”¹¹

In the instant matter, Agency did not appeal the OEA Board’s November 16, 2023, Opinion and Order. As such, the OEA Board’s O&O upholding the undersigned’s ID reversing Agency’s decision to remove Employee became the binding decision of this Office and Employee was entitled to all the relief sought in his Petition for Appeal. Therefore, it is undisputed that Employee is the “prevailing party” here.

Interest of Justice

Pursuant to D.C. Official Code §1-606.08 and OEA Rule 639, the award of attorney fees is discretionary and not mandatory in a successful OEA appeal. To be awarded attorney fees, the party must be the prevailing party, and the degree of his success must also be sizeable enough to render the payment of attorney fees reasonable in the interest of justice.

In *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980), the Merit System Protection Board (MSPB), this Office’s federal counterpart, set out several circumstances to serve as directional markers toward the ‘interest of justice’ (the “Allen Factors”)—a destination which, at best can only be approximate. *Id.* at 435. The circumstances to be considered are:

1. Whether the agency engaged in a “prohibited personnel practice”,
2. Whether the agency’s action was “clearly without merit” or was “wholly unfounded”, or the employee is “substantially innocent” of the charges brought by the agency;

¹⁰ MSPB is this Office’s federal counterpart.

¹¹ See also *Texas State Teachers Association v. Garland Independent School District*, 489 U.S. 782, 109 S.Ct. 1486, 103 L.Ed.2d 866 (1989) (holding that the prevailing party need only “succeed on any issue in the litigation which achieves some of the benefit he sought in bringing the action.”)

3. Whether the agency initiated the action against employee in “bad faith”, including:
 - a. Where the agency’s action was brought to “harass” the employee;
 - b. Where the agency’s action was brought to “exert pressure on the employee to act in certain ways”,
4. Whether the agency committed a “gross procedural error” which “prolonged the proceeding” or “severely prejudiced the employee”,
5. Whether the agency “knew or should have known that it would not prevail on the merits”, when it brought the proceeding, *Id.* at 434- 35.

The OEA Board has adopted these factors in its analysis of attorney fees.¹² In the current matter, Agency argues that Employee is not entitled to an award of attorney’s fees in the interest of justice because none of the categories discussed in *Allen* are present in the instant matter. Employee on the other hand asserts that Agency’s action violated *Allen* factors 2, 3, 4, and 5. I disagree with Agency’s position that none of the *Allen* factors weigh towards an award of attorney fees. The undersigned finds that the basis of the ID reversing Agency’s removal of Employee was due to Agency’s violation of *Allen* Factors 2 and 5.

Agency was aware of Employee’s medical condition and the need for him to be away from work for an extended period. Employee informed Agency’s Director on July 10, 2019, that he was going out on disability due to his condition. Agency received Employee’s long-term disability documentation in January of 2020. Additionally, Agency received Employee’s doctor’s note from Dr. Griffiths in July 2020, in response to Agency’s June 30, 2020, Letter requesting information on Agency’s condition. Dr. Griffiths’ July 22, 2020, letter highlighted that Employee was not to return to work due to dialysis. Dr. Griffiths also provided that if Agency needed further information, they should contact him at the telephone number included in the letter.¹³ However, Agency never contacted Dr. Griffiths about the gravity of Employee’s condition.

Furthermore, I disagree with Agency’s assertion that the determination of ‘incapacitation’ to overcome an AWOL charge is a ‘fact-based’ determination that can only be made during an evidentiary hearing. Of note, in Employee’s Exhibit 4 – Employee’s FMLA application form which was filed with Agency when Employee began dialysis treatment in 2019, Dr. Griffiths stated that the side effects of dialysis treatment were *incapacitating*, and that Employee could suffer from weakness and unsteady gait that could necessitate that Employee be absent from work (emphasis added). The application states:¹⁴

1. Approximate date condition commenced: **1-9-17**
Probable duration of condition: *lifetime*

¹² See *Phillippa Mezile v. D.C. Department on Disability Services*, Opinion and Order on Petition for Review, OEA Matter No. 2401-0158-09R12AF17 (March 20, 2018). See also. *Webster Rogers v. D.C. Public Schools*, Opinion and Order on Remand, OEA Matter No. 2401-0255-10AF16 (November 7, 2017).

¹³ Agency Exhibit 7.

¹⁴ See Employee’s Exhibit 4.

4. Describe other relevant medical facts, if any, related to the condition for which the employee seeks leave (such medical facts may include symptoms, diagnosis, or any regiment of continuing treatment such as the use of specialized equipment):

[Employee] will be seen 4x a week for dialysis. The days are Mon, Tues, Thur, and Fri for approximately 4 1/2 hrs each day. The patient will experience weakness, fatigue, unsteady gait, and shortness of breath which improves with dialysis.

5. Will the employee be incapacitated for a single continuous period of time due to his/her medical condition, including any time for treatment and recovery? ___

No Yes

...

7. Will the condition cause episodic flare-ups periodically preventing the employee from performing his/her job functions? ___ No Yes

Is it medically necessary for the employee to be absent from work during the flare-ups? ___ No Yes. If so, explain:

During flare-ups pt will have generalized weaknesses and unsteady gait.

(Emphasis added).

Agency was apprised of Employee's condition as far back as 2019. Had Agency done its due diligence prior to charging Employee with AWOL, Agency would not have proceeded with the current adverse action. Accordingly, I conclude that Agency's action against Employee was without merit because Agency was aware that Employee was incapacitated during the relevant AWOL period based on Employee's FMLA application form submitted to Agency and the subsequent doctor's notes from Dr. Griffiths. Moreover, Agency knew or should have known that its action of terminating Employee while he was incapacitated would not prevail on the merits when it commenced this proceeding. Moreover, Agency was aware that the side effects of dialysis treatment were incapacitating, and that incapacitation was an affirmative defense to AWOL. Therefore, I find that Agency violated *Allen* factors 2 and 5. Thus, I further find an award of attorney fees to be in the interest of justice. Accordingly, I conclude that the requirements of both D.C. Official Code § 1-606.08 and OEA Rule 634.1 have been satisfied in this matter. The issue now hinges on the reasonable amount of attorney fees to be awarded. The D.C. Court of Appeals, in *Frazier v. Franklin Investment Company, Inc.*, 468 A.2d 1338 (1983), held that the determination of the reasonableness of an award is within the sound discretion of the trial court. It reasoned that the trial court has a superior understanding of the litigation.¹⁵ Here, the undersigned is the equivalent of the trial court.¹⁶

¹⁵ Citing *Hensley v. Eckerhart*, 461 U.S. 424, 103 S. Ct. 1993, 1941 (1983).

¹⁶ *Estate of Bryan Edwards v. District of Columbia Department of Youth and Rehabilitation Services*, Opinion and Order on Attorney's Fees, OEA Matter No. 1601-0017-06AF10 (June 10, 2014).

Attorney Suspension

It is undisputed that Employee is the prevailing party in this matter and therefore entitled to an award of attorney's fee in the interest of justice. However, Agency argues that Mr. Bailey's Petition for Attorney's fees should be denied because he was suspended by the D.C. bar on November 22, 2021.¹⁷ It also alleges that Mr. Carter was not authorized to practice law throughout the proceeding. Mr. Bailey on the other hand argues that he is entitled to attorney's fees up until he was suspended by the D.C. Bar on November 22, 2021, and entitled to be compensated as a paralegal thereafter. He also avers that Mr. Carter is entitled to be compensated as a paralegal throughout the duration of this proceeding.

On December 20, 2021, Mr. Bailey filed a Consent Request to Continue Representation, citing that Employee consented to be represented by Mr. Bailey as a non-attorney following the District of Columbia's Order preventing Mr. Bailey from acting as an attorney pursuant to D.C. Bar R. XI Section 14.¹⁸ Based on Mr. Bailey's December 20, 2021, submission, I agree with Agency's assertion that Mr. Bailey is not entitled to any fees incurred while he was administratively suspended from the practice of law from November 22, 2021, through the filing of the current fee petition. I further find that neither Mr. Bailey nor Mr. Carter are entitled to be compensated as paralegals during the relevant period of November 22, 2021, to the present date because they were not supervised by a licensed attorney.

Pursuant to OEA Rule 615.1, an employee "... may appear on their own behalf, through an attorney, through a union representative, or through any *other competent individual*" in any proceeding before this Office. However, D.C. Official Code §1-606.08 and OEA Rule 639 does not provide for an award for fees for union representatives or other competent individuals. Since neither Mr. Bailey nor Mr. Carter were attorneys, and were not supervised by licensed attorneys, I conclude that after November 22, 2021, they were *competent individuals* representing Employee and therefore, they are not entitled to any fees from November 22, 2021, to date.¹⁹ (Emphasis added).

In *Copeland v. District of Columbia Department of Employment Services*,²⁰ Copeland was represented in an administrative proceeding by two (2) law students from the George Washington University Law School Public Justice Advocacy Clinic, under the direct supervision of the Clinic professor, a member of the District of Columbia Bar. Copeland was the prevailing party and the law students, and their professor filed an attorney fee petition pursuant to D.C. Official Code § 1-623.27(b)(2)²¹. The Administrative Judge in this case entered an order

¹⁷ Mr. Bailey's law license was suspended for billing related malpractice. Pursuant to the D.C. Bar website, Mr. Bailey's license status is listed as "Dual Suspension (Disc/NP)" as of February 9, 2024. See <https://my.dcbbar.org/directorymemberships?id=0014z00001kZRPwAAO> retrieved February 9, 2024.

¹⁸ This section is titled 'Disbarred and Suspended Attorneys'.

¹⁹ In *Employee v. District of Columbia Department of Youth and Rehabilitation Services*, OEA Matter No. 1601-0032-14AF21, *Opinion and Order on Petition for Review* (December 17, 2021), the OEA Board opined that, the Employee's attorney in this matter was not entitled to fees incurred while he was administratively suspended from the practice of law.

²⁰ 3 A.3d 331 (Sept. 2, 2010).

²¹ "If a person utilizes the services of an attorney-at-law in the successful prosecution of his or her claim under § 1-623.24(b) or before any court for review of any action, award, order, or decision, there shall be awarded, in addition

denying the fee application on the ground that “[t]he plain language of the statute [D.C.Code § 1–623.27(b)(2)] provides for payments to ‘attorney-at-law’ and does not specify any other class of person eligible to receive such payments.” The Compensation Review Board (“CRB”) agreed with this rationale, stating that law students “do not qualify as attorneys-at-law.” This matter was appealed to the District of Columbia Court of Appeals wherein, this Court opined that “[t]here is no question that a claimant must ‘utilize[] the services of an attorney-at-law in the successful prosecution of his or her claim’ in order to be entitled to the award of ‘a reasonable attorney’s fee’ under § 1–623.27(b)(2). But when that threshold requirement is met, it would be untenable to argue that ‘a reasonable attorney’s fee’ cannot be based on the work of law students and other non-lawyers who assisted in the representation *under the attorney’s direction.*” (Emphasis added).

I find that the current case is distinguishable from *Copeland* in that, while the law students in *Copeland* were supervised by a licensed attorney, this is not the case here. In the instant matter, neither Mr. Bailey nor Mr. Carter were supervised by or under the direction of a licensed ‘attorney-at-law’ during their representation of Employee from November 22, 2021, to the filing of the current fee petition. Therefore, I conclude that the threshold requirement *that a claimant must ‘utilize[] the services of an attorney-at-law in the successful prosecution of his or her claim’ in order to be entitled to the award of ‘a reasonable attorney’s fee’* under § 1–623.27(b)(2) was not met here. (Emphasis added).

Moreover, the District of Columbia Court of Appeals in *Copeland* opined that “... contrary to the Department’s characterization, this was not a case of lay representation before the Department. Ms. Copeland “utilized the services of an attorney-at-law in the successful prosecution” of her claim, and *the law students who assisted her pursuant to Rule 48 did so under that attorney’s direction and control* (emphasis added).”²² The Court further stated that “the “supervising lawyer” *must be an “active” member of the District of Columbia Bar; ...*” Based on the record, neither Mr. Bailey nor Mr. Carter were “active” members of the District of Columbia Bar from November 22, 2021, to the filing of the current fee petition, and they were not supervised by an “active” member of the District of Columbia Bar. (Emphasis added). Applying the Courts’s reasoning in *Copeland* to the current matter, I conclude that Mr. Bailey’s and Mr. Carter’s request for compensation as ‘paralegals’ for the period of November 22, 2021, to the filing of the current attorney’s fees petition is unreasonable because their representation of Employee was not done under the direction and control of a licensed attorney. Accordingly, I further conclude that Mr. Bailey’s and Mr. Carter’s request for fees during the relevant timeframe is unwarranted.

Reasonableness of Attorney Fee

In *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the U.S. Supreme Court held that, the most critical factor in determining the reasonableness of an attorney’s fee award is the degree of success obtained, since a requested fee based on the hours expended on the litigation as a whole

to the award of compensation, in a compensation order, a reasonable attorney’s fee, not to exceed 20% of the actual benefit secured, which fee award shall be paid directly by the Mayor or his or her designee to the attorney for the claimant in a lump sum within 30 days after the date of the compensation order.”

²² See *Copeland v. District of Columbia Department of Employment Services*, *supra*.

may be deemed excessive if a plaintiff achieves only partial or limited success. In cases where a party is only partially successful, the trial court must exercise its discretion to determine what amount of fees, if any, should be awarded.²³ In the instant matter, Employee was fully successful in his appeal against Agency, and he is entitled to attorney fees. Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award. The burden is on the fee applicant to produce satisfactory evidence that the requested rates are in line with those prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, or reputation.²⁴ The best evidence of the prevailing hourly rate is ordinarily the hourly rate customarily charged in the community in which the attorney whose rate is in question practices.²⁵ OEA Rule 639.3 establishes that “an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal.”

Here, in Employee’s Motion for Attorneys’ Fees, Mr. Bailey requested fees in the amount of \$132,749.00, which represent a total of 429.14 hours of service at a rate of \$750/hour for himself as an attorney for the period of September 22, 2020, to November 22, 2021; and at a rate of \$225/hour for himself as a paralegal for the period of November 22, 2021, to June 1, 2022; a rate of \$239/hour for himself for the period of June 1, 2022, to the filing of the fees petition. Because I have concluded that Mr. Bailey was not entitled to any fees after November 22, 2021, when his law license was suspended, I will only address the reasonableness of Mr. Bailey’s fees for the period of September 22, 2020, to November 09, 2021, which covers a total of 67.34 hours and represents a fee amount of \$50,505.

Mr. Carter requested an award for fees in the amount of \$27,173.54 for his services as a paralegal, which represents a total of 131.29. This covers the period of September 2020, to date, at a rate of \$206 for the period of June 2020, to May 2021; \$208 for May 2021, to June 2022; and \$239 for the period of June 2022 to date. As previously noted, after Mr. Bailey’s law license was suspended on November 22, 2021, Mr. Carter was no longer supervised by a licensed attorney, and Employee was no longer represented by an attorney, as such I find that Mr. Carter is not entitled to any fees after November 22, 2021. Accordingly, I will only address the reasonableness of Mr. Carter’s fees for the period of September 2020, to November 22, 2021, which covers a total of 106.79 hours and represents a fee amount of \$22,285.54.

Employee’s representatives also submitted two (2) invoices totaling the sum of \$9,999.60 (\$3,049.50 and 46950.10) from Capital Financial Forensics and Accounting LLC covering service for the period of September 15, 2023, to December 16, 2023. The descriptions in the invoices refer to discussions between Capital Financial Forensics and Accounting LLC and Employee’s representatives on (1) potential tax implications to Employee if he received a ‘lump sum’ for his backpay and other benefits Employee was entitled to; (2) damages calculation and (3) document review. I find that Employee is not entitled to reimbursement of the fees to Capital Financial Forensics and Accounting LLC to obtain tax advice on his backpay and benefit award or any damages calculations outside of the award of backpay, benefits and reinstatement. Consequently, this amount is not considered a valid expense associated with the current matter

²³ *Fleming v. Carroll Publ’g Co.*, 581 A.2d 1219 (D.C. 1990).

²⁴ *Blum v. Stenson*, 465 U.S. 886 (1984).

²⁵ *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

and is hereby **DENIED** and reduced to **\$0**. Moreover, Employee was not represented by licensed attorneys in 2023, when these expenses were incurred.

OEA's Board has determined that the Administrative Judges of this Office may consider the "Laffey Matrix" in determining the reasonableness of a claimed hourly rate. The *Laffey* Matrix used to compute reasonable attorney fees in the Washington, D.C.-Baltimore Metropolitan Area, was initially proposed in *Laffey v. Northwest Airlines, Inc.*²⁶ It is an "x-y" matrix, with the x-axis being the years (from June 1 of year one to May 31 of year two, e.g., 2015-16, 2016-17) during which the legal services were performed; and the y-axis being the attorney's years of experience. The axes are cross-referenced, yielding a figure that is a reasonable hourly rate. The *Laffey* Matrix calculates reasonable attorney fees based on the amount of work experience the attorney has and the year that the work was performed. Imputing the applicable year allows for the rise in the costs of living to be factored into the equation. The matrix, which includes rates for paralegals and law clerks, is updated annually by the Civil Division of the United States Attorney's Office for the District of Columbia.²⁷

This Office has consistently relied upon the USAO Matrix in consideration of the award for attorney fees. While it has been referred to as the "Laffey Matrix" the undersigned notes that name is now representative of a different scale, albeit similar considerations regarding attorney's experience, reasonableness of hours and the nature of the proceeding are considered by both matrices. However, the USAO Matrix "has been prepared by the Civil Division of the United States Attorney's Office for the District of Columbia (USAO) to evaluate request for attorney's fees in civil cases in District of Columbia Courts."²⁸ The USAO Matrix was utilized by the USAO through 2021, and it has now adopted what it names the "Fitzpatrick Matrix."²⁹ The Fitzpatrick Matrix was adopted in 2022 to address the issues/conflicts found in previous matters regarding the use of the *Laffey* Matrix versus the USAO Matrix. However, it should be noted that this matrix has not yet been adopted for use outside the District of Columbia.

Further, it should be noted that Courts have "treated...the *Laffey* Matrix as a reference rather than a controlling standard."³⁰ "There is no concrete, uniform formula for fixing the

²⁶ 572 F.Supp. 354 (D.D.C. 1983), aff'd in part, rev'd in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985).

²⁷ The updates are based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

²⁸ See. <https://www.justice.gov/file/1461316/download> – USAO Matrix Explanatory Note 1.

²⁹ See. <https://www.justice.gov/usao-dc/page/file/1189846/download> – Fitzpatrick Explanatory Note 1:

This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared to assist with resolving requests for attorney's fees in complex civil cases in District of Columbia federal courts handled by the Civil Division of the United States Attorney's Office for the District of Columbia. It has been developed to provide "a reliable assessment of fees charged for complex federal litigation in the District [of Columbia]," as the United States Court of Appeals for the District of Columbia Circuit urged. *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, nor has it been adopted by other Department of Justice components.

³⁰ *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).

hourly rates that are awarded in employment disputes (federal or local).”³¹ The purpose of the *Laffey* Matrix is to provide a “short-cut compilation of market rates for a certain type of litigation.”³² Determining a reasonable hourly rate requires a showing of at least three elements: 1) the attorneys’ billing practices; 2) the attorneys’ experience, skill, and reputation; and 3) the prevailing rates in the relevant community.³³ When utilizing the *Laffey* Matrix as a guide, courts will “first determin[e] the so-called loadstar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate.”³⁴ Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.³⁵ In addition, “[t]he novelty [and] complexity of the issues” should be “fully reflected” in the determination of the fee award.³⁶ The undersigned finds that the same considerations are applicable within the confines of the *USAO Fitzpatrick Matrix*. As a result, the undersigned will review this matter based upon the considerations of reasonableness as described above.

Hourly Rate

Samuel Bailey Jr.

Here, the record highlights that Mr. Bailey has over 40 years of experience practicing law. Mr. Bailey proffers that he graduated from Law School in 1975. He was a member of the District of Columbia and Pennsylvania bars. He has represented employees with private and public employers, including the District of Columbia government, in federal and state court civil litigation and administrative proceedings since 1979. He has served as counsel in several employment matters.³⁷ Mr. Bailey claims a rate of \$750 per hour from September 22, 2020, to November 22, 2021, when he was a licensed attorney. The hourly rates provided during the relevant times under the applicable attorney fee matrix³⁸ for someone with Mr. Bailey’s forty (40) plus years of experience is as follows: 2020-2021— \$665/hour. Accordingly, I find that the hourly rate charged by Mr. Bailey is excessive and not in line with the USAO’s matrix in

³¹ *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).

³² *Id.*

³³ *Id.* at 4 (quoting *Covington v. District of Columbia*, 313 U.S. App. D.C. 16, 18, 57 F.3d 1101, 1103 (D.C. Cir. 1995); *See also Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 988 (D.C. 2007).

³⁴ *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 823 A.2d 513, 530 (D.C. 2003) (quoting *Hampton Courts Tenants Ass’n v. District of Columbia Rental Hous. Comm’n*, 599 A.2d 1113, 1115 (D.C. 1991).

³⁵ *See Elec. Transaction Sys. Corp.*, *supra*.

³⁶ *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014) (quoting *Pennsylvania v. Del Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986).

³⁷ Employee’s Motion for Attorney’s Fees (December 18, 2023).

³⁸ Around 2015, the United States Attorney’s Office for the District of Columbia (USAO) introduced its own version of an attorney’s fees matrix to replace the *Laffey* matrix by the Legal Services Component of the Consumer Price Index (commonly referred to as the Legal Services Index or the “LSI”) to evaluate requests for attorney’s fees in civil cases in District of Columbia courts. While the USAO’s matrix released in 2015 is a variation of the *Laffey* matrix, the hourly rates provided by the LSI matrix are higher than the hourly rates in the USAO matrix. For purposes of analyzing the hourly rates in the instant matter, I find it appropriate to consider the rates in the USAO’s matrix. Since 2015, this Office has used the matrix produced by the USAO for analyzing an award of attorney fees and often refers to the USAO’s matrix interchangeably with the LSI *Laffey* matrix. *See Webster Rogers v. D.C. Public Schools*, Opinion and Order on Remand, OEA Matter No. 2401-0255-10AF16 (November 7, 2017). *Barbusin v. Department of General Services*, Second Addendum Decision on Attorney Fees, OEA Matter No. 1601-0090-18AF21 (Apr. 29, 2021). *See DL v. District of Columbia*, 924 F.3d 585 (D.C. Cir. 2019) for a discussion on the various matrices.

analyzing attorney fees for civil cases in the District of Columbia. Therefore, the undersigned will perform an analysis based on the hourly rate of **\$665 per hour** for work performed by Mr. Bailey prior to the suspension of his law license on November 22, 2021.

Karl Carter

Pursuant to the record, Mr. Carter has over 40 years of experience practicing law. Mr. Carter proffers that he graduated from Law School in 1970, and he was barred in the District of Columbia from 1972 until his voluntary disbarment in 2012. He avers that he now works as a paralegal providing litigation support in employment and discrimination cases.³⁹ However, he did not provide this Office with information on exactly how long he has been working as a paralegal. Mr. Carter is requesting that he be compensated as a paralegal with an hourly rate of \$206 for the period of June 2020, to May 2021, and \$208 for the period of June 2021 to May 2022, based on the *Laffey* Matrix. However, it is noted that the hourly rates provided during the relevant times under the applicable USAO fee matrix for Paralegals/Law Clerks is as follows: 2020-2021— \$180/hour. Accordingly, I find that the hourly rate charged by Mr. Carter is excessive and not in line with the USAO's matrix in analyzing legal fees for civil cases in the District of Columbia. Therefore, the undersigned will perform an analysis based on the hourly rate of **\$180 per hour** for work performed by Mr. Carter, as a Paralegal under the supervision of Mr. Bailey, prior to the suspension of his law license on November 22, 2021.

Number of Hours Expended

OEA's determination of whether an Employee's attorney fee request is reasonable is also based upon consideration of the number of hours reasonably expended on the litigation as multiplied by the reasonable hourly rate.⁴⁰ While it is not necessary to know the "exact number of minutes spent or precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application.⁴¹ The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative and excessive hours. In the instant matter, Mr. Bailey requests attorney fees in the amount of \$50,505 for 67.34 hours expended in this matter from September 22, 2020, to November 9, 2021, and Mr. Carter requests fee as a paralegal in the amount of \$22,285.54 for 106.79 hours expended in this matter from September 22, 2020, to November 15, 2021.

Agency asserts that the amount of attorney fees requested by Employee's counsel is grossly unreasonable and not in the interest of justice. Agency avers that prior to November 22, 2021, the only tangible work Mr. Bailey or Mr. Carter performed was the preparation of a response to the Notice of Proposed Removal, the filing of the OEA Petition for Appeal, Opposition to Agency's Motion to Dismiss, and attending a brief Mediation Conference.⁴² In

³⁹ Employee's Motion for Attorney's Fees, *supra*.

⁴⁰ *Lee v. Metropolitan Police Department*, OEA Matter No 1601-0087-15AF18 (July 27, 2018) *citing to Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). *See also Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

⁴¹ *Id. Copeland supra*.

⁴² *See Agency's Motion to Hold Employee's Motion for Attorney's Fees in Abeyance and Opposition to Employee's Petition for Attorneys' Fees* (January 24, 2024).

addition, Agency maintains that an award for attorney's fees is not reasonable in this matter because Employee would likely obtain none of the relief sought. Agency further avers that Employee's fee request should be denied due to improper 'block-billing.' It also states that Employee's time entries are not sufficiently detailed to assess their reasonableness. Agency cites that Employee's representatives' hours should be reduced due to excessive phone and email drafting/reviewing time. Agency also notes that Employee's representatives spent an excessive amount of time on frivolous tasks such as reviewing documents and case law on damages. Agency asserts that these hours should be eliminated or reduced. Agency concludes that the fees requested for Mr. Bailey's work should be reduced by a 10% flat percentage.⁴³

I have reviewed the total 67.34 hours claimed by Mr. Bailey, as well as Agency's objections, and find that the number of hours expended were excessive for the degree of difficulty. This finding is based on the comparison of the professional services provided by other similarly experienced counsel who have appeared before this Office and the degree of legal complexity involved in the issues presented. This Office has consistently held that requests for attorney fees should be reasonable in nature and not excessive or duplicative. While an Evidentiary Hearing was held in this matter due to an issue of material fact regarding whether Employee was incapacitated during the relevant AWOL period, the undersigned finds that it was an otherwise straightforward matter. There were no complex legal arguments made by either party. OEA has held that the award of attorney fees can be reduced if a determination has been made that the fees were excessive.⁴⁴

Billing Entries

Upon review of the billing entries included with Employee's fee petition, the undersigned finds that there are assessments for fees which seem unnecessary, particularly noting that Employee's representatives each have at least thirty (30) years' experience. As previously outlined, OEA has held that "although it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application."⁴⁵ Here, the undersigned find that some of the billing entries are duplicative, excessive and/or unreasonable. Of note, the undersigned finds that Mr. Bailey billed Employee for services unrelated to Employee's OEA appeal. Specifically, Counsel billed Employee for work performed prior to filing Employee's appeal with OEA on March 21, 2021. All entries from September 22, 2020, to January 29, 2021, were not performed in preparation for Employee's appeal before OEA. Accordingly, the undersigned finds that these entries totaling **29.59 hours** (Mr. Bailey) and **49.09 hours** (Mr. Carter) of work performed prior to the filing of the Petition for Appeal at OEA are hereby **DENIED**. Moreover, both representatives billed Employee for the same tasks performed.

⁴³ *Id.*

⁴⁴ See *Winfred L. Stanley, Reginald L. Smith Sr., & John C. Daniels v. Metropolitan Police Department*, OEA Matter Nos. J-0075-98A08R10, J-0074-98A08R10, J-0081-A08R10, Corrected Decision on Attorney Fees on Remand, (June 1, 2011). Here, the Administrative Judge reduced rates between 50% and up to 60% for excessive and duplicative hours (pages 7-10).

⁴⁵ *Alice Lee v. Metropolitan Police Department Supra* citing to *citing to Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

The time entries set forth by **Mr. Bailey** are charted below, along with a finding of reasonableness for each entry.

Date	Item	Time Claimed	Findings	Amount Awarded
February 16, 2021	Review of Final Decision and related documents	0.5 hour	I find the time claimed in reviewing the Final Decision and related documents is reasonable and warrants an award of 0.5 hour of attorney fees	\$332.50
February 24, 2021	Review DCRA final decision and related documents, including a petition for Appeal Form and telephone conference with paralegal and client to schedule a time to meet about Petition for Appeal form and its submission. Further discussed with the client was selecting Appeal DCRA's final decision to remove it from the Office of Employment Appeals [sic]. Also discussed were attorney fees for appeal submissions and related hearings [sic].	1 hour	Part of the entry is duplicative of the February 16, 2021, entry and the other part is duplicative of the March 05, 2021, entry below. Therefore, I find that it should be stricken in its entirety.	\$0.00
March 5, 2021	Telephone conference with Karl Carter and client regarding filing the application appeal form. Review completed draft application form. Prepare emails to Client and Karl Carter.	1 hour	I find the time claimed is reasonable and warrants an award of 1 hour of attorney fees	\$665

April 8, 2021	Review [Employee's] Emails and OEA filing. Prepare email to the client asking about submission of the entire letter he forwarded to our office and drafted a letter to Ms. Hill at OEA about the status of [Employee's] appeal.	0.34 hour	I find the time claimed here is reasonable and warrants an award of 0.34 hour of attorney fees	\$226.10
May 18, 2021	Review case law for motion to compel. And waiver of attorney-client privilege.	0.27 hour	I find the time claimed here is reasonable and warrants an award of 0.27 hour of attorney fees	\$179.55
June 2, 2021	Review financial disclosure form and telephone conference with Karl Carter. Schedule an appointment with [Employee].	0.5 hour	Mr. Bailey did not clarify how the financial disclosure form is relevant to the current matter. He also failed to separate the amount of time he took to review the financial disclosure document and how long it took to schedule an appointment with Employee. Thus, the entry should be stricken in its entirety.	\$0.00
June 15, 2021	Review of email from DCRA regarding Financial Disclosure Form and submission of an extension to submit; preparation of email regarding extension of time until June 30, 2021, to Board of Government Ethics and sent to Board of Government	2 hours	I find that this entry is not related to Employee's appeal before OEA. Accordingly, the entry should be stricken in its entirety.	\$0.00

June 28, 2021	Review motion to dismiss, telephone conference with Karl Carter and [Employee] regarding DCRA's motion to dismiss the [Employee's] Petition for Appeal to OEA. Telephone conference with Assistance General Counsel.	1 hour	I find the time claimed here is reasonable and warrants an award of 1 hour of attorney fees	\$665
June 29, 2021	Review motion to dismiss and attachments; organized motion for electronic sharing with Karl Carter. The DCRA filing by their general counsel was more than 100 pages w/o page numbers or tab. Organized beta stamp paging for internal use of DCRA documents	2 hours	I find that the 'review motion to dismiss' part of this entry is duplicative of the June 28, 2021, entry. Thus, I find it appropriate to reduce the fee award to 1.0 hour .	\$665
July 8, 2021	Telephone conference with Client [Employee] and Karl Carter regarding response to DCRA Motion to Dismiss	1 hour	I find the time claimed here is reasonable and warrants an award of 1 hour of attorney fees	\$665
July 8, 2021	Review of Motion to Dismiss and telephone conference with Karl Carter and [Employee] regarding the basis of response to the Motion to Dismiss and the claims to be filed at the DCRA and EEOC	2 hours	This entry is duplicative of the entries on June 28, 2021, and the previous entry for July 8, 2021. Moreover, the EEOC claim is not related to the current matter. Therefore, this entry is stricken in its entirety.	\$0.00

July 15, 2021	Telephone conference regarding communication with DCRA and OEA. Review OEA order for Mediation and submission of CCS settlement statement due July 23, 2021, and the mediation settlement conference on July 28, 2021. Discuss preparation of the Motion to dismiss and Union collective bargaining issues etc. and issues that [Employee] sent.	1 hour	I find this time entry reasonable. Thus, I find that an award attorney's fee for 1 hours is reasonable.	\$665.00
July 16, 2021	Telephone conference with Karl Carter, paralegal and [Employee] regarding the response to DCRA's motion to dismiss	0.5 hour	As previously noted, this entry is duplicative of the entries on June 28, 2021, and the first July 8, 2021, entry. Therefore, this entry is stricken in its entirety.	\$0.00
July 22, 2021	Review response to Motion to Dismiss, took notes	2.14 hours	I find that this entry is not sufficiently detailed, it is duplicative and excessive as it is captured in the July 23, 2021, entries below. Therefore, this entry is stricken in its entirety.	\$0.00
July 23, 2021	Telephone conference with Karl and [Employee] and review of Karl's draft of response and opposition to motion to dismiss.	2 hours	I find this time entry reasonable. Thus, I find that an award attorney's fee for 2 hours is reasonable.	\$1,330

July 23, 2021	Draft response and opposition to Motion to dismiss [Employee's] OEA petition	1.5 hours	I find this time entry reasonable. Thus, I find that an award attorney's fee for 1.5 hours is reasonable.	\$997.50
July 24, 2021	Drafting response to DCRA's Motion to dismiss and confidential settlement statement	1.5 hours	This appears to reference two separate documents: (1) drafting response to DCRA's Motion to dismiss; and (2) confidential settlement statement. Moreover, part of this entry 'drafting response to DCRA's Motion to dismiss' is duplicative as stated in the July 23, 2021, entry above. Therefore, I find it appropriate to reduce the fee award to 0.75 hour .	\$498.75
July 26, 2021	Review second draft of DCRA's opposition to motion to dismiss and prepare a summary of settlement confidentiality statement for mediation	0.75 hour	I find this time entry reasonable. Thus, I find that an award attorney's fee for 0.75 hours is reasonable.	\$498.75
July 26, 2021	Review file, emails, and telephone conference call with Karl Carter regarding CSS for submission to Mediator and review of opposition to motion to dismiss	1 hour	This entry appears to reference multiple tasks: (1) review an unspecified file; (2) emails and conference calls with Mr. Carter regarding CSS for mediation; (3) review opposition to DCRA's Motion to dismiss. Because I am unable to discern what legal service Mr. Bailey is claiming, I do not find it appropriate to award attorney fees for this entry.	\$0.00
July 26, 2021	Telephone conference with Karl Carter regarding [Employee] matter and drafting opposition to Motion to Dismiss and; drafting Motion to Dismiss and preparing	1 hour	I find this entry duplicative and inappropriate to award attorney's fees for this entry.	\$0.00

	Exhibits.			
July 26, 2021	Drafting Opposition to Motion to Dismiss and telephone conversation regarding the same	1 hour	I find this entry duplicative and inappropriate to award attorney's fees for this entry.	\$0.00
July 27, 2021	Telephone conference with Client [Employee] and paralegal Karl Carter regarding opposition to motion to dismiss. Drafting motion to dismiss and preparation of Exhibits	4.5 hours	I find this entry duplicative and inappropriate to award attorney's fees for this entry.	\$0.00
July 27, 2021	Review of opposition to motion to dismiss and preparation for the mediation session on July 28, 2021, at 11:00 a.m.	1 hour	This entry appears to reference two (2) separate tasks: (1) review opposition to motion to dismiss (which I find to be duplicative) and (2) preparation for mediation session. Therefore, I find it appropriate to reduce the fee award to 0.5 hour .	\$332.50
July 28, 2021	Drafting and preparation to file Opposition to motion to dismiss with exhibits. Telephone conference with Client [Employee] and paralegal Karl Carter; and attend mediation for [Employee] matter before administrative Judge Michelle Harris	4 hours	This entry appears to reference three (3) separate tasks: (1) Drafting and preparation to file Opposition to DCRA's Motion to dismiss; (2) telephone conference with Employee and paralegal Karl Carter; and (3) attending the mediation conference in this matter. Because I find that some of the tasks listed are duplicative of the entry on July 23, 2021 and the time claimed is excessive, it is appropriate to reduce the fee award to an equivalent to 2.0 hour .	\$ 1,330
August 4, 2021	Review mediation notice for settlement conference, prepare and send an email regarding the same to Karl Carter	0.25 hour	A second mediation notice was issued in this matter on July 29, 2021. Therefore, I find this time entry reasonable. And I further find that an award for attorney's fee for 0.25 hours is reasonable.	\$166.25

August 12, 2021	Prepare for mediation and attend remote mediation, telephone conference with the client before and after the mediation session	1.5 hours	I find this time entry reasonable. Thus, I find that an award for attorney's fee for 1.5 hours is reasonable	\$997.50
September 21, 2021	Review email and order from ALJ Dohnji regarding change of hearing date and preparation of email to Karl Carter	0.25 hour	I find this time entry reasonable. Thus, I find that an award for attorney's fee for 0.25 hours is reasonable	\$166.25
September 28, 2021	Prepare and file Consent Request to extend schedule of Status Conference 30 days including review of emails from General Counsel of DCRA and preparation of emails to General Counsel for DCRA	1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$665.00
October 8, 2021	Preparation of email to ALJ and General Counsel for DCRA that Client was scheduled for kidney transplant and would not be available for scheduled hearing set for October 12, 2021	0.25 hour	I find this time entry reasonable. Thus, I find that an award for attorney's fee for 0.25 hours is reasonable	\$166.25
November 9, 2021	Prepare for and attend a Status conference before the ALJ when she issued an order that Client submit his brief on or before December 28, 2021.	1 hours	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$665.00

			Total hours awarded: 17.56	Total amount Awarded: \$11,876.90
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Because many of the entries in Mr. Bailey's fee petition were discredited for being duplicative, and overall carelessness of the time claimed, I was compelled to significantly reduce the hours or strike an entry in its entirety. Moreover, most of the hours billed prior to the issuance of the Final Agency Decision and filing of the Petition for Appeal with OEA were stricken in their entirety. OEA has held that the total denial of fees is a stringent sanction which is only justified in extraordinary circumstances.⁴⁶ Accordingly, in the interest of justice, I find that Mr. Bailey is entitled to an award of attorney fees (from February 16, 2021, to November 22, 2021), although at a substantial reduction from the amount requested, based on the reasons set forth above. As such, I find it appropriate to award Mr. Bailey with attorney fees for 17.56 hours of legal services at a rate of \$665 per hour, for a total award of \$11,876.90.

The time entries set forth by Mr. Carter are charted below, along with a finding of reasonableness for each entry.

Date	Item	Time Claimed	Findings	Amount Awarded
February 17, 2021	Review Final Agency Decision regarding Payne's Removal	0.3 hour	I find the time claimed in reviewing the final Decision is reasonable and warrants an award of 0.3 hour of attorney fees	\$54
February 24, 2021	Telephone conference with attorney and client to discuss times to meet about OEZ [sic] appeal and its submission	1 hour	I find the time claimed in reviewing the final Decision is reasonable and warrants an award of 1 hour of attorney fees	\$180
February 26, 2021	Review the Final Agency decision, attached documents, and other documents relating to the Notice of Proposed Removal. Draft application for an OEA Appeal	1.5 hour	Part of this entry is duplicative of the February 17, 2021, entry. Therefore, I find it appropriate to reduce the award to 1.0 hour worth of legal services.	\$180

⁴⁶ *Henry Davis v. Department of Youth Rehabilitation Services*, Addendum Decision on Attorney Fees, OEA Matter No. #1601-0020-07AF08 (August 25, 2008) (citing OEA Matter No. 1601-0018-86AF87, p. 4 (June 15, 1988)).

March 5, 2021	Telephone conference with attorney and client regarding filing the OEA Petition and other related issues under the related federal statutes	1 hour	Mr. Bailey has already claimed and was awarded one (1) hour for this telephone conference. Accordingly, I find that this entry should be stricken in its entirety.	\$0
June 10, 2021	Telephone conference with attorney and client review documents to discuss case strategy.	1.5 hours	Mr. Carter does not specify what documents were reviewed during the telephone conference and what he contributed to the discussion, as the paralegal. Moreover, this telephone conference is not listed in Mr. Bailey's entries above. Thus, the entry should be stricken in its entirety.	\$0.00
June 17, 2021	Review Agency Motion to Dismiss Petitioner's Appeal	2 hours	I find the time claimed here is reasonable and warrants an award of 2 hours of attorney fees	\$360
June 18, 2021	Review case law supporting the Agency's Motion to Dismiss	0.5	I find the time claimed here is reasonable and warrants an award of 0.5 hour of attorney fees	\$90
June 28, 2021	Review Agency Motion to Dismiss. Telephone conference with attorney & client regarding Agency Motion to Dismiss. Telephone conference with General Counsel.	1 hour	I find that part of this entry is duplicative of the June 17, 2021, entry. Moreover, Mr. Bailey has already claimed and was awarded one (1) hour for this telephone conference. Accordingly, I find that this entry should be stricken in its entirety.	\$0
June 29, 2021	Review the Agency Motion to Dismiss and review the attached documents.	1.5 hours	I find that this entry is duplicative of the June 17, 2021, entry. Therefore, this entry should be stricken in its entirety.	\$0
June 30, 2021	Review the Agency Motion to Dismiss and	1.5 hours	Part of this entry is duplicative of the June 17, 2021, entry. Therefore, I find it appropriate to reduce the	\$90

	attached documents & draft Statement of Facts.		award to 0.5 hour for the Statement of Facts draft.	
July 1, 2021	Review the Agency Motion Dismiss, attached documents, and research issue. Petitioner was Removed for Cause.	3 hours	Part of this entry is duplicative of the June 17, 2021, entry. Therefore, I find it appropriate to reduce the award to 1 hour for the legal research.	\$180
July 2, 2021	Review Agency Motion to Dismiss, research issue Petitioner was AWOL & such Absence was a violation of the Douglas factors.	3 hours	Part of this entry is duplicative of the June 17, 2021, entry. Therefore, I find it appropriate to reduce the award to 1 hour for the legal research.	\$180
July 5, 2021	Review Motion to Dismiss And research OEA decisions on AWOL's Issues	1.5 hours	I find that this entry is duplicative of the June 17, 2021; and July 1 & 2, 2021, entries. Therefore, this entry should be stricken in its entirety.	\$0
July 6, 2021	Research issues relating to the Agency claims that Petitioner's absences were not covered by an approved leave plan.	1 hour	I find that this entry is duplicative of the June 17, 2021; and July 1 & 2, 2021, entries. Therefore, this entry should be stricken in its entirety.	\$0
July 7, 2021	Research issues relating to the Agency's violation of its regulations and the Union contract.	2 hours	I find the time claimed here is reasonable. However, given Mr. Carter's experience and the fact that this was not a complex issue, I find it appropriate to reduce the award to 1 hour for the legal research.	\$180

July 8, 2021	Telephone conference with attorney and client regarding the Response to the Agency's Motion to Dismiss.	1 hour	Mr. Bailey has already claimed and was awarded one (1) hour for this telephone conference. Accordingly, I find that this entry should be stricken in its entirety.	\$0
July 9, 2021	Review the Agency Motion to Dismiss, supporting documents, and draft Opposition to Motion to Dismiss.	2.5 hours	Part of this entry is duplicative of the June 17, 2021, entry. Therefore, I find it appropriate to reduce the award to 2 hours for the Opposition to Motion to Dismiss draft.	\$360
July 12, 2021	Review Agency Motion to Dismiss, supporting documents, and draft Opposition to Motion to Dismiss, and review supporting documents	3.5 hours	Part of this entry is duplicative of the June 17, 2021, entry. Therefore, I find it appropriate to reduce the award to 2 hours for the Opposition to Motion to Dismiss draft.	\$360
July 15, 2021	Telephone conference with attorney and client regarding Order for Mediation and supporting documents for the Settlement Conference on July 23, 2021. Discussed the preparation of the Opposition to Agency Motion to Dismiss.	2 hours	Mr. Bailey has already claimed and was awarded one (1) hour for this telephone conference. Accordingly, I find that this entry should be stricken in its entirety.	\$0
July 15, 2021	Supporting documents. Review the draft of Opposition to the Agency's Motion to Dismiss and begin the final version of the Opposition to the Agency's Motion to Dismiss.	3.5 hours	I find that this entry is duplicative of the July 9, 2021; and July 12, 2021, entries. Therefore, this entry should be stricken in its entirety.	\$0

July 20, 2021	Draft and finalize Opposition to Agency Motion to Dismiss.	6 hours	I find that this entry is reasonable. However, given Mr. Carter's experience, the fact that he has already spent multiple hours drafting this document; and also the fact that this was not a complex issue, I find it appropriate to reduce the award to 2 hours .	\$360
July 23, 2021	Telephone conference with client and attorney regarding draft Opposition to Agency Motion to Dismiss.	2 hours	Mr. Bailey has already claimed and was awarded two (2) hours for this telephone conference. Accordingly, I find that this entry should be stricken in its entirety.	\$0
July 26, 2021	Telephone conference with attorney and client regarding submission to Mediator and review Opposition to Motion to Dismiss.	1 hour	I find the time claimed here is reasonable and warrants an award of 1 hour of attorney fees	\$180
July 27, 2021	Telephone conference with attorney and client regarding the Opposition to Agency Motion to Dismiss.	2.9 hours	I find this entry duplicative and inappropriate to award attorney's fees for this entry. Furthermore, Mr. Bailey claimed 4.5 hours for this entry (which was denied), compared to Mr. Carter's 2.9 hours for the same telephone call. Because of these discrepancies in the representatives' individual time allotted to this entry, I find that it should be stricken in its entirety. Further, adding these hours together, Employee is being charged for 7.4 hours of a telephone conference, discussing the same Opposition to Agency's Motion to Dismiss, which appears to be a recurring discussion for the telephone conferences. Given the patently inflated time claimed for this entry, I find that it should be stricken in its entirety.	\$0.00
July 28, 2021	Telephone conference with attorney and client attend mediation for [Employee]	4 hours	The undersigned has already awarded Mr. Bailey 2.0 hours for the mediation conference; I find that it would be inappropriate to award extra hours to Mr. Carter,	\$0.00

	matter before Administrative Judge Michele Harris.		especially since his role as a Paralegal at the mediation conference is inconsequential. Accordingly, I find that this entry should be stricken in its entirety.	
August 11, 2021	Review documents and prepare for mediation	0.5 hour	A second mediation notice was issued in this matter on July 29, 2021. However, Mr. Carter does not disclose what documents he reviewed or his role in the mediation since he is the Paralegal and not Employee's counsel. Therefore, I find that this entry should be stricken in its entirety.	\$0
August 12, 2021	Attend mediation telephone conference with attorney and client prior to and after the mediation.	1.5 hours	The undersigned has already awarded Mr. Bailey 2.0 hours for the mediation conference; thus, I find that it would be inappropriate to award extra hours to Mr. Carter, especially since he is not Employee's counsel. Accordingly, I find that this entry should be stricken in its entirety.	\$0
November 9, 2021	Review the Order for Status Pre-Hearing Conference and attend the Status Prehearing Conference, where the Judge issues an Order that the Petitioner submit a brief on all five issues by 12/28/21.	1 hour	The undersigned has already awarded Mr. Bailey one (1) hour for attending this conference; thus, I find that it would be inappropriate and duplicative to award extra hours to Mr. Carter. Accordingly, I find that this entry should be stricken in its entirety.	\$0
November 12, 2021	Review the order of November 16th requiring the Petitioner to respond to issues raised in the Order issued on Nov 9 and research issues.	1 hour	The November 16, 2021, Order is a two-page document. Therefore, I find that with Mr. Carter's legal experience, it is appropriate to reduce the award to 0.5 hour .	\$90
November 15, 2021	Review the November 9th Order and research issues proposed by the Administrative Judge regarding	3 hours	I find this time entry reasonable. However, based on Mr. Carter's legal experience, I find it appropriate to reduce the award to 2 hours	\$360

	(1) Was there a basis for cause; (2) Whether the Illness rendered Petitioner incapacitated (3) Whether Petitioner communicated his illness to the agency; and (4) Whether the penalty was appropriate.			
			Total hours awarded: 17.80	Total amount Awarded: \$3,204

Upon review of the billing entries included with Employee’s Motions, the undersigned finds that there are assessments for fees which seem unnecessary, particularly noting that Employee’s representatives each have at least thirty (30) years’ experience in these matters. As previously outlined, OEA has held that “although it is not necessary to know the exact number of minutes spent nor the precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application.”⁴⁷ Here, in review of the arguments made by Agency regarding specific billing entries, the undersigned agrees with Agency’s assertions regarding the unreasonableness of some of those entries. Of note, the undersigned finds that Counsel billed Employee for services unrelated to Employee’s OEA appeal. Specifically, Employee’s representative billed Employee for work performed prior to filing Employee’s appeal with OEA on March 11, 2020. Additionally, Employee’s representatives billed Employee for work performed after Mr. Bailey’s law license was suspended.

Thus, while I find an award of attorney fees is warranted since Employee prevailed in this matter, as noted above, I find that the *award must be significantly reduced*. (Emphasis added). Further, I find that the request for attorney fees in the amount of \$ 132,749.00 for Mr. Bailey and \$22,285.54 for Mr. Carter, as well as the hourly rates presented in this matter to be *wholly unreasonable* and must be reduced. (Emphasis added). This reduction is based upon the aforementioned reasons regarding the insufficient billing details, and the duplicative, excessive/unreasonable expenditure of times conveyed in the billing invoices. Accordingly, based upon the following rates and hours:

⁴⁷ *Alice Lee v. Metropolitan Police Department* *Supra* citing to *Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

1. Mr. Bailey (February 16, 2020, to November 9, 2021) - \$665/hour for a total of 17.56 hours, for a total amount of \$11,876.90.
2. Mr. Carter (February 17, 2020, to November 15, 2021) - \$180/hour for a total of 17.80 hours, for a total amount of \$3,204.

The undersigned finds that a total award amount of Fifteen thousand, eighty, dollars and ninety cents (**\$15,080.90**) is the appropriate fee award for this matter. In conclusion, I find that Employee is the prevailing party in this matter and in the interest of justice, he is entitled to the award of reasonable attorney fees, but the award of fees must be reduced.

ORDER

It is hereby ORDERED that Agency pay, within thirty (30) days from the date on which this addendum decision becomes final, **\$15,080.90 (Fifteen thousand, eighty, dollars and ninety cents) to Employee's representatives (Mr. Bailey and Mr. Carter)** in attorney fees and costs.

It is FURTHER ORDERED that Agency's Motion for Extension of Time is **MOOT**; AND Agency's Motion to Hold Employee's Motion for Attorney's Fees in Abeyance is hereby **DENIED**. Additionally, Agency's Motion to Strike Employee's Filing or, Alternatively, Agency's Motion for Leave to file a Reply with Employee's Filing is hereby **DENIED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.
Senior Administrative Judge