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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0032-14AF21
)	
Employee)	
)	Date of Issuance: September 15, 2021
v.)	
)	
DEPARTMENT OF YOUTH)	ARIEN P. CANNON, ESQ.
REHABILITATION SERVICES,)	Administrative Judge
Agency)	
)	
)	
)	
_____)	
Johnnie Louis Johnson, III, Esq., Employee Representative)	
Daniel Thaler, Esq., Agency Representative ¹)	

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL HISTORY

This matter is before the undersigned on a Petition for Attorney Fees after several rulings, appeals, and remands culminating with Employee’s termination being reversed. An Initial Decision (“ID”) was issued on September 18, 2015, reversing the Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) decision to remove Employee from his position. Agency filed a Petition for Review with the Office of Employee Appeal’s (“OEA”) Board on October 23, 2015, asserting that the Initial Decision was based on an erroneous interpretation of statute. The OEA Board issued an Opinion and Order (“O & O”) on Petition for Review on March 7, 2017, remanding this matter to the undersigned to make further determinations. The O & O specifically remanded the matter for two queries to be addressed: (1) whether evidence existed to establish that Employee was medically cleared or deemed to have overcome his disability; and (2) whether necessary medical treatments were performed to lessen Employee’s disability.

¹ Frank McDougald was Agency’s representative until his retirement in May of 2021. Mr. Thaler entered his appearance shortly thereafter.

I issued an Initial Decision on Remand (First ID on Remand) on October 25, 2017, after consideration of the parties' arguments, which addressed the issues raised by the OEA Board's O & O. The First ID on Remand again reversed Agency's decision to terminate Employee. The reversal in the ID on Remand was based on the issues first identified by the OEA Board and my finding that evidence existed to establish that Employee was medically cleared or deemed to have overcome his disability. The reversal was also based on the second finding that necessary medical treatments were performed to lessen Employee's disability.

Agency appealed again, filing a Petition for Review of the Initial Decision on Remand. The OEA Board issued an Opinion and Order on Remand (Second O & O) on April 24, 2018. This time, the OEA Board upheld the undersigned's finding that: (1) Employee was medically cleared to return to work without restriction on November 5, 2012; and (2) Employee received medical treatments to lessen his disability after being injured on July 30, 2010. However, after addressing the issues raised in its first O & O, the Board's Second O & O addressed a separate issue—for the first time—and held that “it is unclear whether the AJ applied D.C. Code § 1-623.45(b)(1) or 7 DCMR § 139 in determining the date on which the two-year period began to run.” As such, the Board again remanded the matter to the undersigned.

A Status Conference was convened on June 26, 2018, to address the Board's Second O & O regarding the appropriate date the two-year period began to run under D.C. Code § 1-623.45(b). On October 31, 2018, the undersigned issued a Second Initial Decision on Remand (this was the undersigned's third Initial Decision in this matter) again upholding the reversal of Agency's action in terminating Employee. Agency appealed this decision to the OEA Board, which issued a Second Opinion and Order on Remand on October 23, 2019 (this was the OEA Board's third Order in this matter), affirming the undersigned's Second Initial Decision on Remand. Agency appealed this Second O & O on Remand to the Superior Court for the District of Columbia. In a September 21, 2020 Order, the Superior Court affirmed the OEA Board's Second Opinion and Order on Remand. This order was not appealed to the District of Columbia Court of Appeals and Employee was ultimately returned to work effectively on December 20, 2020.

On February 4, 2021, and April 19, 2021, Employee's counsel, Mr. Johnnie Louis Johnson, III, (“Mr. Johnson”) filed what were treated as Petitions for Attorney Fees.² During the May 6, 2021 status conference, Mr. Johnson was instructed to resubmit his Petition for Attorney Fees clearly designating the time expended on the various types of legal work performed in this matter. Employee's counsel was also instructed to reconcile the conflicting amount of attorney fees sought in the April 19, 2021 Petition for Attorney Fees. Employee's counsel submitted a third Petition for Attorney Fees, dated June 4, 2021. Agency submitted its opposition to Employee's Petition for Attorney Fees on July 2, 2021.

JURISDICTION

This Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.08 (2001).

² Mr. Johnson February 4, 2021 letter was treated as a Petition for Attorney fees despite being insufficient and not containing the necessary information for consideration of an award of attorney fees.

ISSUE

Whether Employee's counsel is entitled to an award of attorney fees; and if so, how much.

FINDING OF FACTS, 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 the prevailing party and payment is warranted in the interest of justice."³ Similarly, OEA Rule 634, 59 DCR 2129 (March 16, 2012) provides that an employee shall be entitled to an award of reasonable attorney fees if: (1) he or she is a prevailing party; and (2) the award is warranted in the interest of justice. This award is an exception to the general rule that a prevailing party may not ordinarily recover attorneys' fees in the absence of a statute or enforceable contract for a fee award.⁴ 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.⁵

Timeliness

OEA Rule 634.2 provides that "[u]nless the Administrative Judge directs otherwise, a request for attorney fees shall be made by written motion within thirty (30) calendar days of the date that the Initial Decision becomes final." Agency argues that the Petition for Attorney Fees is untimely. The District of Columbia Superior Court denied Agency's appeal on September 21, 2020. No appeal followed the Superior Court's order, thus Agency asserts that Employee's Petition for Attorney Fees should have been filed no later than November 20, 2020, unless Employee's attorney sought and was granted an extension.

While OEA Rule 634.2 provides that a request for attorney fees shall be made within thirty (30) calendar days from the date that the initial decision becomes final, the rule also allows the administrative judge to exercise discretion to consider a petition for attorney fees beyond the timeframe prescribed. Here, the first resemblance of a petition for attorney fees was filed with this Office on February 4, 2021. This was a letter from Employee's counsel, Mr. Johnson, which indicated that Agency had not paid the "court-ordered attorney's fees." On the date of this letter, the undersigned, nor any other judicial body, had ordered an award of attorney fees. During the March 4, 2021 status conference on compliance, Mr. Johnson was advised that an award of attorney fees had not been issued and he was instructed to file a Petition for Attorney Fees for the undersigned's consideration. Given the delay in Agency reinstating Employee and issuing a backpay check, along with other benefits owed to Employee, I found it appropriate to allow Mr. Johnson to file a Petition for Attorney Fees beyond the timeframe set forth in OEA Rule 634.2. As is often the case with compliance matters before OEA, counsel for an employee may be required to expend additional time and resources beyond the timeframe set forth in OEA Rule 634.2, to compel an agency to fully comply with an OEA reversal order. Rather than piecemeal an award of attorney fees and issue a fee award after an OEA order has become final and another for work performed in getting an agency to come into full compliance, it has been OEA's practice

³ See also OEA Rule 634, 59 DCR 2129 (March 16, 2012).

⁴ *Shimman v. Int'l Union of Operating Engineers, Loc. 18*, 744 F.2d 1226, 1229 (6th Cir. 1984).

⁵ *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968).

to allow attorneys to file a petition for attorney fees after the thirty-day timeframe set forth in OEA Rule 634.2 for good cause and until an agency has demonstrated full compliance. Accordingly, given Agency's delay in coming into full compliance with OEA's reversal order, I find that there is good cause for Mr. Johnson's Petition for Attorney Fees being filed beyond the 30-day time frame set forth in OEA Rule 634.2.

Prevailing Party

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.⁶ Here, it is uncontroverted that Employee is a prevailing party. After being removed from his position on November 29, 2013, and withstanding many appeals and remands, Agency was ultimately ordered to reinstate Employee to his same or comparable position and to reimburse all backpay and benefits lost because of his termination. Consequently, I find that Employee is the prevailing party in this matter. Employee was reinstated to his position effective December 20, 2020, and a backpay check was issued. Agency's compliance on other outstanding benefits owed to Employee remain.

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 towards the 'interest of justice' (the "Allen Factors")—a destination which, at best, can only be approximate."⁷ The circumstances to be considered are:

1. Where the agency engaged in a "prohibited personnel practice"
2. Where the agency's action was "clearly without merit" or was "wholly unfounded", or the employee is "substantially innocent" of the charges brought by agency;
3. Where the agency initiated the action against the 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. Where the agency committed a "gross procedural error" which "prolonged the proceeding" or "severely prejudiced the employee"
5. Where the agency "knew or should have known that it would not prevail on the merits", when it brought the proceeding.⁸

The OEA Board has adopted these factors in its analysis of attorney fees.⁹ Agency contends that none of the *Allen* factors weigh towards an award of attorney fees here. It further asserts that the outcome ultimately turned on a matter of first impression and subtle differences in statutory

⁶ *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1601-0138-88AF92 (May 14, 1993); *See also Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371 (1980).

⁷ *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980).

⁸ *Id.* at 434-35.

⁹ *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).

interpretation.¹⁰ I disagree with Agency's position that none of the *Allen* factors weigh towards an award of attorney fees. While the issues raised by Agency on appeal may have been matters of first impression, I find its arguments regarding the interpretations of the relevant provisions in the D.C. Code and regulations to be a distorted reading of the term "commencement of compensation." This straightforward language was raised and litigated by Agency on appeal, and it was ultimately held that its interpretation was incorrect. Even if I found that none of the abovementioned *Allen* factors weigh towards an award of attorney fees, these factors are not exhaustive, but illustrative.¹¹ As such, I will address the relevant *Allen* factors below.

I find the first two *Allen* factors particularly applicable in the instant case. Factor One: I find that Agency engaged in a "prohibited personnel practice" when it terminated Employee from his position despite the pertinent Code provisions providing a two-year period for an employee to return to work after overcoming a work-related injury. Factor Two: I further find that Employee was "substantially innocent" of the charges brought against him for "incompetence" and "inability to perform the essential functions of the job." These charges were based on Agency's position that Employee did not return to work within the timeframe allowed after suffering a work-related injury. The date on which the clock began in calculating the two-year period for when Employee was able to return to his position without penalty was raised as an issue by Agency. However, it was ultimately upheld that Agency misapplied the pertinent statutory and regulatory provisions in allowing Employee to resume his position after returning from a work-related injury. Accordingly, I find it in the interest of justice to grant an award of attorney fee.

Reasonableness of Attorney Fees

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. *Blum v. Stenson*, 465 U.S. 886 (1984). 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 quest practices. *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

The OEA Board has determined that Administrative Judges of this Office may consider the so-called "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.*, 572 E.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). 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., 92-93, 93-94, etc.) 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 or work experience the attorney has and the year that the work was performed.

¹⁰ See *Murray v. Department of Youth Rehabilitation Services*, Second Initial Decision on Remand, OEA Matter No. 1601-0032-14R18 (Oct. 31, 2018).

¹¹ *Allen*, *supra*.

This Office's determination of whether an employee's attorney fees request is reasonable is based upon a consideration of the number of hours reasonably expended on the litigation, multiplied by a reasonable hourly rate.¹² 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.¹³ The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative, and excessive hours.¹⁴

In an affidavit prepared by Mr. Johnson, and submitted with his April 19, 2021 Petition for Attorney Fees, he maintains that he has been admitted to practice law for over 50 years.¹⁵ Mr. Johnson graduated from law school in 1970, whereupon he successfully took the Tennessee Bar Examination in July of 1970.¹⁶ Mr. Johnson has tried cases in Tennessee, the Commonwealth of Virginia, and the District of Columbia state courts, as well as federal cases.¹⁷ Mr. Johnson asserts that he has billed his clients at the hourly rate of \$500 per hour for the past ten years.¹⁸ Mr. Johnson was the attorney of record in this matter from its inception in December of 2013.¹⁹

Agency highlights that there are several inconsistent requests throughout multiple filings for attorney fees submitted by Mr. Johnson. In his April 19, 2021 Petition for Attorney Fees, Mr. Johnson included an affidavit stating that he expended 272 hours on the case for a total of \$136,002.00.²⁰ However, in an attachment with this Petition for Attorney Fees, Mr. Johnson requested \$183,500.00 for a purported 367 hours of work.²¹ In the most recent Petition for Attorney Fees, dated June 4, 2021, Mr. Johnson requests yet another new total—323.08 hours for a total of \$161,916.67. Employee's fee petition does not include any explanation of the continuously changing totals nor any affidavits supporting the new total. I agree that the varying total hours and amounts requested by Mr. Johnson discredit his attorney fees petition and warrant a significant reduction in attorney fees requested.

Mr. Johnson claims a rate of \$500 per hour. Agency does not contest the hourly billing rate cited by Employee. However, it is noted that the hourly rates provided during the relevant times under the applicable attorney fee matrix²² for someone with Mr. Johnson's twenty plus years of experience is as follows:

¹² *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980); *See also Hensley v. Eckerhart*, 461 U.S. 424 (1983); *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir. 1982).

¹³ *Copeland, supra*.

¹⁴ *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985).

¹⁵ *See* Petition of Johnnie Louis Johnson, III for Attorney Fees, Exhibit A (April 19, 2021).

¹⁶ *Id.*

¹⁷ *See Id.*

¹⁸ *See Id.*

¹⁹ It does not appear that Mr. Johnson represented Employee in his appeal before the District of Columbia Superior Court. *See Department of Youth Rehabilitation Services v. Government of D.C. Office of Employee Appeals*, 2019 CA 007692 P(MPA) (D.C. Sup. Ct. Sept. 21, 2020). Seemingly, Mr. Johnson's representation ended sometime after the OEA Board's Second Opinion and Order on Remand was issued on October 23, 2019.

²⁰ *See* Petition of Johnnie Louis Johnson, III for Attorney Fees, Exhibit A (April 19, 2021).

²¹ *See* Petition of Johnnie Louis Johnson, III for Attorney Fees, Exhibit A (April 19, 2021).

²² Around 2015, the United States Attorney's Office for the District of Columbia (USAO) introduced its own version of 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

2013-2014— \$510/hour

2014-2015— \$520/hour

2015-2016—\$568/hour

2016-2017—\$581/hour

2017-2018—\$602/hour

I find that the hourly rate charged by Mr. Johnson is reasonable and in line with the USAO's matrix in analyzing attorney fees for civil cases in the District of Columbia.

In the revised Petition for Attorney Fees filed by Mr. Johnson, dated June 4, 2021, he asserts that the time expended was 323.8 hours at a rate of \$500 per hour for a total of \$161,916.67.²³ Agency asserts that the amount of attorney fees requested by Employee's counsel is unreasonable. Agency also maintains that the attorney fee petition contains insufficient time records. Additionally, Agency avers that Employee's petition contains "blatant 'casual after-the-fact' estimates of time" that do not support an award of attorney fees. Agency notes that Mr. Johnson repeated the same time estimates throughout his petition, with 43 of the 50 time entries simply rotating between 750 minutes and 60 minutes of claimed legal services.²⁴ A large majority of the time entries are also undated.

I find many of the time entries in Mr. Johnson's petition demonstrably excessive and duplicative. The time entries included with the fee petition, dated June 4, 2021, essentially mirrors the Table of Contents produced by this Office when this matter was appealed to the District of Columbia Superior Court (this document is also included with Mr. Johnson's April 19, 2021 fee petition as Exhibit C). The simple rotation between 750 minutes and 60 minutes of time expended on 43 out of the 50 entries for legal services call into question the veracity and accuracy of the time supposedly expended by Mr. Johnson in this matter. The time entries set forth by Mr. Johnson are charted below, along with a finding of reasonableness for each entry:

in District of Columbia courts. While the USAO's matrix released in 2015 is a variation of the LSI *Laffey* matrix, the hourly rates provided by the LSI *Laffey* 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); See also *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.

²³ It is noted that 323.8 hours multiplied by \$500 equals \$161,900.00. For purposes of this decision, I will perform an analysis with the total dollar figure provided by Mr. Johnson—\$161,916.67.

²⁴ See Petition of Johnnie Louis Johnson, III for Attorney Fees, Exhibit B (April 19, 2021)

No.	Item	Time Claimed	Findings	Amount Award
1	Reviewed Notice of Final Decision on Proposed Removal	640 min = 10.67 hours	The Notice of Final Decision on Proposed Removal is a two-page document. Mr. Johnson certainly could not have spent over ten hours <i>reviewing</i> this document. Given the patently inflated time claimed for this entry, I find that it should be stricken in its entirety.	\$0.00
2	Reviewed Advance Notice of Proposed Removal	640 min = 10.67 hours	The Advance Notice of Proposed Removal is a three-page document. Mr. Johnson certainly could not have spent over ten hours <i>reviewing</i> this document. Given the patently inflated time claimed for this entry, I find that it should be stricken in its entirety.	\$0.00
3	Reviewed Proposed Removal	740 min = 12.33 hours	This entry is duplicate of items 1 and 2. Given this flagrant oversight, I find that this entry should be stricken in its entirety.	\$0.00
4	Prepared Oct 2, 2013 Response to Proposed Removal	750 min = 12.5 hours	Agency asserts that this entry is not related to the OEA matter. I disagree and find that an attorney fee award is warranted for this entry. This Proposed Removal notice initiated the adverse action against Employee. Employee had counsel to represent him at the agency level in hopes of preventing his termination from becoming effective. However, I find that a significant reduction is warranted in the time claimed. This entry is a 3.5-page response. I find it appropriate to reduce the award to 2.0 hours ' worth of legal services.	\$1,000.00
5	Appealed the Sept. 23, 2013 Advance Written Notice of Proposed Removal	60 min = 1 hour	Agency asserts that this entry appears duplicative of Item #4. However, I find that this entry references Employee's Petition for Appeal with OEA, whereas entry # 4 references Employee's response to the Advance Written Notice of Proposed Removal at the agency level. Thus, I find that this entry warrants an award of attorney fees for 1.0 hour .	\$500.00
6	Reviewed DYRS' Motion for an Enlargement of Time to File a Response to Employee's Petition for Appeal	750 min = 12.5 hours	Agency filed essentially a two-page document on January 23, 2014, requesting an enlargement of time to file a response to Employee's Petition for Appeal. Mr. Johnson's claim to over twelve hours of work to review this document is patently excessive. Thus, the entry should be stricken in its entirety.	\$0.00
7	Reviewed DYRS' Answer to Employee's Petition for Appeal	750 min = 12.5 hours	I find the amount of time claimed here excessive. Agency's Answer is a ten-page document with several attachments that Mr. Johnson certainly had seen prior to them being included with Agency's answer. Based on this finding, I find that it is warranted to significantly reduce the fees claimed by Mr. Johnson and reduce the award to 1.0 hour for <i>review</i> of Agency's Answer.	\$500.00
8	Reviewed Notice of Mediation/ Settlement Conference, Prehearing Conference Order	60 min = 1 hour	This entry includes the <i>review</i> of two separate scheduling documents. I find the claim of 1 hour excessive. These documents are also duplicative of items 10 and 11. Thus, I find it appropriate to reduce the award to .5 hour .	\$250.00

9	Prepared Continuation Request	60 min = 1 hour	I find this time entry to be excessive. This document is essentially a 1-page document. I find that an award of .5 hour is warranted in the preparation of this document.	\$250.00
10	Reviewed Mediation Referral Form, Prehearing Conference Order	60 min = 1 hour	It is apparent that this entry, and all other entries in this chart, are copied from the Table of Contents associated with this file when it was produced by this Office (OEA) after being appealed to D.C. Superior Court. The "Mediation Referral Form" is an internal document that was prepared by the undersigned to have this matter referred to mediation. This document was not prepared by Mr. Johnson. As such, this entry shall be stricken in its entirety.	\$0.00
11	Reviewed Sept 12, 2014 Notice of Mediation/Settlement Conference	60 min = 1 hour	This entry is duplicative of items 8 and 10. It is also excessive. Based upon the findings in 8 and 10 this entry is also stricken in its entirety.	\$0.00
12	Preparation of Mediation Agreement	60 min = 1 hour	I find the time claimed in preparing a confidential settlement statement for the mediation is reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
13	Reviewed Mediation Report	60 min = 1 hour	It is unclear what Mediation Report Mr. Johnson is referencing here. Any mediation report would be an internal document prepared by the mediator for OEA record keeping purposes only. Thus, this entry is stricken in its entirety.	\$0.00
14	Reviewed Nov 10, 2014 Brief of DYRS	750 min = 12.5 hours	I find this time entry to be excessive. Agency's brief is essentially a 10-page document. It certainly did not take Mr. Johnson more than 12 hours to <i>review</i> this brief. I find it appropriate to award 2.0 hour for <i>review</i> of this entry. Agency maintains that this entry is duplicative of items # 21 and # 26. The brief referenced in entries 21 and 26 are likely referring to a different Agency brief given the many appeals and remands in this matter.	\$1,000.00
15	Prepared Employee's Memorandum in Opposition to Respondent's Removal Action	750 min = 12.5 hours	I find this time entry reasonable. However, given the substandard quality of the Petition for Attorney's Fees, I find that it warrants reducing the hours claimed. Thus, I find that an award of 6.2 hours is appropriate.	\$3,100.00
16	Reviewed Prehearing Conference Order	60 min = 1 hour	I find this entry to be excessive. It is unclear which Prehearing Conference Order Mr. Johnson is referencing since this time entry is undated. However, no prehearing conference order issued would have exceeded a straightforward two-page document. Because of the excessiveness claimed, I find it warranted to have the entry stricken in its entirety.	\$0.00

17	Reviewed Designation of DYRS' Representation Pre- hearing Statement	60 min = 1 hour	This appears to reference two separate documents: (1) Agency's Designation of Representation, a form designating a new representative for Agency; and (2) Agency's Prehearing Statement. Because I am unable to discern what legal service Mr. Johnson is claiming, I do not find it appropriate to award any fees for this entry.	\$0.00
18	Preparation of Employee's Memorandum in Opposition to Removal Action	750 min = 12.5 hour	I find this entry to be duplicative of item #15. Furthermore, given that most of the time entries do not include dates, it is impossible to know which filing Mr. Johnson is specifically referencing. Thus, I find it appropriate to have this entry stricken in its entirety.	\$0.00
19	Reviewed Compensation Order on Remand	60 min = 1 hour	This entry is not related to Employee's OEA case. It is likely that the Compensation Order on Remand is related to Employee's Workers' Compensation matter and not his adverse personnel action before OEA. Thus, I do not find it appropriate to award attorney fees for this entry.	\$0.00
20	Reviewed DYRS Prehearing Statement	740 min = 12.33 hours	I find this entry excessive. Thus, the hours claimed shall be reduced to 1.0 hour .	\$500.00
21	Reviewed DYRS' Brief	750 min = 12.5 hours	I find this entry patently excessive. Agency asserts that it is also duplicative of items # 14 and #26. While it is unclear which one of Agency's brief Mr. Johnson is claiming that he reviewed, 12.5 hours to review <i>any</i> brief filed by Agency is unwarranted. I also find that this entry is a separate brief than items 14 and 26 given the number of briefs submitted by Agency in this matter. Thus, I find it appropriate to reduce the fee award to an equivalent to 1.0 hour .	\$500.00
22	Reviewed June 13, 2014 Compensation Order	60 min = 1 hour	This entry is not related to the instant OEA case. It is likely that this Compensation Order is related to Employee's Workers' Compensation matter and not his adverse personnel action before OEA. Thus, an award of attorney fees is not appropriate for this entry.	\$0.00
23	Reviewed Decision and Remand Order	60 min = 1 hour	This undated entry does not appear to be related to OEA case. Thus, I do not find it appropriate to award attorney fees for this entry.	\$0.00
24	Prepared Employee's Memorandum with Supplemental Filings	750 min = 12.5 hours	I find this entry to be excessive. Employee responded to a June 1, 2015 Order seeking to have the parties submit supplement filings. Employee, through Mr. Johnson filed a 4-page response on June 17, 2015, along with 5 exhibits prepared by someone other than Mr. Johnson. I find that 12.5 hours is an unreasonable amount of time to claim for this filing. Thus, I find it appropriate to reduce the fee award to the equivalent of 1.0 hour .	\$500.00
25	Reviewed Order for Supplemental Filings	60 min = 1 hour	I find this entry excessive. The Order for Supplemental Filings issued on June 1, 2015, is a straightforward single page document simply rescheduling a status conference. Thus, the patently excessive time claimed for review of this document warrants the entire entry being stricken.	\$0.00

26	Reviewed DYRS' Brief	750 min = 12.5 hours	I find this entry patently excessive. While it is unclear which one of Agency's brief Mr. Johnson is claiming that he reviewed, 12.5 hours to <i>review any</i> brief filed by Agency is unwarranted. I also find that this entry is a separate brief than entry # 14 and 26 given the number of briefs submitted by Agency in this matter. Thus, I find it appropriate to reduce the hours expended on this entry to 1.0 hour .	\$500.00
27	Reviewed Dec. 5, 2014, Compensation Order on Remand	60 min = 1 hour	This entry is not related to OEA case. It is likely that this Compensation Order on Remand is related to Employee's Workers' Compensation Matter and not his adverse personnel action before OEA. Thus, an award of attorney fees is not appropriate for this entry.	\$0.00
28	Reviewed OEO's Sept. 18, 2015 Initial Decision	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
29	Reviewed DYRS' Petition for Review	750 min = 12.5 hours	I find this entry excessive. Thus, the hours claimed shall be reduced to 1.0 hour .	\$500.00
30	Reviewed Nov. 26, 2014 Decision of Compensation Review Board	120 min = 2 hours	This entry is not related to OEA case. It is likely that this Compensation Order on Remand is related to Employee's Workers' Compensation Matter and not his adverse personnel action before OEA. Thus, an award of attorney fees is not appropriate for this entry.	\$0.00
31	Reviewed DYRS' Petition to OEA for Expedition Decision on Employee's claim, Review	740 min = 12.33 hours	I find this entry patently excessive. The document seemingly referenced here is actually a single-page letter from Mr. Johnson to the OEA Board seeking an expedited decision on the Petition for Review filed by Agency. Thus, given the absurdity of the request, I find it appropriate to have this entry stricken in its entirety.	\$0.00
32	Reviewed Mar. 17, 2017 Opinion and Order on Petition for Review	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
33	Participated at Status Conference on Remand	60 min = 1 hour	I do not find an award of attorney fees appropriate for the entry. Given that the entries asserted mirror the Table of Contents in the record provided by OEA to the D.C. Superior Court, it is apparent that the Status Conference referenced here did not take place on the original date and was rescheduled. This is evidenced by entry # 34 and #35.	\$0.00
34	Reviewed Rescheduled Status Conference	60 min = 1 hour	I find this entry excessive. The Order Rescheduling Status Conference on Remand is a straightforward single page document simply rescheduling a status conference. Thus, the patently excessive time claimed for review of this document warrants the entire entry being stricken.	\$0.00
35	Participated at Status Conference on Remand	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00

36	Prepared and Submitted Employee's July 10, 2017 Brief	750 min = 12.5 hours	I find this time entry reasonable. However, given the substandard quality of the Petition for Attorney's Fees, I find that it warrants reducing the hours claimed. Thus, I find that an award of 6.2 hours is appropriate.	\$3,100.00
37	Reviewed DYRS' Brief on Remand	750 min = 12.5 hours	I find this entry excessive. Agency's brief on Remand is essentially an 8-page document. Certainly, it did not take Mr. John more than 12 hours <i>review</i> this document. Thus, I find it appropriate to reduce the hours expended on this entry to 2.0 hours .	\$1,000.00
38	Reviewed Oct. 25, 2017 Initial Decision on Remand	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
39	Reviewed DYRS' Nov. 29, 2017 Petition for Review	750 min = 12.5 hours	I find this entry excessive. Agency's brief on Remand is essentially a 9-page document. Certainly, it did not take Mr. John more than 12 hours <i>review</i> this document. Thus, I find it appropriate to reduce the hours expended on this entry to 2.0 hours .	\$1,000.00
40	Prepared Employee's Dec. 27, 2017 Memorandum in Opposition to DYRS' Petition for Review	750 min = 12.5 hours	I find this time entry reasonable. However, given the substandard quality of the Petition for Attorney's Fees, I find that it warrants reducing the hours claimed. Thus, I find that an award of 6.2 hours is appropriate.	\$3,100.00
41	Reviewed OEA's April 24, 2018 Opinion and Order on Remand	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
42	Reviewed and Appeared at Status Conference Pursuant to Order on Second Remand	120 min = 2 hours	I find this entry excessive. Thus, the hours claimed shall be reduced to 1.0 hour .	\$500.00
43	Reviewed the Post Status Conference Order on Remand	60 min = 1 hour	I find this entry patently excessive. Any Post Status Conference Order on Remand is a straightforward document setting for the scheduling of timelines in this matter. It should not take 1 hour to <i>review</i> this document. Thus, I find it appropriate to have this entry stricken in its entirety.	\$0.00
44	Participated at Post Status Conference Order on Remand	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
45	Reviewed DYRS' Aug. 3, 2018 Brief on Remand	750 min = 12.5 hours	I find this entry excessive. This is essentially a 9-page document. Certainly, it did not take Mr. Johnson 12.5 hours to <i>review</i> this document. Thus, I find it appropriate to reduce the time claimed to 1.0 hour .	\$500.00
46	Prepared Employee's Sept. 6, 2018 Brief on Second Remand	750 min = 12.5 hours	I find this time entry reasonable. However, given the substandard quality of the Petition for Attorney's Fees, I find that it warrants reducing the hours claimed. Thus, I find that an award of 6.2 hours is appropriate.	\$3,100.00
47	Reviewed DYRS' Sept. 17, 2018 Reply Brief	750 min = 12.5 hours	I find this entry patently excessive. This is essentially a 7-page document. Certainly, it did not take Mr. Johnson 12.5 hours to <i>review</i> this document. Thus, I find it appropriate to reduce the time claimed to .5 hour .	\$250.00

48	Reviewed OEA's Oct. 31, 2018 Second Initial Decision on Remand	60 min = 1 hour	I find this time entry reasonable and warrants an award of 1.0 hour of attorney fees.	\$500.00
49	Reviewed DYRS' Dec. 5, 2018 Petition for Review	750 min = 12.5 hours	I find this entry excessive. This is essentially an 11-page document. Certainly, it did not take Mr. Johnson 12.5 hours to <i>review</i> this document. Thus, I find it appropriate to reduce the time claimed to 1.0 hour .	\$500.00
50	Prepared Employee's Memorandum in Opposition to DYRS' Petition for Review	750 min = 12.5 hours	I find this time entry reasonable. However, given the substandard quality of the Petition for Attorney's Fees, I find that it warrants reducing the hours claimed. Thus, I find that an award of 6.2 hours is appropriate.	\$3,100.00
			Total hours awarded: 58.5	Total amount Awarded: \$29,250.00

Based on the lack of detailed information and often patently inflated hours in Mr. Johnson's fee petition, I find that a significant reduction in attorney fees is warranted. Mr. Johnson's fee petition contains 50 entries for work he claims was performed, along with the time purportedly expended on each entry. I agree with Agency that Mr. Johnson's Petition for Attorney Fees for 323.8 hours of work at a rate of \$500 per hour for a total of \$161,916.67, is unreasonable given that lack of details and often clearly inflated hours associated with the entries. Many of the hours claimed in Mr. Johnson's fee petition include excessive and duplicative hours for a simple "review" of documents. Furthermore, the fact that a large majority of the entries are undated made it even more difficult to ascertain the reasonableness of the time entries asserted. However, I find that Mr. Johnson's representation of Employee played a major part in Employee's successful appeal before this office. Employee's petition to this Office was able to withstand several appeals by Agency and remands issued by the OEA Board before ultimately prevailing with a District of Columbia Superior Court order upholding the reversal of Employee's termination.

The purported hours expended in this fee petition do not align with the amount of time expected of someone with Mr. Johnson's experience. Because many of the entries in Mr. Johnson's fee petition were discredited for lack of information, being clearly excessive or duplicative, and overall carelessness of the time claimed, I was compelled to significantly reduce the hours claimed or strike an entry in its entirety. OEA has held that the total denial of fees is a stringent sanction which is only justified in extraordinary circumstances.²⁵ Accordingly, in the interest of justice, I find that Mr. Johnson is entitled to an award of attorney fees, 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. Johnson with attorney fees for 58.5 hours of legal services at a rate of \$500 per hour, for a total award of \$29,250.00.

²⁵ *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)).

ORDER

It is hereby **ORDERED** that Agency pay, within thirty (30) days from the date on which this addendum decision becomes final, **\$29,250.00 (Twenty-Nine Thousand Two Hundred-Fifty and 00/100 Dollars)** in attorney fees.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge