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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MICHAEL DUNN,)	
Employee)	OEA Matter No. 1601-0047-10AF14
)	
v.)	Date of Issuance: August 4, 2014
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF YOUTH)	
REHABILITATION SERVICES,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Administrative Judge
James McCollum, Esq., Employee Representative		
Kevin Turner, Esq., Agency Representative		

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 20, 2009, Michael Dunn (“Employee”) timely filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Youth Rehabilitation Services’ (“DYRS” or “Agency”) decision to terminate him from his position as a Lead Youth Development Specialist effective September 23, 2009. Following an administrative review, Employee was charged with the following specifications:

- 1) Any on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Neglect of Duty and Incompetence (violation of the following Agency policies: Reporting Unusual Incidents, Use of Physical Restraints, and Use of Force); and
- 2) Any knowing or negligent material misrepresentation on other document given to a government agency (falsified and backdated a Restraint Form and Incident Report).

On November 23, 2009, Agency submitted its Answer to Employee’s Petition for Appeal. On June 14, 2010, Administrative Judge (“AJ”) Wanda Jackson granted the parties’ Motion for a Protective Order. Thereafter, on March 3, and March 11, 2012, Agency submitted a Motion for an Extension of Time to respond to Employee’s Discovery Requests. Subsequently on May 6, 2011, Employee submitted a Motion to Compel and a Motion for Scheduling Order. Subsequently, on August 30, 2011, Employee submitted a Supplemental Motion to Compel. This matter was initially

assigned to AJ Lois Hochhauser. On December 19, 2011, AJ Hochhauser scheduled a Prehearing Conference for January 10, 2012. During the Prehearing Conference, Employee's representative requested that AJ Hochhauser recuse herself from the case, which she agreed to do. Employee also requested that this matter be submitted to mediation. However, Agency did not respond to this request. On January 31, 2012, Employee submitted a Motion for Assignment and Scheduling Order.

This matter was reassigned to the undersigned AJ on February 13, 2012. On October 5, 2012, following an Evidentiary Hearing, I issued an Initial Decision in which I reversed the Agency's decision to terminate Employee from his last position of record. As relief, I directed that Agency reinstate Employee, and I awarded him back pay and any benefits lost as a result of the removal. On October 25, 2012, Employee filed a Motion for Attorney's Fees and Costs. On November 9, 2012, Agency filed a Petition for Review in this matter, seeking a reversal of the Initial Decision, contending that the Initial Decision is based on erroneous interpretation of statute, regulation or policy. On December 10, 2012, I issued an Addendum Decision on Attorney's Fees noting that Employee's October 25, 2012 Motion for Attorney's fees and costs was premature because the Board had not yet issued an Opinion and Order in this matter. The OEA Board, on April 15, 2014, issued an Order and Opinion in this matter denying Agency's Petition for Review. Subsequently, on April 23, 2014, Employee filed an amended Motion for Attorney's fees and costs. On May 19, 2014, Agency filed a Motion for enlargement of time to respond to Employee's request for attorney's fees and costs. Thereafter, Agency notified the undersigned via email that it appealed the OEA Board's decision to the D.C. Superior Court on May 22, 2014. This appeal is still pending with the D.C. Superior Court.

JURISDICTION

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

ISSUES

Is Employee entitled to an award of attorney fees in this matter? If so, what amount should be awarded?

FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

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". *See also*, OEA Rule 634.1, 59 DCR 2129 (March 16, 2012). This award is an exception from the "American Rule" which requires each party to pay its own legal fees.¹ 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.² An employee is considered the "prevailing" party, if he received "all or a significant part of the relief sought" as a result of the decision.³

¹ *See, e.g., Huecker v. Milburn*, 538 F.2d, 1241, 1245.

² *Newman v. Piggie Park Enterprises, Inc.*, 390 U.S. 400 (1968).

³ *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88AF92 (May 13, 1993). *See also, Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980).

Agency has filed a Petition for Review, and this Petition for Review is currently pending before D.C. Superior Court. Consequently, I find that Employee's Motion for Attorney's fees is premature because the D.C. Superior Court has not yet issued a ruling in this matter. Employee may however, re-file his Motion for Attorney's fees if he is ultimately found to be the prevailing party.

Based on these findings and conclusions, and consistent with this analysis, it is hereby **ORDERED** that Employee's Motion for Attorney's fees be **DISMISSED**.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Administrative Judge