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

In the Matter of:	)	
	)	
ESTATE OF BRYAN EDWARDS, <sup>1</sup>	)	
Employee	)	
	)	OEA Matter No.: 1601-0017-06-AF10
v.	)	
	)	Date of Issuance: June 10, 2014
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
ATTORNEY’S FEES

Bryan Edwards (“Employee”) worked as a Correctional Officer with the D.C. Department of Youth Rehabilitation Services (“Agency”). On October 3, 2005, Agency issued a notice of summary removal against Employee. He was charged with an “employment-related conduct that threatens the integrity of government operations and constitutes an immediate hazard to the agency, to other employees, and is detrimental to the public health, safety, or

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<sup>1</sup> On June 12, 2013, a motion to substitute Bryan Edwards with the Estate for Bryan Edwards was filed. According to counsel, Mr. Edwards passed away on March 14, 2013. Agency did not file an objection to the Motion for Substitution.

welfare.”<sup>2</sup> Agency explained that during two, random drug tests, Employee’s results returned positive for cocaine and/or cocaine metabolites.<sup>3</sup>

On December 15, 2005, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He explained that an interaction of over-the-counter and prescribed medications was responsible for his positive test result on May 17, 2004. As for the positive test on September 14, 2005, he explained that on that morning, he underwent dental surgery where Xylocaine, a cocaine derivative, was administered to him.<sup>4</sup> Therefore, Employee asserted that he had a legitimate reason for the positive test result.<sup>5</sup>

The Initial Decision was issued on May 14, 2007. The Administrative Judge (“AJ”) reasoned that if Employee was able to invalidate either one or both of the verified test results, then Agency’s action should be reversed. The AJ found that for the May 2004 drug test, although Employee legitimately tested positive for the use of cocaine and/or cocaine metabolites, he successfully completed the Employee Assistance Program (“EAP”) and entered into a last chance agreement with Agency. Therefore, the AJ explained that according to Agency’s policy, Employee should have been provided a second opportunity to rehabilitate himself after a verified positive drug result.

As for the September 14, 2005 test, the AJ opined that Agency’s regulations afforded Employee the opportunity to offer a legitimate explanation for a positive test result. The AJ found that the cause of Employee’s positive test result was due to a dental surgery in which the surgeon utilized a derivative of cocaine in administering anesthesia. Thus, the AJ held that the

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<sup>2</sup> *Petition for Appeal*, p. 6 (December 15, 2005).

<sup>3</sup> The drug tests occurred on May 17, 2004 and September 14, 2005.

<sup>4</sup> Employee believed that this anesthetic was responsible for producing a urine specimen containing cocaine and/or cocaine metabolites. He further explained that a previous kidney donation and the removal of half of his bladder prevented him from providing the required amount of urine to complete the September 14, 2005 drug test.

<sup>5</sup> *Petition for Appeal*, p. 8-19 (December 15, 2005).

proper result for the September 14, 2005 urine analysis should have been negative due to a legitimate medical explanation. Accordingly, the AJ reversed Agency's decision to remove Employee and reinstated him to his former position with back-pay and benefits.<sup>6</sup>

Agency filed a Petition for Review with the OEA Board, wherein it argued that the AJ abused his discretion when he denied its request for its Medical Review Officer ("MRO") to testify by telephone, as well as his denial of its subsequent request for a continuance.<sup>7</sup> The Board ruled that the AJ did not abuse his discretion in disallowing the MRO's telephonic testimony or in denying Agency's request for a continuance. As a result, Agency's Petition for Review was denied.<sup>8</sup>

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<sup>6</sup> *Initial Decision*, p. 13-15 (May 14, 2007).

<sup>7</sup> *Petition for Review*, p. 3-6 (June 18, 2007).

<sup>8</sup> *Opinion and Order on Petition for Review* (July 22, 2009). Subsequently, Employee filed a Motion to Enforce the Final Decision for Agency to reinstate him with back pay and benefits. Additionally, he requested, *inter alia*, that OEA award attorney fees and certify the matter to the OEA's General Counsel's office for enforcement. In an Addendum Decision on Compliance issued May 6, 2010, the AJ found that Agency had not complied with OEA's final decision. Accordingly, he certified the matter to OEA's General Counsel for enforcement. Further, he stated that once Employee's counsel supplemented his attorney's fee request, he would issue an Addendum Decision on Attorney Fees. *Addendum Decision on Compliance* (May 6, 2010).

Thereafter, Employee submitted a Motion for Interim Order Awarding Attorneys' Fees wherein he provided that while he was reinstated on May 24, 2010, he was not reimbursed with back pay and benefits. At this time, Employee requested an award of \$37,660.00 in attorneys' fees. *Motion for Interim Order Awarding Attorneys' Fees*, p. 9 (September 14, 2010). Employee's counsel also submitted an amended affidavit explaining the legal services he performed along with his billing records. In response, Agency argued that Employee's request for attorneys' fees should be denied because it failed to establish the reasonableness of the hourly rate requested by his attorney; the hours were not properly documented; and the hours were unreasonable. *Agency's Response to Employee's Motion for Interim Order Awarding Attorney Fees* (October 15, 2010).

In reply, Employee's counsel asserted that his fee request and the rates charged were reasonable. *Reply in Support of Interim Order Awarding Attorneys' Fees* (November 1, 2010). He explained that the reasonableness of the fees was based on the *Laffey* Matrix. The Matrix is derived from *Laffey v. Northwest Airlines, Inc.*, 572 F. Supp. 354 (D.D.C. 1983). Thereafter, OEA's General Counsel issued an Order on Compliance wherein she ordered Agency to submit documents verifying that it had complied with the final decision. *General Counsel's Order on Compliance* (June 14, 2011). Later, Employee filed a Supplemental Motion for Interim Order Awarding Attorneys' Fees which explained that Agency complied with the back pay award on December 29, 2011. However, the issue of attorneys' fees remained outstanding. At this time, Employee's counsel requested \$27,660.00 in attorneys' fees for the period of March 10, 2010 through September 10, 2010; \$19,086.86 for the period of July 1, 2011 through April 30, 2012; and a \$10,000.00 availability retainer. *Supplemental Motion for Interim Order Awarding Attorneys' Fees* (May 4, 2012).

Agency responded by again contesting the reasonableness of the hours claimed and the hourly rate sought by Employee's counsel. Agency reasoned that pursuant to *Surgent v. Department of Human Services*, OEA Matter No.

After a lengthy exchange of filings, an Addendum Decision on Attorney Fees was issued by the AJ on December 17, 2012. First, he held that under D.C. Official Code §1-606.08, “an agency may be directed to pay reasonable attorney fees if the employee is the prevailing party . . . .” To determine whether attorney’s fees were merited, the AJ considered the Merit Systems Protection Board’s rationale in *Allen v. U.S. Postal Services.*, 2 *M.S.P.R.* 420 (M.S.P.B. July 22, 1980) and the five factors it outlined.<sup>9</sup> The AJ found that factors one, four, and five applied to this case.<sup>10</sup>

With regard to the reasonableness of the hourly rate for legal services provided by

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2405-0096-91A94 (September 8, 1999), OEA had adopted the Lodestar method in calculating a reasonable fee. Under the Lodestar method, attorney’s fees are calculated by multiplying the number of hours reasonably expended on the matter by a reasonable hourly rate. It provided that the billable hours were not sufficiently detailed to assess their reasonableness; the hours requested should be reduced due to improper block billing; duplicative and excessive hours should be subtracted from the total; hours billed for clerical tasks should be subtracted or reduced; hours billed for legal services before the Superior Court of the District of Columbia should be subtracted; and the hourly total should be reduced for time spent unrelated to the enforcement proceedings.

Agency also argued that the *Laffey* Matrix rates should not apply because Employee’s counsel failed to establish that he was entitled to such rates. Agency explained that the case was not complex, and Employee’s counsel did not present evidence which proved that his rate was in accordance with the prevailing rate in the community. *Agency’s Response to Employee’s Request for Attorney’s Fees* p. 4-19 (June 6, 2012).

Employee’s counsel later withdrew his pending motions for attorneys’ fees and filed a Motion for an Award of Revised Interim Fees. He explained that after a review of Agency’s objections, the fee petition was adjusted. The revised fee petition covered the full time period of March 25, 2010 to April 30, 2012, and requested fees in the amount of \$38,914.00. *Employee’s Motion for Award of Revised Interim Fees and to Withdraw Pending Interim Fee Petitions* (June 28, 2012).

Agency consented to Employee’s withdrawal of the previously filed motions. However, it reiterated some of its previous objections to the reasonableness of the total hours claimed. *Agency’s Response to Employee’s Motion for Award of Revised Interim Fees and to Withdraw Pending Interim Fee Petitions* (November 26, 2012).

<sup>9</sup> The factors in *Allen* were:

1. Did agency engage in a prohibited personnel practice;
2. Was agency’s action clearly without merit or wholly unfounded, or was the employee substantially innocent of the charges brought by the agency;
3. Did agency initiate the action against the employee in bad faith, including:
  - a. Was agency’s action brought to harass the employee;
  - b. Was agency’s action brought to exert improper pressure on the employee to act in certain ways;
4. Did agency commit a gross procedural error which prolonged the proceeding or severely prejudiced the employee; and
5. Did agency know or should have known that it would not prevail on the merits when it brought the proceeding.

<sup>10</sup> *Addendum Decision on Attorney’s Fees* (December 17, 2012).

Employee's counsel, the AJ cited *Blum v. Stenson*, 465 U.S. 886 (1984) and provided that "[t]he 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, expertise, or reputation."<sup>11</sup> The AJ found that Employee's counsel was an experienced litigator in the field of labor and employment law, and his ". . . professional skill and experience in this subject area alone would justify a fee award at the *Laffey* rate."<sup>12</sup> The AJ reviewed the documents submitted by Employee's counsel and concluded that the amount requested ". . . [was] both reasonable and recoverable."<sup>13</sup> Accordingly, Agency was ordered to pay Employee \$38,914.00 in attorney fees and costs.<sup>14</sup>

Agency filed a Petition for Review with the OEA Board on January 22, 2013. It argues that the AJ's decision was based on an erroneous interpretation of statute, regulation, or policy; it was not based on substantial evidence; and it did not address all material issues of fact properly raised in its opposition to Employee's counsel's fee request. It reiterates that the hours billed for legal services performed in furtherance of litigation before the D.C. Superior Court should be subtracted.<sup>15</sup> Thus, it requests that the Addendum Decision on Attorney's Fees be reversed and remanded for subtracting all hours billed for services before D.C. Superior Court.<sup>16</sup>

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<sup>11</sup> *Id.* at 4.

<sup>12</sup>The AJ also noted that Employee's counsel requested payment for the services of himself, three law clerks, and a first year associate. Employee's counsel submitted a declaration which provided that the hourly rate sought was below the *Laffey* rate for an attorney with his years of experience. He explained that his rate was lowered to minimize potential objections Agency would assert and in effort to expedite the resolution of the case. *Id.*, 4-6.

<sup>13</sup> *Id.* at 11.

<sup>14</sup> The AJ considered Agency's objections to the fee petition. With regard to its objection to legal services performed in connection with the dental surgeon, the AJ found that the time entries and work were valid. As for Agency's contentions that the time spent on researching pre- and post-judgment interests and unemployment compensation benefits should be reduced or subtracted from the total hours, the AJ found that this time was also valid. Lastly, the AJ disagreed with Agency's allegation that certain hours were for work performed in anticipation of an appeal before the D.C. Superior Court. He explained that Agency did not provide any persuasive details or arguments that would lead him to believe that Employee's counsel conducted work in furtherance of an appeal before another judicial body. *Id.*, 6-11.

<sup>15</sup>Agency provides that the AJ's finding regarding the reasonableness of the fee petition was arbitrary and capricious because the AJ relied on the finding that Employee's counsel deducted a significant amount of time from the

Employee's counsel filed an Answer to the Petition for Review on February 22, 2013. He disagrees with Agency's contentions and argues that the Initial Decision was based on substantial evidence. With regard to the hours billed for legal services performed in furtherance of litigation before the D.C. Superior Court, Employee explains that Agency failed to provide a line-by-line enumeration of its basis for objecting to the 29.1 hours. Further, Employee's counsel notes that none of the hours that Agency objected to actually involved litigation in D.C. Superior Court.<sup>17</sup> Lastly, counsel argues that Agency failed to cite which statute, regulation, or policy was violated by the AJ. Therefore, he believes that the AJ's decision should be affirmed.<sup>18</sup>

#### Attorney's Fees

In accordance with D.C. Official Code §1-606.08, an Administrative Judge “. . . 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.” Similarly, OEA Rule 634.1 provides that “an employee shall be entitled to an award of reasonable attorney fees if: (a) he or she is a prevailing party; and (b) the award is warranted in the interest of justice.” It is without question that Employee is the prevailing party in this matter. As the AJ provided, Agency concedes this point in its Response to Employee's Request for Attorney's Fees.<sup>19</sup> Moreover, Agency explained in its Petition for Review that it “does not contest that Employee is entitled to

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petition. It reasons that the deduction of objectionable time from the fee petition did not establish that the remaining hours were reasonable. *Agency's Petition for Review*, p. 6 (January 22, 2013).

<sup>16</sup> *Id.* at 7.

<sup>17</sup> Employee's counsel explains that the majority of the time was for legal services for dealing with compliance. In addition, he explains in his Revised Fee Petition removed hours spent on the D.C. Superior Court litigation.

<sup>18</sup> *Employee's Answer to Agency's Petition for Review*, p. 9-13 (February 22, 2013). Thereafter, Employee died and his Estate filed a Notice of Suggestion of Death and Motion to Substitute. The Estate requests for the OEA Board to substitute it as a party to the case and that it recover any relief that it may be entitled. *Notice of Suggestion of Death and Motion to Substitute* (June 12, 2013).

<sup>19</sup> Agency clearly provided that “it is uncontested that Employee is the prevailing party.” *Agency's Response to Employee's Request for Attorney's Fees*, p. 4 (June 6, 2012).

reasonable attorney's fees."<sup>20</sup> Therefore, both requirements of the D.C. Official Code §1-606.08 and OEA Rule 634.1 have been satisfied. However, it is Agency's position that the AJ's decision on attorney's fees was not based on substantial evidence because hours that were billed for services performed in the Superior Court for the District of Columbia was not subtracted from the fees. Additionally, Agency argued that the AJ's decision is not based on substantial evidence because it failed to address the reasonableness of the total amount requested by Employee's counsel.

#### Substantial Evidence

OEA Rule 633.3(c) provides that a "petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that the findings of the Administrative Judge are not based on substantial evidence." Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.<sup>21</sup> The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. After reviewing the record, this Board believes that the AJ's assessment of the hourly rate and time expended by Employee's counsel was reasonable, and his decision was based on substantial evidence.

#### Reasonable Attorney's Fees

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

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<sup>20</sup> *Agency's Petition for Review*, p. 3 (January 22, 2013).

<sup>21</sup> *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

litigation.<sup>22</sup> In this current matter, OEA's AJ is the equivalent of the trial court. Judge Robinson conducted the evidentiary hearing and drafted the Initial Decision and all subsequent decisions. He has a unique and superior understanding of the case. Therefore, this Board must rely on the AJ's determinations regarding the reasonableness of the hourly rate and time expended. He is aware of how much time each action should have taken given the complexity of the issues and the counsels' level of experience. We are simply tasked with deciding if the AJ's decision regarding these matters was based on substantial evidence.

As previously provided, in *Surgent v. Department of Human Services*, OEA Matter No. 2405-0096-91A94 (September 8, 1999), OEA adopted the Lodestar method to determine attorney's fees which is calculated by multiplying the hourly rate by the number of hours reasonably expended. Likewise in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), the Supreme Court of the United States provided that:

The most useful starting point for determining the amount of a reasonable fee is the number of hours reasonably expended on the litigation multiplied by a reasonable hourly rate. This calculation provides an objective basis on which to make an initial estimate of the value of a lawyer's services. The party seeking an award of fees should submit evidence supporting the hours worked and rates claimed.

Agency argues on Petition for Review that Employee's counsel's fee request was unreasonable.<sup>23</sup> After a series of filings by both parties, Employee's counsel tried to address Agency's claims of unreasonableness in two ways. First, he significantly reduced his hourly fee. Secondly, he removed nearly all of the charges to which Agency objected pertaining to the time expended on the matter. Both will be addressed below.

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<sup>22</sup> Citing *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 1941 (1983).

<sup>23</sup> *Agency's Petition for Review*, p. 6 (January 22, 2013).



### Hourly Rate

Although Agency does not specifically contest the hourly rate on Petition for Review, we will address it because it goes to the reasonableness of the overall fees. Even though the AJ found that the *Laffey* Matrix rate was warranted in the current case, Employee's counsel charged Employee a significantly discounted rate from that which he could have sought. Employee's counsel was requesting \$350 per hour for the work he performed; \$135-140 for law clerks; and \$240 for associates.<sup>24</sup>

The courts in *Blum v. Stenson*, 465 U.S. 886 (1984) and *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988) held that the burden of proof is on Employee's counsel to provide evidence that the rates he requested were in line with attorneys in the area for similar services and comparable skill, experience, and reputation. This Board believes that the AJ's decision that \$350 was a reasonable rate was based on substantial evidence. Employee's counsel provided that he had over thirty-five years of experience representing labor unions and employees in over one hundred trials and administrative proceedings. He also highlighted the awards he received from his work within the labor and employment community. Additionally, he provided an affidavit from the past president of the Metropolitan Washington Employment Lawyers Association, who provided that *Laffey* was the prevailing market rate used by employment law attorneys within the legal community of the District of Columbia.<sup>25</sup>

The *Blum* court also held that "the fees charged often are based on the product of hours devoted to the representation multiplied by the lawyer's customary rate." Employee's counsel's customary rate is clearly outlined in the retainer at \$350 per hour. Thus, this Board believes that

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<sup>24</sup> *Employee's Motion for Award of Revised Interim Fees and to Withdraw Pending Interim Fee Petitions*, p. 14 (June 28, 2012).

<sup>25</sup> *Id.*, Tabs #2 and #3.

given Employee's counsel's extensive experience at the time of the appeal and the plain language of his retainer agreement, \$350 per hour was a reasonable rate. Accordingly, the AJ's decision to award \$350 per hour to counsel was based on substantial evidence.<sup>26</sup>

#### Number of Hours Expended

OEA Rule 634.3 establishes that "an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal." OEA has consistently held that the number of hours reasonably expended is calculated by determining the total number of hours and subtracting all non-productive, duplicative, and excessive hours.<sup>27</sup> The *Hensley* court offered guidance on this issue and held that it is important for those making attorney fee awards to provide a concise but clear explanation of its reasons for the fee award. The court went on to find that "the applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims."<sup>28</sup>

Employee's counsel submitted his billing records to the AJ which offered a descriptive list of services provided. This Board believes that the details of the services outlined by counsel allowed the AJ to easily discern if charges were excessive or duplicative in nature. After a

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<sup>26</sup> For illustration purposes, this Board will only discuss the fees associated with Employee's counsel. It should be noted that the fees discussed do not include the amount which are awarded to the law clerks and associates within Employee's counsel's firm. If the AJ used the *Laffey* rate, as he ruled was the appropriate rate, Employee's counsel's per hour rate would have been \$495, instead of the \$350 per hour he charged. According to Employee's counsel's fee request, he expended 93.60 hours on Employee's case. Thus, under *Laffey*, he would have been entitled to \$46,332 in his fees alone. However, because Employee's counsel reduced his rate to \$350 per hour, the total amount that he requested from Agency for the work he performed was \$32,760. Thus, the AJ's Addendum Decision on Attorney's Fees already includes an attorney's fee reduction of \$13,572.

<sup>27</sup> *Cocome v. D.C. Lottery and Charitable Games Control Board*, OEA Matter No. 1601-0014-84AF02 (June 5, 2003); *Hoston v. D.C. Public Schools*, OEA Matter No. 1601-0022-04AF01 (December 14, 2007); *Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05AF08 (June, 25, 2008); *McCray v. D.C. Public Schools*, OEA Matter No. 1601-0010-03AF07 (May 21, 2007); *Junious v. D.C. Child and Family Services*, OEA Matter No. 1601-0057-01AF07 (May 7, 2007); *Richards and Ullis v. D.C. Public Schools, Department of Transportation*, OEA Matter Nos. 1601-0063-04AF06 and 1601-0092-04AF06 (December 22, 2006) (citing *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985)); and *Khadejah Muhammad v. D.C. Government Operations Division*, OEA Matter No. 1601-0033-07AF11, *Opinion and Order on Petition for Review* (March 4, 2014).

<sup>28</sup> *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

thorough examination of the fees requested, the AJ held that the time reported by Employee's counsel actually spent on this case was reasonable. As it pertained to Agency's arguments regarding charges for work performed in Superior Court, the AJ held that they lacked merit and evidence. The AJ also provided that it was within Employee's counsel's right to conduct research regarding available opportunities for him to recoup the losses to his client. Furthermore, he held that the time entries were valid expenditures of time used to make reasonable, fully-vetted, zealous legal arguments before OEA.<sup>29</sup>

It is the position of this Board that Agency offered nothing more than mere allegations in its presentation of the argument regarding the work performed for services rendered in Superior Court. By contrast, Employee's counsel offered a detailed account of the procedural history of this case to which Agency did not object or respond. Employee's counsel provided that the proceedings in Superior Court were stayed pending negotiation efforts made by both parties through OEA. He went on to provide that attorney, Sarah Knapp, represented Agency during the Superior Court proceeding, but "she was instrumental in negotiating with Edwards' counsel and the Agency, and she (rather than Agency counsel) was ultimately responsible for payment of the back pay amount."<sup>30</sup> Therefore, Employee's contention is reasonable that the entries which involved negotiations with Sarah Knapp were related to the back pay compliance and not the result of litigation in Superior Court, as Agency contends.

Moreover, Employee's counsel's final fee request clearly deducted all of the charges to which Agency objected regarding representation in Superior Court. The only two entries that remained regarding Superior Court amounted to 3.4 hours total. The first was potential causes of action to take against Agency for its failure to comply with OEA's final order to reinstate

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<sup>29</sup> *Initial Decision*, p. 10-11 (December 17, 2012).

<sup>30</sup> *Employee's Answer to Agency's Petition for Review*, p. 9-12 (February 22, 2013).

Employee. The second was research regarding the Superior Court's jurisdiction over enforcement of OEA orders.<sup>31</sup> Both of these charges are valid and warranted given the procedural history. After the first Initial Decision and Opinion and Order on Petition for Review ordering Employee's reinstatement and back pay, an Addendum Decision on Compliance and a General Counsel's Order on Compliance were issued. Employee had exhausted all of his procedural options before OEA to compel Agency to comply. It is reasonable that research regarding a potential enforcement action in Superior Court was warranted at this point. Moreover, the research was not conducted during the course of litigation before the courts, therefore, the Board will allow the charge for 3.4 hours to remain.

### Conclusion

There is substantial evidence in the record to support the AJ's decision on Employee's counsel's hourly rate and time expended on the case. The record clearly shows that the hourly rate was reasonable. The rate was significantly reduced by counsel as a good faith effort to offer Employee a rate commensurate with his circumstances. Additionally, there was no evidence presented that the hours charged in this matter were duplicative or excessive. Employee's counsel waived a great deal of the time spent on this case which could have been charged. Moreover, the time spent was reasonable. The record supports the AJ's award of attorney's fees. Therefore, Agency's Petition for Review is DENIED, and the order to award attorney's fees in the amount of \$38,914.00 is upheld.

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<sup>31</sup> *Employee's Motion for Award of Revised Interim Fees and to Withdraw Pending Interim Fee Petitions*, Tab #1 (June 28, 2012).

**ORDER**

Accordingly, Agency's Petition for Review is **DENIED**. Agency shall file with this Board within thirty (30) days from the date upon which this decision is final, documents evidencing compliance with the terms of this Order awarding Employee's counsel attorney's fees in the amount of \$38,914.00.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

\_\_\_\_\_  
A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.