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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SCOTT SEFTON,)	
Employee)	OEA Matter No. 1601-0109-13AF15R16
)	
v.)	Date of Issuance: October 12, 2016
)	
D.C. FIRE & EMERGENCY)	Monica Dohnji, Esq.
MEDICAL SERVICES DEPARTMENT,)	Senior Administrative Judge
Agency)	
_____)	

Marc L. Wilhite, Esq., Employee’s Representative
John H. Schroth, Esq., Employee’s Representative
Onyebuchim A. Chinwah, Esq., Agency’s Representative

SECOND ADENDUM DECISION ON ATTORNEY FEES ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 28, 2013, Scott Sefton (“Employee”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the D.C. Fire & Emergency Medical Services’ (“Agency”) action of suspending him, and demoting him from the rank of Captain to Lieutenant. This matter was originally assigned to former Administrative Judge (“AJ”) Sommer Murphy. Employee’s position of record at the time Agency took adverse action was a Firefighter with Engine 27. Employee was charged with: 1) “Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations” to wit: (Neglect of Duty); 2) “Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations” to wit: (Misfeasance); and 3) Making false statements during an accountability call. The events which formed the basis of Employee’s appeal occurred on August 24, 2012, when Engine 27 responded to a fire at 4418 Edson Place in Northeast, D.C. On February 27, 2013, the Fire Trial Board (“Board”) held a disciplinary hearing. The Board issued a Letter of Decision on June 14, 2013 finding Employee guilty.

Employee subsequently appealed Agency’s decision to this Office. On August 18, 2014, former AJ Sommer Murphy issued an Initial Decision, sustaining Charge No. 1, Specification No. 1. However, Charge No. 1, Specification No. 2; and Charge No. 2, Specification No. 1 were

reversed. Agency was ordered to reimburse Employee for all back pay and benefits incurred from the effective date of his suspension through the expiration date of his suspension (totaling 168 hours).¹ The Initial Decision also reversed Employee's demotion, and Agency was ordered to promote him back to the rank of Captain.² Agency subsequently filed a Petition for Review of the Former AJ Murphy's Initial Decision with D.C. Superior Court on September 22, 2014.³ On July 28, 2015, the Honorable Judge Brian Holeman upheld OEA's decision and denied Agency's Petition for Review.⁴ Agency did not elect to appeal the Superior Court's decision with the D.C. Court of Appeals; therefore, the Superior Court's decision became final on August 28, 2015. Counsel for Employee then filed a Motion for Award of Attorney Fees and Costs on September 25, 2015. On October 19, 2015, Agency filed an Opposition to Employee's Motion for Award of Attorney Fees and Costs. On November 19, 2015, former AJ Sommer Murphy issued an Addendum Decision on Attorney Fees noting that, Employee was only entitled to attorney fees for legal work incurred solely before OEA. The sum of this amount was \$16,419.18.

On February 5, 2016, Employee filed a motion in the D.C. Superior Court for award of Attorney's Fees and Cost for legal work incurred before the D.C. Superior Court. On April 21, 2016, the D.C. Superior Court remanded this matter to OEA to immediately, and without delay enter an award for attorney's fees and cost in favor of Employee against Agency in the amount of \$8,470.81. This matter was reassigned to the undersigned AJ in September of 2016.

JURISDICTION

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

ISSUES

Does OEA have jurisdiction to award attorney fees for work incurred before the D.C. Superior Court?

ENTITLEMENT OF EMPLOYEE TO ATTORNEY FEES

D.C. Official Code § 1-606.08 (2001) 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."⁵ On November 19, 2015, former AJ Murphy found that Employee was the prevailing party and as such, was entitled to attorney fees in the interest of justice.

¹ *Sefton v. D.C. FEMS*, OEA Matter No. 1601-0109-13 (August 18, 2014).

² *Id.*

³ Employee filed a Motion to Intervene in D.C. Superior Court. Employee also filed a Consent Motion to Stay the Time to File Attorney Fees on October 22, 2014. The motion was granted.

⁴ 2014 CA 005987 P(MPA).

⁵ See OEA Rule 634.1.

Does OEA have jurisdiction to award attorney fees for work incurred before the D.C. Superior Court

While both parties agree that Employee is the prevailing party and is entitled to attorney's fees, the crux of the matter is whether OEA can award a prevailing party's attorney fees for legal work incurred before the D.C. Superior Court. On April 21, 2016, the Honorable Brian Holeman remanded this matter to OEA to immediately and without delay enter an award for attorney's fees and cost in favor of Employee in the amount of \$8,470.81.⁶ This amount is for work incurred by Employee's attorney before the D.C. Superior Court.

D.C. Official Code § 1-606.08 (2001) 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." This Office has consistently held that it does not have jurisdiction to award attorney fees for work incurred before the D.C. Superior Court. The OEA Board in *Andrew Jenkins v. D.C. Public Schools*, OEA Matter No. J-0050-91AF92, Opinion and Order (March 18, 1994) noted that, there is nothing in D.C. Official Code § 1-606.08 (2001) which reflects that it was intended to extend this Office's jurisdiction to include an award of attorney fees for work performed before the courts. Nor is there anything in the legislative history which suggests such a purpose.⁷ The OEA Board further explained that, the attorney fees provision is one part of a legislative enactment, which in its entirety, deals with the processing of administrative appeals before this Office.⁸

Based on the reasoning in *Jenkins supra*, I conclude that, OEA does not have jurisdiction to award attorney fees for work incurred before the D.C. Superior Court and as such, Employee is only entitled to attorney fees in the amount of \$16,419.18, which is the amount he incurred before this Office. Because the D.C. Superior Court has original jurisdiction to award attorney fees on a fee petition submitted directly to the Court, Employee would have to go back to the D.C. Superior Court to be award attorney fees and cost for work incurred before that court.

ORDER

It is hereby **ORDERED** that Agency pay, within thirty (30) days from the date on which this second addendum decision becomes final, **\$16,419.18** in attorney fees and costs.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁶ *D.C. Fire & Emergency Medical Services Department v. D.C. Office of Employee Appeals and Scott Sefton*, Case No. 2014 CA 5987 P(MPA), dated April 21, 2016.

⁷ See *Jenkins, supra*.

⁸ *Citing Olsen v. Department of Commerce*, 735 F. 2d 558, 560-561 (Fed. Cir. 1984); *Phillips v. General Services Administration*, 924 F. 2d 1577 (Fed. Cir. 1991); *Gardner v. Menendez*, 373 F. 2d 488 (1967).