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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
VERONICA BUTLER,	)	
Employee	)	OEA Matter No. 1601-0132-14R17AF18
	)	
v.	)	Date of Issuance: September 18, 2018
	)	
DISTRICT OF COLUMBIA	)	
OFFICE OF AGING,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
Joseph Mallon, Esq., Employee Representative	)	
Janea Hawkins, Esq., Agency Representative	)	
Rahsaan Dickerson, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On September 25, 2014, Veronica Butler (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Office of Aging’s (“DCOA” or “Agency”) decision to terminate her from her position as a Special Assistant to the Executive Director, effective September 3, 2014. Employee was charged with violating the following: (1) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operation, specifically: Absent without official leave;<sup>1</sup> and (2) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operation, specifically: Unauthorized absence.<sup>2</sup>

On October 27, 2015, I issued an Initial Decision (“ID”) reversing Agency’s decision to terminate Employee. Agency appealed the ID to the OEA Board. On April 17, 2017, the OEA Board remanded this matter to the undersigned. Subsequently, an Evidentiary Hearing was held on March 1, 2018. Both parties were present for the Evidentiary Hearing. Thereafter, on July 3, 2018, I issued an Initial Decision on Remand (“IDR”) again reversing Agency’s decision to terminate Employee.

On September 5, 2018, Employee emailed a courtesy copy of her Motion for Attorneys’ Fees and Expenses to the undersigned, and Agency’s representative. Thereafter, Employee filed an official

<sup>1</sup> District Personnel Manual (“DPM”) §§ 1603.3(f)(2), 1619.6(b).

<sup>2</sup> DPM §§ 1603.3(f)(2), 1619.6 (a). It should be noted that this cause of action – Unauthorized Absence is listed under DPM 1603.3(f)(1) and not DPM 1603.3(f)(2) as stated in the Notice of Final Decision on Proposed Removal. The cause of action is correctly found under DPM § 1619(6)(a) of the Table of Appropriate Penalties.

Motion for Attorneys' Fees and Expenses on September 6, and September 10, 2018. On September 7, 2018, Agency's representative notified the undersigned via email that a Petition for Review was filed by Agency with the District of Columbia Superior Court on September 5, 2018.<sup>3</sup> This Petition for Review is currently pending with the District of Columbia Superior Court. The record is now closed.

### JURISDICTION

OEA 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?

### 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.<sup>4</sup> 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.<sup>5</sup> 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.<sup>6</sup>

Agency filed its Petition for Review on September 5, 2018, and this Petition for Review is currently before the District of Columbia Superior Court. Consequently, I find that Employee's Motion for Attorney's fees is premature because the District of Columbia Superior Court has not yet issued a decision in this matter. Employee may however, re-file her Motion for Attorneys' Fees and Expenses if she 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 Attorneys' Fees and Expenses be **DISMISSED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Senior Administrative Judge

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<sup>3</sup> Per Agency's email, an official copy of Agency's court filing would be served on OEA General Counsel.

<sup>4</sup> *See, e.g., Huecker v. Milburn*, 538 F.2d, 1241, 1245.

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

<sup>6</sup> *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).