THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1]	)	
	)	
v.	)	OEA Matter No.: 1601-0012-14AF22
	)	
	)	Date of Issuance: March 2, 2023
D.C. DEPARTMENT OF EMPLOYMENT SERVICES, Agency	)	

OPINION AND ORDER
ON
ATTORNEY'S FEES

Employee was terminated from her position as an Administrative Law Judge ("ALJ") with the Department of Employment Services ("Agency") effective October 18, 2013. On April 22, 2016, an Office of Employee Appeals ("OEA") Administrative Judge ("AJ") issued an Initial Decision reversing Agency's termination action.[2] Employee was ordered to be reinstated to her previous position with backpay and benefits. Agency did not appeal the Initial Decision, which became final in May of 2016.[3] On August 4, 2017, Agency issued Employee a check for back pay in the amount of $129,766.55. On August 11, 2017, the matter was certified by the OEA General Counsel's office to the Executive Office of the Mayor ("EOM") Office of General Counsel

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] *See McNair v. Department of Employment Services,* OEA Matter No. 1601-0012-14 (April 22, 2016).
[3] The April 22, 2016, Initial Decision will herein be identified as the ("2016 Initial Decision").

("OGC") to certify compliance with the April 2016 order. In July of 2018, the EOM OGC issued a decision finding that Agency substantially complied with the 2016 Initial Decision; Employee's lapse in medical insurance was solely attributable to her failure to pay her portion of the insurance fees under the Consolidated Omnibus Budget Reconciliation Act ("COBRA"); and Employee was required to complete a fit-for-duty test as a condition to returning for work.[4]

On February 3, 2020, Employee advised Agency that she could not produce a note related to her fitness for duty because she did not have current insurance coverage. She was advised by Agency that an emergency room doctor's note would suffice. Agency further provided Employee with a return-to-work date of February 10, 2020. However, Employee did not report for duty from February 10, 2020, through February 28, 2020. As a result, on March 5, 2020, Agency issued Employee a Proposed Notice of Termination. Specifically, Employee was charged with Unauthorized Absence because she failed to return to work on February 10, 2020, as instructed. On August 14, 2020, Agency issued a Final Notice on Proposed Removal. The notice sustained the proposed adverse action, and Employee's removal became effective on August 28, 2020.

Employee filed another Petition for Appeal with OEA on September 14, 2020. She argued that her termination was wrongful and asserted that Agency failed to comply with the 2016 Initial Decision reinstating her to her previous position.[5] In response, Agency contended that it was within its authority to remove Employee for unauthorized absence under Chapter 6B, Section 1605.4 of the D.C. Municipal Regulations ("DCMR") and the Table of Penalties, because termination for absences without prior authorization constitutes grounds for removal after the first offense. Agency explained that although it was understood that Employee was supposed to return to work on February 10, 2020, she did not. It further noted that as of February 28, 2020, when the proposed

[4] See Addendum Decision on Attorney's Fees (September 28, 2022).
[5] *Petition for Appeal* (September 14, 2020).

removal notice was dated, Employee still had not returned to work. As it related to Employee's assertion that Agency failed to comply with the 2016 Initial Decision, Agency opined that there were no outstanding actions that it was required to take that would have prevented Employee from returning to work. According to Agency, the EOM was the final arbiter of whether it complied with the 2016 Initial Decision. In support thereof, it highlighted the EOM's July 18, 2018, Memorandum and Decision which provided that Agency had substantially complied with the AJ's order.

Agency went on to explain that in accordance with the 2016 Initial Decision, Employee was reinstated effective July 18, 2018, and was issued a check in the amount of $129,766.55 for backpay. It stated that while the AJ ordered Agency to reinstate Employee's benefits, this part of the order could not be complied with unless she returned to work or paid her portion of health insurance. Agency highlighted that the AJ required it to reinstate Employee's benefits; however, the requirement was tied to necessary actions on Employee's part. Since the AJ did not remove the requirement that Employee pay her portion of the health insurance and/or return to work to receive health insurance, Agency reasoned that its termination action was proper. Therefore, it submitted that her termination should be upheld.[6]

A Prehearing Conference was held in the current matter on November 16, 2021. On November 22, 2021, the AJ issued a Post-Prehearing Conference Order which directed Agency to provide the backpay worksheet related to Employee's previous case before this Office – OEA Matter No. 1601-0012-14C16. The order further provided that although Employee's previous case was captured under a separate case number, the compliance issues addressed in that matter had the potential to impact the current appeal. As a result, Employee was ordered to amend her Petition

[6] *Agency Answer to Petition for Appeal* (March 30, 2021).

for Appeal.[7]

Thereafter, Employee filed an Amended Petition for Appeal. She asserted that Agency engineered her functional removal only three months after being reinstated by forcing her into Absent Without Official Leave ("AWOL") status. Additionally, she argued that Agency's termination action was unwarranted because it subjected her to disparate treatment. According to Employee, although the AJ ordered that her termination be reversed with backpay and benefits in April of 2016, Agency waited until September of 2016 to complete the reinstatement and never restored her various forms of accrued leave. Employee further believed that Agency placed her in a non-pay status in November of 2016, which caused her health insurance to lapse. She submitted that Agency's termination action was unwarranted because it was retaliatory and violated her due process rights. Lastly, Employee suggested that because her removal was unwarranted pursuant to the 2016 Initial Decision, the prior appeal should be reopened for purposes of enforcement and assessing attorney's fees. [8]

On January 7, 2022, Agency filed its Answer to the AJ's Pre-hearing Conference and Request for Hearing on Merits of February 2020 Removal. According to Agency, while it was aware that Employee's backpay worksheet existed, the document could not be located at that time. It indicated that efforts would continue to locate the worksheet.[9] Agency subsequently filed a motion with OEA stating that Employee's backpay package was located and reiterated its request for a hearing on the merits of Employee's February 2020 removal.

On January 24, 2022, the AJ issued an order addressing Agency's request for a hearing as

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[7] *Post-Prehearing Conference Order* (November 22, 2021). During the conference, it was determined that some of Employee's arguments before OEA may have been previously settled; thus, Employee was directed to amend her petition.
[8] *Amended Petition for Appeal* (December 16, 2021).
[9] *Agency Answer to the Court's Pre-hearing Conference and Request for Hearing on Merits or February 2020 Removal* (January 7, 2022).

well as Employee's other pending motions.[10] The order instructed that the current matter – OEA Matter No. 1601-0059-20 – be held in abeyance until Agency fully complied with the 2016 Initial Decision regarding the benefits owed to Employee. Thus, all other motions from the parties were held in abeyance pending the disposition of Employee's Motion to Reopen for Enforcement and Assessment of Attorney Fees in the 2016 matter.[11]

On September 28, 2022, the AJ issued an Addendum Decision on Attorney's Fees in relation to the 2016 Initial Decision.[12] He held that although Agency temporarily reinstated Employee, to date, Agency still had not fully complied with the 2016 Initial Decision. Specifically, the AJ concluded that Employee was never properly credited for her annual leave hours that she would have accrued during the period in which she was wrongfully terminated. As it related to the issue of estoppel, the AJ stated that he was unaware that Employee accepted an Offer of Judgment ("OOJ") in a separate, but parallel, federal case on January 2, 2022. However, he theorized that Employee was not estopped from requesting fees related to the 2016 decision before OEA.[13]

The AJ noted that the compliance and enforcement aspects of the 2016 Initial Decision had been litigated and reviewed at great length by OEA's General Counsel's office, the EOM OGC, and the Superior Court for the District of Columbia. He went on to discuss that Employee was compelled to file an appeal of the EOM's ruling because it was misguided as to the actual benefits owed to Employee, particularly regarding annual leave hours versus the credited AWOL hours.

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[10] *See Employee's Partial Motion for Summary Judgment on Retaliation* (January 18, 2022); *Employee's Motion on Contempt and Sanctions* (January 14, 2022); and *Employee's Motion to Strike Agency Response* (January 20, 2022).
[11] *See Order on Agency's Request for Hearing, Employee's Motion for Contempt and Sanctions, Employee's Partial Motion for Summary Judgment on Retaliation, Employee's Motion on Hearing for Damages, and Employee's Motion to Strike Agency Response* (January 24, 2022). Employee's Motion to Reopen was granted by the AJ pursuant to D.C. Code § 1-606.02 (a)(6). The AJ ordered Employee to file a Motion for Attorney's Fees related to the 2016 Initial Decision on or before March 11, 2022. *See Order on Motion to Reopen for Enforcement and Assessment of Attorney's Fees* (January 24, 2021).
[12] *See* OEA Matter No. 1601-0012-14AF22 (September 28, 2022).
[13] *Addendum Decision on Attorney's Fees*, OEA Matter No. 1601-0012- 14AF22 (September 28, 2022).

As a result, Employee incurred legal fees while the matter was pending in Superior Court. The AJ cited to the Court's order which provided that because of the gaps in the D.C. Code and OEA rules pertaining to enforcement authority of an OEA order, neither the Court's rules, nor this Office's rules, provided for further relief after findings were issued by the EOM OGC. However, the AJ questioned whether the Court's order intended to preclude OEA from enforcing what it acknowledged to be outstanding compliance issues.[14]

Notwithstanding, the AJ determined that an award of attorney's fees was warranted because Employee was the prevailing party in the appeal related to her 2013 removal. He also believed that an assessment of the *Allen* factors[15] weighed in favor of an attorney fee award in the interest of justice. Concerning the reasonableness of the request, the AJ believed that Employee's application of $367,937.50 for legal fees was unreasonable. He opined that the total number of hours reasonably expended – 238.5 – multiplied by what he determined to be a reasonable hourly rate ($450 per hour, as provided in Employee's retainer agreement), resulted in an appropriate award amount of $107,437.50. Therefore, Agency was ordered to pay the awarded fee within thirty days from the date on which the addendum decision became final.[16]

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[14] *Id*.

[15] In *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1990), the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set out several circumstances to serve as directional markers towards the interest of justice. 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."

[16] *Addendum Decision on Attorney's Fees* at 9. The Addendum Decision also acknowledged that the related appeal, OEA Matter No. 1601-0059-20, had not been fully adjudicated and was being held in abeyance until the terms of the 2016 Initial Decision were satisfied. On September 30, 2022, the AJ issued a Second Addendum Decision on Compliance in relation to the 2016 Initial Decision. The order denied Employee's Motion for Enforcement and held

On November 8, 2022, Agency filed a Petition for Review of the Addendum Decision on Attorney's Fees. The filing is captioned with OEA Matter No. 1601-0059-20. It argues that the AJ did not have jurisdiction grant attorney's fees for "lack of compliance" with the 2016 Initial Decision. Agency asserts that the AJ ignored relevant evidence and made contradictory statements in his own orders, specifically as it related to Employee's backpay package and calculations. Additionally, it opines that the AJ glossed over the significance of the OOJ, and that Employee ignored his order to produce all documents related to settlement negotiations. Moreover, Agency reasons that it substantially complied with the 2016 Initial Decision and states that the AJ acknowledged this in his September 28, 2022, order. It, therefore, believes that the interest of justice warrants the reversal of the Addendum Decision on Attorney's Fees. Consequently, Agency requests that the issue of compliance be closed with prejudice for the 2016 Initial Decision; Employee be estopped from requesting attorney's fees; OEA admonish Employee's counsel for withholding the documents requested in the OOJ; and the Board deny the award of attorney's fees. Agency also requests a hearing on the merits of Employee's February 2020 removal.[17]

Employee filed her response on November 11, 2022. She contends that Agency's petition is impermissible because OEA's rules to not contemplate appeals of addendum decisions to the Board. Employee agrees with the AJ's conclusions of law related to the award of attorney's fees and notes that the AJ was in the best position to evaluate the veracity and reliability of the documentary and testimonial evidence regarding backpay, benefits, and attorney's fees. Further, she asserts that the attorney fees were not ordered to punish Agency for lack of compliance because counsel is entitled to such an award. Employee also reasons that the AJ properly found it

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that given the extensive procedural history in this matter solely regarding enforcement and compliance, coupled with the extensive efforts by OEA to address the outstanding issues, the AJ had no choice but to leave the enforcement of the 2016 Initial Decision to another entity to address outstanding compliance issues.

[17] *Petition for Review of Judge Cannon's Addendum Decision on Attorney Fees* (November 8, 2022).

appropriate to address the motion for fees because she was the prevailing party, and an award was warranted in the interest of justice. Consequently, she asks that the Board deny Agency's Petition for Review; order Agency to fully comply with the Addendum Decision on Attorney's Fees, including reasonable interest; award fees associated with the current answer to Agency's petition; order Agency to pay all reasonable future fees; and grant any other just and proper relief.[18]

Discussion.

OEA Rule 637.4 provides that the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), held 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.[19]

In this case, Agency has filed its petition for review of the Addendum Decision on Attorney's Fees under OEA Matter No. 1601-0059-20. This case number relates to Employee's August 28, 2020, termination based on a charge of Absence Without Authorization under 6B DCMR § 1605.4(f)(2). The current termination action was initiated after Employee was ordered to be reinstated pursuant to OEA Matter No. 1601-0012-14, but she failed to return to work. The current case, OEA Matter No. 1601-0059-20, is still under review by the AJ. There has been no initial decision issued in this matter; thus, there is no prevailing party. As such, any petition for attorney's fees or petition for review of the award of fees for Matter No. 1601-0059-20 is premature at this junction. This Board recognizes that Agency's filing under the incorrect case

[18] *Response to Petition for Review* (November 11, 2022).
[19] Black's Law Dictionary, Eighth Edition; *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).

number was likely an error and that it intended to file its petition under OEA Matter No. 1601-0012-14AF22. Given the extensive and complex procedural history of this case, it is important that any filings be associated with the correct and corresponding OEA caption. The September 28, 2022, Addendum Decision on Attorney's Fees is captioned as "1601-0012-14AF22." Any appeal from this decision should be captioned accordingly. Notwithstanding, this Board finds that the Addendum Decision on Attorney's Fees was based on substantial evidence, and we will perform an analysis of OEA Matter No. 1601-0012-14AF22, as provided in the addendum decision.[20]

Compliance with the 2016 Initial Decision

Agency argues that the AJ did not have jurisdiction to hear issues related to compliance with the 2016 Initial Decision because he previously conceded that the issue was transferred to the EOM pursuant to OEA Rule 635. Agency opines that the AJ ignored binding law and erroneously reopened the issue of compliance by allowing Employee to file a motion that was prohibited by law.

OEA Rule 637.2 states that "any party to the proceeding may serve and file one (1) original and one (1) copy of a Petition for Review of an Initial Decision with the Board within thirty-five (35) calendar days of issuance of the Initial Decision." Therefore, a party is permitted to file a petition for review of an Initial Decision. Section 640 of OEA's rules, related to compliance and enforcement, provides no procedural avenue for an employee to appeal an addendum decision on compliance to the OEA Board. There is no mention of the OEA Board within any of the provisions of OEA Rule 640. Additionally, this Board has previously held that compliance decisions are not reviewable.[21] It appears that Agency has merged issues of compliance and attorney's fees in its

[20] On February 22, 2022, Agency's counsel confirmed with this Office via email that its filing under the incorrect OEA matter was an inadvertent error. It clarified that the current Petition for Review should have been filed under 1601-0012-14AF22.
[21] *See Delores Junious v. D.C. Child and Family Services*, OEA Matter No. 1601-0058-01C07, *Opinion and Order*

current petition. However, any arguments related to compliance with the AJ's Second Addendum Decision on Compliance are improperly before this Board and will not be addressed.

Prevailing Party

D.C. Code § 1-606.08 provides that an OEA 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."[22] OEA has previously relied on its ruling in *Zervas supra* and the Merit Systems Protection Board's ("MSBP") holding in *Hodnick supra*, which held that "for an employee to be a prevailing party, he must obtain all or a significant part of the relief sought…." However, the holding in *Hodnick* was overruled by the MSPB in *Ray v. Department of Health and Human Services.*[23] In *Ray*, the MSPB adopted the U.S. Supreme Court's holding in *Farrar v. Hobby*[24] for the purpose of determining the prevailing party within the context of the Civil Service Reform Act of 1978. Under the standard provided in *Ray*, "…to qualify as a prevailing party, a…plaintiff must obtain at least some relief on the merits of his claim. The plaintiff must obtain an enforceable judgment against the defendant from whom fees are sought…or comparable relief through a consent decree or settlement."

In this case, Employee is the prevailing party for purposes of the award of attorney's fees. In *McNair v. Department of Employment Services,* OEA Matter No. 1601-0012-14 (April 22, 2016), the AJ held that Employee was wrongfully terminated from her position as an ALJ. Therefore, Agency's termination action was reversed, and Employee was ordered to be reinstated

on Petition for Review (January 25, 2010); *Willie Porter v. Department of Mental Health*, OEA Matter No. 1601-0046-12C16, *Opinion and Order on Compliance* (December 3, 2019); and *Laura Jackson v. Department of Health*, OEA Matter No. 2401-0020-10R17C19, *Opinion and Order on Petition for Review* (June 30, 2020); and *Employee v. Department of Small and Local Business Development*, OEA Matter No. J-0009-18R20, *Opinion and Order on Petition for Review* (June 17, 2021).

[22] *See* OEA Rule 634.

[23] 64 M.S.P.R. 100 (1994).

[24] 506 U.S. 103 (1992).

with backpay and benefits. Agency did not appeal the 2016 Initial Decision; thus, it became final in May of 2016. While the parties subsequently engaged in multiple years of litigation before OEA, the EOM OCG, and in Superior Court, as it related to the compliance and enforcements aspects of the matter, Employee's status as the prevailing party remained unchanged. Consequently, the record supports a finding that the standard provided in *Ray* and *Farrar* was met. This Board must next determine whether there is substantial evidence to support the AJ's finding that the award of attorney's fees was warranted in the interest of justice.[25]

Interest of Justice

To determine whether a fee award is merited, OEA has historically relied on *Allen v. United States Postal Service,* in which the Merit Systems Protection Board ("MSPB") provided circumstances to serve as "directional markers towards the 'interest of justice,' a destination which, at best, can only be approximate."[26] The circumstances that should be considered are the following:

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

[25]Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.15 Under OEA Rule 628.1, the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. Preponderance of the evidence shall mean "that degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

[26] 2 M.S.P.R. 420 (1980).

The AJ in this case performed an analysis of the *Allen* factors in determining that an award of fees was appropriate in the interest of justice. He explained that two factors were specifically applicable: Agency engaged in a "prohibited personnel practice" by engaging in disparate treatment, and Agency committed a gross procedural error by prolonging the compliance and enforcement proceedings, which severely prejudiced Employee. He further held that, even if none of the *Allen* factors were applicable, the continued delay in providing the benefits and backpay owed to Employee also weighed in favor of a fee award.

This Board believes that the AJ's analysis constitutes a reasonable interpretation of the relevant case law and that his conclusions are based on substantial evidence. The 2016 Initial Decision stemmed from Employee's wrongful termination in 2013. Thus, this matter has been in limbo for nearly ten years. While Agency argues that Employee should be estopped from pursuing a fee award before this Office pursuant to the OOJ, the AJ, in reviewing the record, determined that Employee was not precluded from seeking an award for attorney's fees performed before OEA related to compliance and enforcement. The AJ was in the best position to evaluate the veracity and applicability of this document, and we believe that his findings as to why Employee is still entitled to fees is supported by the record. The compliance and enforcement issues regarding the 2016 Initial Decision continued to be litigated in D.C. Superior Court long after the OOJ was signed by the parties. Therefore, this Board finds that the AJ's conclusions related to the interest of justice are based on a rational analysis of the record. Consequently, we will not disturb his ruling.

Reasonableness of 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 litigation.[27] The OEA AJ is the equivalent of the trial court in this matter. The AJ drafted each decision concerning Employee's 2013 termination and had a unique and superior understanding of the case. As a result, this Board must rely on his conclusions regarding the reasonableness of the hourly rate and time expended. Therefore, we are solely tasked with deciding if the AJ's decision was based on substantial evidence.

In *Hensley v. Eckerhart*, the Supreme Court of the United States provided that "[t]he 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."[28]

Regarding the hourly rate, the courts in *Blum v. Stenson*[29] and *Save Our Cumberland Mountains v. Hodel*[30] held that the burden of proof is on the employee's counsel to provide evidence that the rates he requested were in line with attorneys in the area for similar services, comparable skill, experience, and reputation. This Board believes that the AJ's determination that $450 per hour was a reasonable rate is based on substantial evidence in light of the retainer agreement entered into between Employee and her counsel.[31]

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[27] *Id*.
[28] 461 U.S. 424 (1983).
[29] 465 U.S. 886 (1984).
[30] 857 F.2d 1516 (D.C. Cir. 1988).
[31] Counsel's application for fees requested an hourly rate of $850; however, the attached retainer agreement provided the following rates: $450 per hour for named principals; $275 per hour for associates and other principals; and $150 per hour for law clerks and paralegals. The AJ noted that while counsel failed to include details of his legal experience with his fee petition, such as the number of years he has been practicing or the fees charged by similarly situated attorneys, he nonetheless believed that it was appropriate to consider the rates provided in the USAO's matrix rather than the LSI *Laffey* Matrix.

As it relates to the number of hours expended, OEA Rule 639.3 establishes that "an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal." This Office 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.[32]

Counsel's Petition for Attorney's Fees requested a total of 477.5 hours for the work performed during the course of this appeal.[33] However, after reviewing the submissions, the AJ held that many of the time entries entered were related to Employee's federal matter and were, therefore, outside the scope of the instant fee request. Moreover, he concluded that the description of services listed in several of the entries made by Employee's counsel did not provide enough details to discern whether the legal services claimed were related to the appeal before OEA. As a result, the AJ reduced the hours reasonably expended to 238.75. This Board defers to the AJ's interpretation of the reasonableness of each time entry and finds that the number of hours awarded was based on substantial evidence.[34] Therefore, we find that the fee award of $107,437.50 is based on substantial evidence. We further conclude that counsel's extensive efforts in prosecuting Employee's appeal warrant the award of such a fee.

Conclusion

Based on the foregoing, Agency's arguments related to compliance with the 2016 Initial

[32] *Employee v. D.C. Lottery and Charitable Games Control Board*, OEA Matter No. 1601-0014-84AF02 (June 5, 2003); *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0022-04AF01 (December 14, 2007); *Employee 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); *Employee v. D.C. Child and Family Services*, OEA Matter No. 1601-0057- 01AF07 (May 7, 2007); *Employee 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 *Employee v. D.C. Government Operations Division*, OEA Matter No. 1601- 0033-07AF11, *Opinion and Order on Petition for Review* (March 4, 2014).
[33] *Motion for Attorney's Fees, Costs, or Related Expenses* (February 28, 2022).
[34] This Board notes that counsel elected to request fees primarily related to the enforcement and compliance efforts concerning the 2016 Initial Decision, although he originally entered his appearance with OEA on May 13, 2015.

Decision are improperly before this Board. Lastly, we find that the Addendum Decision on Attorney's Fees is based on substantial evidence in the record. For these reasons, this Board must deny Agency's Petition for Review.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

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Clarence Labor, Jr., Chair

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Jelani Freeman

_____
Peter Rosenstein

_____
Dionna Maria Lewis

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.