THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0015-20-AF24-R24
	)	
v.	)	Date of Issuance: November 20, 2024
	)	
DISTRICT OF COLUMBIA PUBLIC SCHOOLS,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Employee
John Cook, Esq., Employee's Former Representative
Lynette Collins, Esq., Agency Representative

ADDENDUM DECISION ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee was hired by District of Columbia Public Schools ("DCPS" or the "Agency") as a Teacher on or about June 29, 2002. Thereafter, on or about August 15, 2009, Employee was separated from the Agency based on performance related issues. In response to his termination, the Washington Teachers Union (Hereinafter "WTU") filed a grievance on his behalf. The grievance went to arbitration. On or about July 18, 2018, the Arbitrator issued his opinion reversing the termination and ordering DCPS to reinstate Employee. Employee was reinstated on or about April 10, 2019. However, prior to reinstatement, Employee was required to complete Agency's mandatory onboarding process, which included completing a background check, drug and alcohol testing, Tuberculous Test (Hereinafter "TB") and submitting proof of licensure to teach. Thereafter, Agency sought to appeal the Arbitrator's decision reversing Employee's termination.[1] Despite filing the Appeal, Agency began requesting that Employee start with the onboarding process.

[1] The grievance and its dictate were not under consideration or review in the ID.

On October 18, 2019, DCPS issued a Notice of Termination. Specifically, the Notice outlined that Employee was found ineligible for employment based on his failure to comply with onboarding and licensure requirements. The Notice further outlined that the termination would become effective November 4, 2019. In response, on or about December 3, 2019, Employee filed an appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting Agency's final decision terminating him. Thereafter, OEA requested a response and Agency submitted its response. After an unsuccessful attempt at mediation, this matter was first assigned to Administrative Judge ("AJ") Arien Cannon. AJ Cannon then left OEA's employ, and this matter was then reassigned to the Undersigned on March 5, 2020. Several prehearing conferences were held over a three-year period because Employee had multiple attorneys and the holding of an Evidentiary Hearing in this matter was further delayed due to constraints imposed by the District of Columbia State of Emergency caused by the Coronavirus Covid-19 pandemic. Finally, an evidentiary hearing was held on March 6, 2023.

An Initial Decision ("ID") was issued on September 13, 2023. The ID reversed the Agency's removal action and required Agency to reinstate Employee and awarded him backpay and benefits lost as a result of the removal action. On October 13, 2023, Agency filed a Petition for Review with the Board of the Office of Employee Appeals contesting the ID. On January 4, 2024, the Board of the Office of Employee Appeals issued an Opinion and Order that denied Agency's Petition for Review. On February 2, 2024, Employee, through counsel, filed a Motion for Attorney Fees. In response, Agency filed a Motion to Mitigate Damages. In Agency's motion, it argued that Employee had a duty to mitigate damages and sought a limited Evidentiary hearing on this issue. On February 15, 2024, the Undersigned issued an Order to Employee's counsel that required him to address, *inter alia*, whether Agency had fully complied with the ID. On February 27, 2024, Employee's counsel timely responded to the Order and noted that compliance was incomplete and ongoing. After reviewing the party's submission, I had determined that no further proceedings were warranted and on March 4, 2024, the Undersigned issued an Addendum Decision on Attorney's Fees and Cost wherein I denied (without prejudice) Employee's counsel fee request. In doing so, I made the finding that the motion was premature.

Employee's counsel disagreed with this decision and filed a Petition for Review with the Board of the Office of Employee Appeals. On September 12, 2024, the Board of the Office of Employee Appeals issued an Opinion and Order on Attorney's Fees wherein it granted Employee's former counsel Petition for Review requiring the Undersigned to render a decision on attorney's fees. Of note, it has come to the Undersigned's attention that Mr. Cook no longer represents Employee in his ongoing matters before the Office of Employee Appeals. However, given the edict by the Board of the OEA, this fee request only concerns the work performed by Mr. Cook prior to Employee's decision to terminate their business relationship. On November 18, 2024, the OEA received a Joint Stipulation Regarding Attorneys' Fees that I find is dispositive of the issue at hand. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

> The burden of proof for 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.

OEA Rule 631.2 id. States:

> For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUE

Whether Employee's counsel is entitled to an award of attorneys' fees; and if so, how much.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.08 provides that an Administrative Judge of this Office may require payment by the agency of reasonable attorney fees if the appellant is: 1) the prevailing party; and 2) payment is warranted in the interest of justice. *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320. An employee is considered the "prevailing party," if he or she received "all or significant part of the relief sought" as a result of the decision.[2]

In this matter, the Agency does not oppose paying $50,000.00 as noted in the Joint Stipulation Regarding Attorneys' Fees.[3] Accordingly, I hereby GRANT Mr. Cook's request for Attorneys' Fees and Costs in the amount of $50,000.00. Pursuant to the Joint Stipulation mentioned above, the fee award represents "complete satisfaction of [Mr. Cook] and his firm's claims for attorneys' fees and costs arising out of his representation of Employee in this matter."

[2] *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1601-0138-88AF92 (May 13, 1993).
[3] This Stipulation was sent on November 15, 2024, but was formally received by the OEA on November 18, 2024.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency pay Employee's counsel within 30 calendar days from the date of the issuance of this Addendum Decision, the amount of $50,000.00 for legal fees and costs made payable to Cook, Craig & Francuzenko, PLLC.

FOR THE OFFICE:

/s/ *Eric T. Robinson*
ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE