

Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
EMPLOYEE, <sup>1</sup>	)	
Employee	)	OEA Matter No. 1601-0023-22AF23
	)	
v.	)	Date of Issuance: January 3, 2024
	)	
D.C. DEPARTMENT OF PUBLIC	)	
WORKS,	)	
Agency	)	MICHELLE R. HARRIS, ESQ.
	)	Senior Administrative Judge
_____	)	
Charles E. Walton, Esq., Employee Representative	)	
Felix Nnumolu, Esq., Agency Representative	)	

**ADDENDUM DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL HISTORY**

On November 29, 2021, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Public Works’ (“DPW” or “Agency”) decision to suspend him from service for thirty (30) days effective November 1, 2021, through November 30, 2021. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on October 4, 2022. On June 15, 2023, I issued an Initial Decision reversing Agency’s adverse action. Agency did not file an appeal; thus, this decision became final. On August 18, 2023, Employee, by and through his counsel, filed a Motion for Attorney Fees in the amount of \$46, 237.85. On August 22, 2023, I issued an Order requiring Employee’s counsel to submit a supplemental brief on or before August 31, 2023, because information was missing from the initial Motion. Further, this Order required Agency to submit a response to Employee’s Motion on or before September 18, 2023. Employee filed the Supplemental Motion as directed. In that Supplemental Motion, fees were requested in the amount of \$40, 176.90.<sup>2</sup>

Agency also filed its Response as prescribed. Following, Agency’s September 18, 2023, filing, Employee’s counsel notified the undersigned of his intent to file a response. Further, the parties were asked if they wanted to consider mediation regarding this matter. After time was

<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.  
<sup>2</sup> The undersigned will address the differences in the submissions in the analysis of this decision.

provided to ascertain the parties' positions regarding mediation, Agency's representative notified the undersigned on October 5, 2023, that DPW did not want to engage in the mediation of this matter. Employee's counsel was advised on October 5, 2023, to file the response previously mentioned as soon as possible for consideration. However, as of the date of this decision no subsequent motions or responses have been filed with this Office. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether the attorney fees requested are reasonable.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.08 provides that 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 § 639.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021), provides that an employee shall be entitled to an award of reasonable attorney fees if: (1) he or she is a prevailing party; and (2) the award is warranted in the interest of justice. 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.

#### **Prevailing Party**

The Initial Decision issued on June 15, 2023, in this matter, reversed Agency's action of suspending Employee from service for thirty (30) days. Agency did not file an appeal of this decision, and as a result, the Initial decision became binding, and Employee was entitled to all relief as prescribed therein. Further, this Office has consistently held that "[f]or an employee to be a prevailing party, he must obtain all or a significant part of the relief sought."<sup>3</sup> It should be noted that in the instant matter, this was a unique instance of adverse action, in that while Employee was charged with a thirty (30) day suspension, due to internal Agency oversight; Employee never served the suspension time, nor was his pay deducted. As a result, in the Initial Decision, the undersigned determined Employee was not owed any backpay or benefits, but Agency was required to remove any record of the thirty (30) day suspension from Employee's personnel file. Employee asserts that because the Initial Decision reversed Agency's action, that decision became binding and makes it "undisputed" that Employee is the prevailing party.<sup>4</sup> Agency avers that because Employee was not given any relief in this matter, he is not a prevailing party.<sup>5</sup> Further, Agency asserts that if fees are awarded, they should be reduced.

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<sup>3</sup> *Alice Lee v. Metropolitan Police Department*, OEA Matter No 1601-0087-15AF18 (July 27, 2018) citing to *Zervas v D.C. Office of Personnel*, OEA Matter No 1601-0138-88AF92 (May 16, 1993). See also. *Hodnick v Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980).

<sup>4</sup> Employee's Motion for Attorney Fees (August 18, 2023).

<sup>5</sup> Agency's Response to Employee's Motion for Attorney Fees (September 18, 2023).

In the instant matter, while the circumstances of the Initial Decision were unique in that there was no restoration of backpay or benefits since Employee never served the 30-day suspension; I do find that since the Initial Decision reversed Agency's action, Employee prevailed in his Petition for Appeal before this Office, and as such can be deemed the prevailing party. Accordingly, based on the record in this matter, I conclude that Employee is the prevailing party.

### Interest of Justice

In *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980), the Merit Systems Protection Board (MSPB), this Office's federal counterpart, set out several circumstances to serve as "directional markers toward the 'interest of justice' (the "Allen Factors")—a destination which, at best can only be approximate. *Id.* at 435. 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 the agency.
3. Where the agency initiated the action against 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".
5. Where the agency "knew or should have known that it would not prevail on the merits", when it brought the proceeding, *Id.* at 434-35.

Employee asserts that based upon the Initial Decision in this matter, that Agency violated *Allen Factor 2*, citing that Agency's actions were unfounded. Employee avers that he "was innocent of the charges brought by agency."<sup>6</sup> Agency avers that its' conduct "did not implicate any of the *Allen* factors."<sup>7</sup> Further, Agency asserts that it "had no way of knowing that it would not succeed on the merits because Employee never served the suspension, and expectantly, did not receive any relief on behalf of this tribunal." Additionally, Agency avers that Employee was not severely prejudiced by its actions as Employee "received full pay during the "suspension" period, and his personnel record did not contain any mention of the adverse action."<sup>8</sup> Agency also maintains that assuming *arguendo* that it was found that it committed gross procedural error when it failed to process Employee's suspension, Employee suffered no harm and was not prejudiced.<sup>9</sup>

In the instant matter, I find that the basis of the Initial Decision reversing Agency's 30-day suspension of Employee was due to Agency's violation of *Allen Factor 4* – *gross procedural error*. Notwithstanding Agency's arguments, the record reflects that Agency initiated a suspension action

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<sup>6</sup> Employee's Motion for Attorney Fees at Page 4 (August 18, 2023).

<sup>7</sup> Agency's Response at Page 4. (September 18, 2023).

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at Page 6.

against Employee but failed to process and administer the penalty. While this may not have caused severe prejudice or prolonged the proceeding, this was a procedural error on Agency's part that warrants an award of attorney fees in the interest of justice. However, for the reasons that will be cited below, I find that Employee's request for fees in the amount of \$40,176.90, are unreasonable and that amount is not in the interest of justice.

Accordingly, I find that the requirements of both D.C. Official Code § 1-606.08 and OEA Rule 639.1<sup>10</sup> have been satisfied. The issue now hinges on the reasonable amount of attorney fees to be awarded. 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.<sup>3</sup> Here, there undersigned administrative judge is the equivalent of the trial court.<sup>11</sup>

### REASONABLENESS OF ATTORNEY FEES

#### Hourly Rate

“Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award.”<sup>12</sup> The 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, experience, or reputation.<sup>13</sup> The best evidence of the prevailing hourly rate is ordinarily the hourly rate customarily charged in the community in which the attorney whose rate is in question practices.<sup>14</sup> OEA Rule 639.3<sup>15</sup> establishes that “an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal.” In Employee's Motion for Attorney Fees filed on August 18, 2023, Employee's counsel requested attorney fees in the amount of \$46,237.85, representing 47.8 hours of service based on the hourly rates of all attorneys that worked on this matter.<sup>16</sup> The fees requested in this submission were based on a *Laffey* Matrix. Following an Order from the undersigned requiring Employee to submit a supplemental motion utilizing the *USAO Fitzpatrick Matrix*, Employee's counsel filed a supplemental motion on August 30, 2023, which included a request for fees in the amount of \$40,176.90, for 51.9 hours work in this matter.

In its response, Agency avers that the request for fees is unsupported by the record. Further, Agency avers that Employee's counsel is seeking fees for work done on matters not related to the OEA matter, including an Equal Employment Opportunity Commission (EEO) matter. Additionally, Agency asserts that the fees requested are not reasonable and that pursuant to case law, hours can be reduced where the record does not show that the expenditure of the claimed hours were necessary.<sup>17</sup> Agency also argues that the many of the fees requested are overly duplicative and are representative

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<sup>10</sup> 6-B District of Columbia Municipal Regulations (“DCMR”) Ch. 600, et seq (December 27, 2021)

<sup>11</sup> *Estate of Bryan Edwards v. District of Columbia Department of Youth and Rehabilitation Services*, Opinion and Order on Attorney's Fees, OEA Matter No. 1601-0017-06AF10 (June 10, 2014).

<sup>12</sup> *Thomas Pierre v. District of Columbia Public Schools*, OEA Matter No. 1601-0186-12AF17, *Addendum Decision on Attorney Fees* (September 18, 2017).

<sup>13</sup> *Blum v. Stenson*, 465 U.S. 886 (1984).

<sup>14</sup> *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988).

<sup>15</sup> OEA Rule 639.3, 6-B DCMR Ch. 600 (December 27, 2021)

<sup>16</sup> Employee's Motion for Attorney Fees (August 18, 2023).

<sup>17</sup> Agency's Response at Page 8. (September 18, 2023).

of “padding”. Thus, Agency argues that the fees should be greatly reduced. Agency does not dispute the use of the USAO Fitzpatrick Matrix in the assessment of fees in this matter.

OEA’s Board has previously held that the Administrative Judges of this Office may consider the “Laffey Matrix” in determining the reasonableness of a claimed hourly rate. The *Laffey* Matrix, used to compute reasonable attorney fees in the Washington, D.C.-Baltimore Metropolitan Area, was initially proposed in *Laffey v. Northwest Airlines, Inc.*<sup>18</sup> It is an “x-y” matrix, with the x-axis being the years (from June 1 of year one to May 31 of year two, e.g., 2015-16, 2016-17) during which the legal services were performed; and the y-axis being the attorney’s years of experience. The axes are cross-referenced, yielding a figure that is a reasonable hourly rate. The Laffey Matrix calculates reasonable attorney fees based on the amount of work experience the attorney has and the year that the work was performed. Imputing the applicable year allows for the rise in the costs of living to be factored into the equation. The matrix, which includes rates for paralegals and law clerks, is updated annually by the Civil Division of the United States Attorney’s Office for the District of Columbia.<sup>19</sup> It should be noted that the above-referenced “Laffey Matrix” which is updated by the United States Attorney’s Office for the District of Columbia is referred to as the “USAO Attorney Fees Matrix (“USAO Matrix”)<sup>20</sup>.” This is of note because the “Laffey Matrix” and the USAO Matrix are representative of different hourly rates. Further, the USAO adopted this matrix in 2015, and has referred to it as such since that time.

This noted, this Office has consistently relied upon the USAO Matrix in consideration of the award for attorney fees. While it was previously referred to as the “Laffey Matrix” the undersigned notes that the USAO employs a different matrix representative of a different scale, albeit similar considerations regarding attorney’s experience, reasonableness of hours and the nature of the proceeding are considered by both matrices. It should be noted now that USAO has now adopted what it names the “Fitzpatrick Matrix.”<sup>21</sup> The USAO Matrix “has been prepared by the Civil Division of the United States Attorney’s Office for the District of Columbia (USAO) to evaluate request for attorney’s fees in civil cases in District of Columbia Courts.”<sup>22</sup> The USAO matrix cites that the data for this matrix a survey in the D.C. metropolitan area.<sup>23</sup> Further, the USAO Matrix was

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<sup>18</sup> 572 F.Supp. 354 (D.D.C. 1983), aff’d in part, rev’d in part on other grounds, 746 F.2d 4 (D.C. Cir. 1984), cert. denied, 472 U.S. 1021 (1985).

<sup>19</sup> The updates are based on the change in the Consumer Price Index for All Urban Consumers (CPI-U) for Washington-Baltimore, DC-MD-VA-WV, as announced by the Bureau of Labor Statistics for May of each year.

<sup>20</sup> In 2015, the USAO revised its method for determining rates and adopted those through 2021. See. <https://www.justice.gov/file/1461316/download>

<sup>21</sup> See. <https://www.justice.gov/usao-dc/page/file/1189846/download> – Fitzpatrick Explanatory Note 1

This matrix of hourly rates for attorneys of varying experience levels and paralegals/law clerks has been prepared to assist with resolving requests for attorney’s fees in complex civil cases in District of Columbia federal courts handled by the Civil Division of the United States Attorney’s Office for the District of Columbia. It has been developed to provide “a reliable assessment of fees charged for complex federal litigation in the District [of Columbia],” as the United States Court of Appeals for the District of Columbia Circuit urged. *DL v. District of Columbia*, 924 F.3d 585, 595 (D.C. Cir. 2019). The matrix has not been adopted by the Department of Justice generally for use outside the District of Columbia, nor has it been adopted by other Department of Justice components.

<sup>22</sup> See. <https://www.justice.gov/file/1461316/download> – USAO Matrix Explanatory Note 1.

<sup>23</sup> *Id.* at Note 2.

“A reasonable fee” is a fee that is sufficient to attract an adequate supply of capable counsel for meritorious cases. See, e.g., *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 552 (2010). Consistent with that definition, the hourly rates in the above matrix were calculated from average hourly rates reported in 2011 survey data for the D.C. metropolitan area, which rates were adjusted for inflation with the Producer Price Index-Office of Lawyers (PPI-OL) index. The survey data comes from ALM Legal Intelligence’s 2010 & 2011 Survey of Law Firm Economics. The PPI-OL index is available at <http://www.bls.gov/ppi>. On that page, under “PPI Databases,” and “Industry Data (Producer Price Index - PPI),” select either “one screen” or “multi-screen”

utilized by the USAO in 2021, wherein fees for this matter were initially assessed. The Fitzpatrick Matrix was more “formally” adopted in 2022 to address the issues/conflicts found in previous matters regarding the use of the Laffey Matrix versus the USAO Matrix. However, it should be noted that this matrix has not been adopted for use outside the District of Columbia. That stated, the undersigned would note that in consideration of the nature of this matter before this Office, the USAO Fitzpatrick Matrix aligns with OEA’s previous attorney fee award determinations.

Further, it is important to note that courts have “treated...the *Laffey* Matrix as a reference rather than a controlling standard.”<sup>24</sup> “There is no concrete, uniform formula for fixing the hourly rates that are awarded in employment disputes (federal or local).”<sup>25</sup> The purpose of the Laffey Matrix is to provide a “short-cut compilation of market rates for a certain type of litigation.”<sup>26</sup> Determining a reasonable hourly rate requires a showing of at least three elements: 1) the attorneys’ billing practices; 2) the attorneys’ experience, skill, and reputation; and 3) the prevailing rates in the relevant community.<sup>27</sup> When utilizing the Laffey Matrix as a guide, courts will “first determin[e] the so-called loadstar—the number of hours reasonably expended by counsel multiplied by a reasonable hourly rate.”<sup>28</sup> Courts have increased or decreased the hourly rates depending on the characteristics of the case and the qualification of counsel.<sup>29</sup> In addition, “[t]he novelty [and] complexity of the issues” should be “fully reflected” in the determination of the fee award.<sup>30</sup> This noted, the undersigned finds that the same considerations are applicable within the confines of the *USAO Fitzpatrick Matrix*. As a result, the undersigned will review this matter based upon the considerations of reasonableness as described above.

In the instant matter, Agency contests that Employee was the prevailing party, but asserts that if fees are granted, that they should be greatly reduced. Agency avers that the fees requested are unreasonable, the hours billed are also excessive and that the billing documentation in this matter was insufficient, and as such, the fees should be significantly reduced. In consideration of this matter, the undersigned finds that the USAO Fitzpatrick Matrix is appropriate basis for which Employee’s counsel should be assessed rates in this matter. That noted, the undersigned finds that while an award of attorney fees in this matter is warranted, for the reasons that will be explained below, that award should be significantly reduced in this matter.

The primary attorneys (as noted by Employee’s Motion) in the instant matter were Charles E Walton and James K. Davis. It should be noted that this Office has no record of an entry of appearance for attorney James K. Davis. Employee is requesting that Attorneys Charles E. Walton (“Walton”) and James K. Davis (“Davis”) be compensated at an hourly rate noted in the Fitzpatrick

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and in the resulting window use “industry code” 541110 for “Offices of Lawyers” and “product code” 541110541110 for “Offices of Lawyers.” The average hourly rates from the 2011 survey data are multiplied by the PPI-OL index for May in the year of the update, divided by 176.6, which is the PPI-OL index for January 2011, the month of the survey data, and then rounding to the nearest whole dollar (up if remainder is 50¢ or more).”

<sup>24</sup> *Elec. Transaction Sys. Corp. v. Prodigy Partners Ltd., Inc.*, CIV. A 08-1610 (RWR, 2009 WL 3273920 (D.D.C. Oct. 9, 2009).

<sup>25</sup> *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014).

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* at 4 (quoting *Covington v. District of Columbia*, 313 U.S. App. D.C. 16, 18, 57 F.3d 1101, 1103 (D.C. Cir. 1995); See also *Lively v. Flexible Packaging Ass’n*, 930 A.2d 984, 988 (D.C. 2007).

<sup>28</sup> *Federal Marketing Co. v. Virginia Impression Products Co., Inc.*, 823 A.2d 513, 530 (D.C. 2003) (quoting *Hampton Courts Tenants Ass’n v. District of Columbia Rental Housings. Comm’n*, 599 A.2d 1113, 1115 (D.C. 1991).

<sup>29</sup> See *Elec. Transaction Sys. Corp.*, *supra*.

<sup>30</sup> *Ross v. Ofc. of Employee Appeals*, 2010 CA 3142 (MPA) (December 31, 2014) (quoting *Pennsylvania v. Del Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 565 (1986).

Matrix.<sup>31</sup> Employee asserts that Walton and Davis have both “practiced before both state and federal court for more than 30 years and their practice has focused on labor and employment and civil matters.”<sup>32</sup>

### **Number of Hours Expended**

OEA’s determination of whether an Employee’s attorney fee request is reasonable is also based upon consideration of the number hours reasonably expended on the litigation as multiplied by the reasonable hourly rate.<sup>33</sup> While it is not necessary to know the “exact number of minutes spent or precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application.”<sup>34</sup> The number of hours reasonably expended is calculated by determining the total number of hours and subtracting nonproductive, duplicative and excessive hours. In the instant matter, Employee initially requested attorney fees in the amount of \$46, 237.85 for 47.8 hours expended in this matter based on the “Laffey Matrix”. Following an Order, Employee filed a Supplemental Motion wherein it requested attorney fees in the amount of \$40,176.90 for 51.9 hours of work, as noted under the “*Fitzpatrick Matrix*.” As was previously noted, the *Fitzpatrick Matrix* represents the correct matrix for which fees are reviewed by this Office. Agency asserts that if fees are awarded that the amount should be significantly reduced as the fees are excessive and Employee’s counsel has failed to establish that the hours claimed were necessary. Further, Agency avers that this was not a complex legal matter and was straightforward in nature, thus not necessitating the fees claimed.

I have reviewed the total hours claimed, as well as Agency’s objections, and find that the number of hours expended was excessive for the degree of difficulty and the amount of legal service time required in the instant matter. I base this finding on the comparison of the professional services provided by other similarly experienced counsel who have appeared before this Office and the degree of legal complexity involved in the issues presented. I also find that the request for attorney fees included times that were prior to the filing of the Petition for Appeal in this matter. As a result, the undersigned finds that any fees requested prior to November 29, 2021, should be denied. The billing invoices for those dates prior to the filing of the Petition for Appeal reflect that it was for work related to an Equal Employment (EEO) matter. Additionally, the undersigned would note that Employee’s Supplemental Response filed on August 30, 2023, included additional billing entries which were not a part of the original motion. The supplemental response included additional hours to request fees for 51.9 hours of work. The Order for the supplemental filing did not permit the attorneys to add additional fees, as the supplemental filing was meant to address and utilize the correct USAO Fitzpatrick Matrix and to provide the experience for the attorneys for which fees were claimed. Thus, all fees that were not a part of the original August 18, 2023, Motion for Attorney fees are hereby denied.

This Office has consistently held that requests for attorney fees should be reasonable in nature and not excessive or duplicative. The instant matter was an adverse action of a 30-day suspension, wherein the Agency failed to administer/have Employee serve the suspension. There was

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<sup>31</sup> Requested rates based on USAO Fitzgerald Matrix: Charles E. Walton, Esq.: \$725/2021; \$752/2022; \$801/2023; James K. Davis, Esq.: \$736/2021; \$760/2022; \$807/2023.

<sup>32</sup> Employee’s Motion for Attorney Fees (July 29, 2022).

<sup>33</sup> *Lee v. Metropolitan Police Department*, OEA Matter No 1601-0087-15AF18 (July 27, 2018) citing to *Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

<sup>34</sup> *Id. Copeland supra*.

no Evidentiary Hearing held in this matter, and it should be noted that there were delays in the adjudication of this matter because Employee had initially cited to Agency the intent to withdraw the appeal before this Office, as well as delays due to Employee's counsel's failure to appear for a scheduled proceeding. Further, while the situation regarding Agency's failure to process and levy the 30-day suspension were unique, there were no complex legal arguments made by either party. OEA has held that the award of attorney fees attorney fee awards can be reduced if a determination has been made that the fees were excessive.<sup>35</sup>

### *Billing Entries*

Employee submitted a three (3) page invoice of the billing entries in this matter. Agency argues Employee's request for fees should be reduced because counsel is "seeking attorney fees for work performed on unrelated matters, specifically Employee's Equal Employment Opportunity case."<sup>36</sup> Additionally, Agency asserts that "Employee also seeks attorney fees for work that was already previously completed and is therefore duplicative." Agency also argues that "Employee is seeking attorney fees for multiple hours of work on pleadings that should take fewer hours, which indicates padding."<sup>37</sup> To support these assertions, Agency proffers the following related to some of the fees that were billed<sup>38</sup>:

1. Employee is improperly seeking \$4,409.30 in attorney fees for work done in an EEO matter unrelated to the instant cases. (This includes dates from August 2021-September 2021).<sup>39</sup>
2. On July 7, 2022, Employee's invoice shows that his counsel reviewed documentation described as "Receipt of DC Government Agency" and that his task required 0.3 hours of work, or \$225.60. The description does not indicate what document was received, let alone reviewed. .
3. Employee is also seeking fees from August 24, 2022, for time spent by Mr. Davis in conferring with Employee's counsel of record, Charles E. Walton (Mr. Walton), and drafting a "motion to correct the record." This fee should be excluded from the fees calculation because Employee never filed a motion to correct the record in the instant case, Mr. Davis mostly dealt with Employee's unrelated EEO matter, and there is no way to tell whether the "motion to correct the record was related to the instant matter due to the vague description of the work done.

Upon review of the billing entries included with Employee's Motion, the undersigned finds that the entries are not detailed and/or listed in a manner consistent with the measures of reasonableness upon which this Office has relied. Further, there are assessments for fees which seem unnecessary and redundant, particularly noting that the attorneys of record each have over 30 years' experience in these matters. As previously outlined, OEA has held that "although it is not necessary

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<sup>35</sup>See. *Winfred L Stanley, Reginald L. Smith Sr., & John C. Daniels v. Metropolitan Police Department*, OEA Matter Nos. J-0075-98A08R10, J-0074-98A08R10, J-0081-A08R10, Corrected Decision on Attorney Fees on Remand, (June 1, 2011). Here, the Administrative Judge reduced rates between 50% and up to 60% for excessive and duplicative hours (pages 7-10).

<sup>36</sup> Agency's Response at Page 8. (September 18, 2023).

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at Page 9. Agency describes the fees requested. The undersigned has already determined that any fees requested prior to the filing of the Petition for Appeal on November 29, 2021, should be denied in this matter. The undersigned would also note that these requests in large part reflect unrelated matters as described by Agency and should not have been included in this fee petition.

to know the exact number of minutes spent nor the precise activity to which each hour was devoted, the fee application must contain sufficient detail to permit an informed appraisal of the merits of the application.”<sup>40</sup> I find in this matter that Employee’s counsel has failed to provide sufficient and detailed information to support the expenditure of 47.8 hours in this matter. In review of the arguments made by Agency regarding specific billing entries, the undersigned agrees with Agency’s assertions regarding the unreasonableness of those entries. Of particular note, the undersigned finds that all the charges preceding November 29, 2021, the date of filing of the Petition for Appeal, should be denied. Accordingly, **the fees requested from August 4, 2021, through November 9, 2021, which total \$9,304.20 are hereby DENIED** and are subsequently reduced from the final award. Additionally, I also find that the number of hours noted for many of the entries are excessive given the years of experience of the attorneys and with regard to the nature of this instant appeal. Again, there was no Evidentiary Hearing held in this matter and while the issue was unique, there was no complex body of legal citations included for the submissions to this Office. Thus, I find that many of the fees should be reduced and/or denied for being overly duplicative and/or excessive based upon the work noted for those fees. The fees requested were reflected as the following (*this table does not include fees for dates prior to November 29, 2021*) The attorneys are represented by initials – Charles E. Walton (CEW) and James K. Davis (JKD):

Date	EE	Activity	Description	Rate	Hours	Line Total
11/29/2021	CEW	Document Preparation	Research, draft and file EE Petition for Appeal	\$725	4.0	\$2,900.00
02/03/2022	CEW	Document Review	Receipt and review of Agency answer to EE Petition for appeal	\$752	0.5	\$376.00
02/03/2022	CEW	Document Review	Receipt and review of mediation/settlement conference	\$752	0.3	225.60
07/07/2022	CEW	Document Review	Receipt of DC Government Agency	\$752	0.3	225.60
08/01/2022	CEW	Emails	Email Re: schedule for CSS & Mediation	\$752	0.3	225.60
08/02/2022	CEW	Document Preparation	Research and draft client’s confidential settlement statement	\$752	2.0	1504.00
08/24/2022	JKD	Document Preparation	confer with CEW, draft motion to correct the record	\$760	0.8	608.00
01/14/2023	CEW	Document Preparation	Preparation of 3 court response-started with preparation of pre-trial statement	\$801	1.5	1201.50
01/16/2023	CEW	Document Preparation	Response to appeal	\$801	3.0	2403.00
01/18/2023	CEW	Document Preparation	Preparation of case pleading	\$801	3.3	2643.30
01/22/2023	CEW	Document Preparation	Prepared response to summary disposition and prepared summary disposition	\$801	3.5	2803.50
01/22/2023	JKD	Document Review	Review and edit Pre-Hearing Statement, Response to Agency’s Motion for Summary Disposition and Employee’s Motion for Summary Disposition and	\$807	2.8	2259.60

<sup>40</sup> *Alice Lee v. Metropolitan Police Department Supra* citing to *citing to Copeland v Marshall*, 641 F.2d 880 (D.C. Cir. 1980). See also *Hensley v Eckerhart*, 461 U.S. 424 (1983) and *National Association of Concerned Veterans v. Secretary of Defense*, 675 F.2d 1319 (D.C. Cir 1982).

			Memorandum of Points and Authorities			
01/23/2023	CEW	Document Preparation	Prepared pretrial statement	\$801	2.5	2002.50
01/23/2023	CEW	Document Preparation	Prepared Statement for Good Cause	\$801	0.1	80.10
01/23/2023	JKD	Document Review	Review good cause statement and other document; filed documents with Office of Employee Appeals	\$807	1.0	807.00
01/25/2023	CEW	Client Conference	Meeting with client to discuss reply to motion for Summary Disposition	\$801	0.8	640.80
02/06/2023	CEW	Preparation	Preparation for status conference	\$801	0.5	400.50
02/07/2023	CEW	Preparation	Preparation for status conference	\$801	0.5	400.50
02/08/2023	CEW	Hearing	Hearing – Pretrial – Request by the court, Pre and Post Meeting with Client	\$801	0.5	400.50
02/13/2023	CEW	Review of case	Case and calendar review	\$801	0.3	240.30
*04/03/2023	CEW	Document Review	Review Agency Motion for Summary Judgment	\$801	1.5	1201.50
04/07/2023	CEW	Call from client	Client meeting	\$801	0.5	400.50
04/10/2023	JKD	Document Preparation	Review file, draft brief with CEW	\$807	5.5	4438.50
*04/10/2023	CEW	Document Preparation	Negotiate extension of time with Felix Nnumolu, file consent request for extension with court; review draft response to Motion for Summary Judgment	\$801	2.0	1602.00
04/13/2023	CEW	Client Conference	Status update and briefing with the client	\$801	0.3	240.30
04/14/2023	JKD	File Review	Review file, confer with CEW, prepare status update	\$807	0.1	80.70
04/14/2023	JKD	File Review	Review file, confer with CEW, prepare status update	\$801	0.1	80.70
*06/22/2023	CEW	Document Review	Review OEA Initial Decision; phone call with client	\$801	0.3	240.30
*07/12/2023	CEW	Email	Review of email	\$801	0.1	80.10
*07/25/2023	CEW	Email	Email review	\$801	0.1	80.10
*07/25/2023	CEW	Email	Review of email	\$801	0.1	80.10
			<b>TOTAL FEES REQUESTED - \$30,872.70</b>			

In consideration of the fee request, the undersigned finds that many of the billing entries provided are not sufficient to support the award of fees as requested. Further, given that this matter involved a 30-day suspension, I find that the request of attorney fees based on the requested hourly rates and the time purported to be expended in the completion of the work described to be disproportionately high in consideration of the relatively simplistic arguments presented in this matter. Furthermore, in consideration of the years of experience noted for the attorneys in this request in comparison with similarly experienced attorneys practicing before this Office, I find that many of the hours expended in this matter were unwarranted for attorneys with this level of expertise. Additionally, the undersigned finds it inappropriate that additional billing entries were added with submission of the August 30, 2023, Supplemental Motion. This is of note because the Order requiring the supplemental motion did not grant any permission for such actions, nor did the substantive portion of that response indicate the attorneys' intentions to include additional entries etc. The undersigned finds that these actions put into question the overall billing practices employed during the course of this matter. Thus, as was previously noted, all fees included in the August 30, 2023, Supplemental Motion that were not included in the August 18, 2023, Motion, are hereby **DENIED IN WHOLE** (*See. Part Q below*). Accordingly, because of the aforementioned deficiencies in billing, lack of detail or duplicative/unreasonable entries, I find that the final award

for many of the fees requested should be reduced or denied as noted in the table and descriptions below<sup>41</sup>:

Date	EE	Activity	Description	Rate	Hours Granted	Total Awarded
11/29/2021	CEW	Document Preparation	Research, draft and file EE Petition for Appeal	\$725	2.0	\$1450.00
02/03/2022	CEW	Document Review	Receipt and review of Agency answer to EE Petition for appeal	\$752	0.5	\$376.00
02/03/2022	CEW	Document Review	Receipt and review of mediation/settlement conference	\$752	0.3	\$225.60
07/07/2022	CEW	Document Review	Receipt of DC Government Agency	\$752	0	0
08/01/2022	CEW	Emails	Email Re: schedule for CSS & Mediation	\$752	0.3	\$225.60
08/02/2022	CEW	Document Preparation	Research and draft client's confidential settlement statement	\$752	1.0	\$752
08/24/2022	JKD	Document Preparation	confer with CEW, draft motion to correct the record	\$760	0	\$0
01/14/2023	CEW	Document Preparation	Preparation of 3 court response-started with preparation of pre-trial statement	\$801	0.75	\$600.75
01/16/2023	CEW	Document Preparation	Response to appeal	\$801	0	\$0
01/18/2023	CEW	Document Preparation	Preparation of case pleading	\$801	1.65	\$1321.65
01/22/2023	CEW	Document Preparation	Prepared response to summary disposition and prepared summary disposition	\$801	1.75	\$1401.75
01/22/2023	JKD	Document Review	Review and edit Pre-Hearing Statement, Response to Agency's Motion for Summary Disposition and Employee's Motion for Summary Disposition and Memorandum of Points and Authorities	\$807	1.4	\$1129.80
01/23/2023	CEW	Document Preparation	Prepared pretrial statement	\$801	0	\$0
01/23/2023	CEW	Document Preparation	Prepared Statement for Good Cause	\$801	0.1	\$80.10
01/23/2023	JKD	Document Review	Review good cause statement and other document; filed documents with Office of Employee Appeals	\$807	0.5	\$403.50
01/25/2023	CEW	Client Conference	Meeting with client to discuss reply to motion for Summary Disposition	\$801	0.8	\$640.80
02/06/2023	CEW	Preparation	Preparation for status conference	\$801	0	0
02/07/2023	CEW	Preparation	Preparation for status conference	\$801	0.5	\$400.50
02/08/2023	CEW	Hearing	Hearing – Pretrial – Request by the court, Pre and Post Meeting with Client	\$801	0.5	\$400.50
02/13/2023	CEW	Review of case	Case and calendar review	\$801	0	0
<b>*04/03/2023</b>	<b>CEW</b>	<b>Document Review</b>	<b>Review Agency Motion for Summary Judgment</b>	<b>\$801</b>	<b>0</b>	<b>0</b>

<sup>41</sup> Entries that are designated with at (\*) reflect entries that were not a part of the original August 18, 2023, Motion for Attorney Fees, but were added with the submission of the August 30, 2023, Supplemental Response. All of those entries are denied.

04/07/2023	CEW	Call from client	Client meeting	\$801	0.5	\$400.50
04/10/2023	JKD	Document Preparation	Review file, draft brief with CEW	\$807	2.75	\$2219.25
*04/10/2023	CEW	Document Preparation	<i>Negotiate extension of time with Felix Nnumolu, file consent request for extension with court; review draft response to Motion for Summary Judgment</i>	\$801	0	0
04/13/2023	CEW	Client Conference	Status update and briefing with the client	\$801	0.3	\$240.30
04/14/2023	JKD	File Review	Review file, confer with CEW, prepare status update	\$807	0	0
04/14/2023	JKD	File Review	Review file, confer with CEW, prepare status update	\$807	0.1	\$80.70
*06/22/2023	CEW	Document Review	<i>Review OEA Initial Decision; phone call with client</i>	\$801	0	0
*07/12/2023	CEW	Email	<i>Review of email</i>	\$801	0	0
*07/25/2023	CEW	Email	<i>Email review</i>	\$801	0	0
*07/25/2023	CEW	Email	<i>Review of email</i>	\$801	0	0
			<b>TOTAL FEES TO BE AWARDED - \$12,349.30</b>			

- a. **Reduced by 50% - 11/29/2021-** CEW – “Research, draft and file EE Petition for Appeal”. **Reduced from 4.0 hours to 2.0 hours.** The attorneys utilized OEA’s standard form for the Petition. Further, the attachment only represented a document with four (4) pages of substantive information, and the remainder of the 57-page document included attachments/exhibits that were previously utilized before this Office and in other proceedings.
- b. **Denied – 07/07/2022** – CEW – “Receipt of DC Government Agency.” – There is no detail supporting any work actually performed based on the description provided.
- c. **Denied – 08/24/2022** - JKD – “Confer with CEW, draft motion to correct the record.” There was never any motion filed in this matter to correct the record.
- d. **Reduced: 01/14/2023** – CEW – “Document Preparation – “Preparation of 3 court response-started with preparation of pretrial statement.” **Reduced from 1.5 hours to 0.75 hours.** The undersigned finds it unreasonable for this time expenditure, when two (2) subsequent entries also note this same work.
- e. **Denied- 01/16/2023 CEW- Document Preparation “Response to appeal”-** This billing entry lacks any detail regarding why three (3) hours were spent on this “response to appeal.” Further, it is of note that the appeal in this matter is filed by the Employee, so this entry lacks procedural reasoning.
- f. **Reduced by 50% - 01/18/2023** – CEW - “Preparation of case pleading” This entry lacks any detail regarding what the “preparation” was to support 3.3 hours of work by an attorney with 32 years of experience. **Reduced from 3.3 hours to 1.65 hours.**
- g. **Reduced by 50% - 01/22/2023** – CEW – “Document preparation” Prepared response to summary disposition and prepared summary disposition. – **Reduced from 3.5 hours to 1.75 hours.**
- h. **Reduced by 50% – 01/22/2023-** JKD – “Document Review” – “Review and edit Pre-Hearing Statement, Response to Agency’s Motion for Summary Disposition and

Employee's Motion for Summary Disposition and Memorandum of Points and Authorities". **Reduced from 2.8 hours to 1.4 hours.**

- i. **Denied -01/23/2023** – CEW – “Prepared pretrial statement.” This entry reflects duplicative charges for work already billed. Further it should be noted that the attorney failed to appear for the status conference or submit the document on time was required by Order, thus resulting in an Order for Show Cause to be issued.
- j. **Reduced by 50%- 01/23/2023** -JKD - “Review good cause statement and other documents, filed documents with Office of Employee Appeals.” This should not have taken an hour given that the billing time for the preparation of the statement of good cause itself completed by CEW on the same day was only billed at 0.1 hours. Thus, it is unreasonable that a mere review and submission would warrant an entire hour. **Reduced from 1.0 hours to 0.5 hours.**
- k. **Denied - 02/06/2023** – CEW – “Preparation for Status Conference” This is representative of an identically billed entry on 02/07/2023. The Status Conference was held on 02/08/2023, thus, the billing entry for the 02/07/2023 was granted. It should be noted that both entries lack detail regarding what the “preparation” entailed.
- l. **Denied – 02/13/2023** – CEW –“Review of case- Case and calendar review.” This entry lacks substantive detail.
- m. **Denied – 04/03/202** – CEW – “Review Agency Motion for Summary Judgment.” This entry was not included in the original fee petition, and for reasons previously explained, I find it must be denied in whole.
- n. **Reduced by 50% – 04/10/2023** – JKD - “Review file, draft brief with CEW”. For attorneys with over 30 years’ experience, I find that an expenditure of 5.5 hours on a brief that was six (6) pages and lacked any complex legal concepts, analyses or citations is unreasonable. Further, the brief was filed after the deadline. **Reduced from 5.5 hours to 2.75 hours.**
- o. **Denied- 04/10/2023** – CEW – “Negotiate extension of time with Felix Nnumolu, file consent request for extension with court; review draft response to Motion for Summary Judgment.” **This entry was not included with the original motion.** Further, the undersigned would note that Employee’s representative never filed a motion to request an extension but sent email correspondence to the AJ.
- p. **Denied – 04/14/2023-** JKD – “Review file, confer with CEW, prepare status update.” This entry lacks any substantive detail regarding work. Further, this is a duplicative entry listed for the same date and activity and time spent. Thus, only one entry was granted for this time.
- q. **Denied – (Multiple dates) – 06/22/2023; 07/12/2023; 07/25/2023; 07/25/2033** – CEW – These entries were not included with the original motion. Further, all these entries are redundant and lack detail. Of note, all of the entries in July reflect a “review of email or email review.” As a result, these entries would have been denied even if they were included in the original fee petition.

As a result, while I find an award of attorney fees is warranted since Employee prevailed in this matter, I find that the award must be significantly reduced. Accordingly, I find that the request for attorney fees in the amount of \$40,176.90 in this matter to be wholly unreasonable and must be significantly reduced. As previously described, this reduction includes the denial of all fees requested for the time frame between August 4, 2021, through November 9, 2021, (~~\$9,304.20-Denied~~). Additionally, for the aforementioned reasons regarding the insufficient billing details, excessive expenditure of time and redundant/duplicative billing entries, I find that the requested fee amount of \$40,176.90<sup>42</sup> should be reduced as previously prescribed to an award amount totaling **\$12,349.30**.<sup>43</sup> I find that an award of **\$12,349.30** is the appropriate fee award for this matter based upon the a review of the record in its entirety along with the motions submitted in request and response of the instant matter.

### ORDER

Based on the foregoing it is hereby **ORDERED** that Agency pay, within thirty (30) days from the date on which this Addendum Decision becomes final, **\$12,349.30** (**Twelve thousand-three-hundred forty-nine dollars and thirty cents**) in attorney fees.

FOR THE OFFICE:

**/s/ Michelle R. Harris**  
Michelle R. Harris, Esq.  
Senior Administrative Judge

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<sup>42</sup> The amount for fees considered after the denial of the \$9,304.20 billed prior to the filing of the instant Petition for Appeal is \$30,872.70.

<sup>43</sup> See. *Robert Johnson. District of Columbia Office of Employee Appeals, v District of Columbia Fire and Emergency Medical Services Department*, No. 19-CV-275, (District of Columbia Court of Appeals - September 6, 2022). Here, the Court of Appeals found that “superficial billing entries furnished in support of a fee request are not sufficiently detailed to permit the [court] to make an independent determination whether or not the hours claimed are justified.” The Court of Appeals agreed with the AJ that “repeated one-line entries such as ‘research and writing for appellate brief’ did not come close to providing the necessary explanation of whether the hours spent researching and writing were justified.” citing to *Hampton Court Tenants Ass’n*, 599 A.2d at 1117; see also *Role Models Am., Inc. v Brownlee*, 353 F.3d 962, 971 (D.C. Cir. 2004)