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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	OEA Matter No.: 1601-0050-16AF23
EMPLOYEE <sup>1</sup>	)	
	)	Date of Issuance: March 6, 2025
v.	)	
	)	
D.C. OFFICE OF THE	)	
ATTORNEY GENERAL,	)	
Agency	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR ATTORNEY’S FEES**

Employee worked as a Support Enforcement Specialist with the D.C. Office of the Attorney General (“Agency”). On February 24, 2016, Agency issued an Advance Notice of Proposed Removal to Employee for “failing to satisfactorily perform one or more of the duties of [her] position” and “any on-duty employment-related act or omission that interferes with the efficiency or integrity of operations.” The charges were based on Employee’s failure to successfully complete the standards identified in her Performance Improvement Plan (“PIP”). On April 20, 2016, Agency issued its Final Decision on Proposed Removal, sustaining the charges against Employee. Her termination was effective on April 25, 2016.<sup>2</sup>

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<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> See *Agency’s Answer to Petition for Appeal*, Tab 12 (OEA Mater No. 1601-0050-16).

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 24, 2016. On October 22, 2018, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s termination action. Thereafter, Employee and Agency sought review of the Initial Decision with the OEA Board.<sup>3</sup> On July 16, 2019, the Board issued an order upholding the Initial Decision. Agency then filed an appeal with the Superior Court for the District of Columbia on August 13, 2019. On July 2, 2020, the Court denied Agency’s petition and affirmed OEA’s ruling reversing Employee’s termination. Agency subsequently appealed to the District of Columbia Court of Appeals. On May 23, 2023, the Court affirmed the Superior Court’s ruling.<sup>4</sup>

On June 21, 2023, Employee, acting in a pro se capacity, filed a third Motion for Attorney’s Fees and Costs with OEA.<sup>5</sup> Employee’s motion included reimbursement requests for services rendered from the following: David Branch, Esq.; William Dansie, Esq.; Alan Lescht and Associates, PC; Berry & Berry, PLLC; David Shapiro, Esq.; and witness Christopher Tate.<sup>6</sup>

Agency submitted its response to the fee petition on July 31, 2023. It asserted that although Employee was the prevailing party in this matter, an award of fees was not required in the interest of justice. Specifically, Agency opined that none of the factors outlined in *Allen v. United States Postal Service*, 2 M.S.P.R. 420 (1980), applied to this matter because it did not engage in a prohibited personnel practice; its termination action was not taken without merit or wholly unfounded; Agency did not act in bad faith; and it did not commit a gross procedural error. It

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<sup>3</sup>Although she was determined to be the prevailing party, Employee’s petition argued that she was unable to present certain documents during the evidentiary hearing; the prehearing statement was altered by her former attorney; and the prehearing conferences were not recorded.

<sup>4</sup> Case No. 20-CV-0482 (May 23, 2023).

<sup>5</sup> Employee previously filed motions for attorney’s fees on August 15, 2019, and July 31, 2020. Both motions were denied by the AJ as premature because the matter is still pending before this Office.

<sup>6</sup> *Employee’s Motion for Attorney’s Fees and Costs* (June 21, 2023).

further posited that Employee could not be reimbursed for services that she rendered herself. Therefore, it believed that an award of fees was not warranted.<sup>7</sup>

During a September 20, 2023, status conference, Employee was ordered to submit a supplemental brief to include the fee requests from the attorneys who previously represented her before OEA. Agency was also directed to submit a report regarding the status of Employee's reinstatement to her position of record.<sup>8</sup> On September 29, 2023, Alan Lescht and Associates, PC filed a fee petition requesting \$54,524.50 in attorney's fees for work associated with prosecuting Employee's appeal. However, on October 13, 2023, Employee filed a Motion to Disregard the petition filed for attorney fees as well as a motion for additional time to file her own supplemental brief. In her filings, Employee claimed *inter alia* that the petition was filed without her consent; Alan Lescht & Associates was not rehired to represent her; the firm's actions were fabricated; and firm attorney, Sara Safriet, Esq., deliberately failed to represent Employee truthfully in 2016 and 2017.<sup>9</sup>

On October 18, 2023, the AJ issued an order scheduling a status conference to discuss the outstanding issues related to attorney's fees and compliance with the October 22, 2018, Initial Decision.<sup>10</sup> After several continuances, the AJ held a conference on February 21, 2024, to ascertain the status of Employee's fee request. On March 8, 2024, Employee submitted a brief detailing her basis for requesting attorney's fees. She reiterated her desire to be reimbursed in accordance with

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<sup>7</sup> *Agency's Opposition to Employee's Motion for Attorney's Fees* (July 31, 2023).

<sup>8</sup> *Post-Status Conference Order* (September 20, 2023).

<sup>9</sup> *Employee's Motion to Disregard the Petition Filed for Attorney Fees by Alan Lescht and Associates* (October 13, 2023) and *Employee's Motion Requesting Extension of Time to Submit a Supplemental Motion for Attorney's Fees and Other Costs* (October 13, 2023).

<sup>10</sup> *Order Regarding Employee's Motion for an Extension of Time and to Disregard Filing by Alan Lescht & Associates, P.C.* (October 18, 2023). In her order, the AJ noted that an attorney from the firm stated via email that it was not currently representing Employee. However, the attorney cited that Employee had forwarded the August 25, 2023, Post-Status Conference Order requesting briefing on attorney's fees, which prompted their filing. The AJ's order also granted Employee's motion to disregard the filing submitted by the firm.

the amounts reflected in her June 21, 2023, motion. Employee also contended that an award was warranted because she was the prevailing party; she paid retainer fees and other costs to three attorneys associated with proceedings before OEA; and the retained attorneys who engaged in unprofessional conduct and failed to protect Employee's interests in accordance with the law. Hence, Employee reasoned that she was entitled to be reimbursed for the legal costs that she incurred to secure representation.<sup>11</sup>

The AJ issued a Third Addendum Decision on Attorney's Fees on July 16, 2024. First, she highlighted OEA Rule § 639.1 and D.C. Code § 1-606.08, which collectively provide that an employee shall be entitled to an award of reasonable attorney's fees if they are the prevailing party, and the award is warranted in the interest of justice. As it related to the prevailing party requirement, the AJ provided that OEA's Initial Decision reversed Agency's termination action; the ruling was upheld by Superior Court on July 2, 2020; and the Court of Appeals affirmed the reversal of Employee's termination on July 2, 2020. Therefore, she concluded that Employee was the prevailing party in this matter.<sup>12</sup>

Next, the AJ relied on the factors provided in *Allen v. United States Postal Service*, which serve as directional markers to determine whether a petitioner is entitled to attorney's fees in the interest of justice.<sup>13</sup> Specifically, she outlined that Agency violated *Allen* factor No. 4, – gross procedural error – because it failed to follow all applicable District laws, rules, and regulations in

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<sup>11</sup> *Employee's Motion to Award Attorney's Fees and Other Costs* (March 8, 2024).

<sup>12</sup> *Third Addendum Decision on Attorney's Fees* (July 16, 2024).

<sup>13</sup> The Court provided the following factors to be considered in awarding attorney's fees: 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" and 5. Where the agency "knew or should have known that it would not prevail on the merits" when it brought the proceeding.

the administration of Employee's termination action. As such, she held that an award of fees was appropriate in the interest of justice. However, the AJ went on to explain that while Employee was previously represented by Alan Lescht & Associates, PC and Danise & Danise, LLP, both attorneys withdrew their appearances in 2018. Further, the AJ noted that Employee's motion for attorney's fees also requested reimbursement for out-of-pocket expenses paid to David Branch, Esq., Berry & Berry, PLLC, and Dave Shapiro, Esq..<sup>14</sup>

After reviewing the record, the AJ held that D.C. Code § 1-606.08 and OEA Rule 639 did not provide for an award for fees for employees representing themselves. The AJ reasoned that while Employee previously retained legal representation throughout this matter, she required the withdrawal of her representation by those attorneys. Therefore, she deemed Employee to be a pro se litigant at the time the third Motion for Attorney's Fees was filed. Moreover, the AJ provided that Employee's Motion sought reimbursement for fees paid to attorneys who represented her during her appeal, as well reimbursement for fees and services that she completed herself. Thus, the AJ concluded that although attorney's fees were warranted in this case, as a pro se litigant, Employee was not entitled to an award for the out-of-pocket monies she paid for legal services. Assuming *arguendo* Employee could be awarded fees, the AJ nonetheless ruled that the documentation submitted was insufficient to support such an award. As a result, Employee's June 21, 2023, Motion for Attorney's Fees was denied.<sup>15</sup>

Employee disagreed with the AJ's ruling and filed a Petition for Review of the Third Addendum Decision on Attorney's Fees with the OEA Board on August 19, 2024. She argues that the attorneys hired to represent her participated in professional misconduct and misinformed her

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<sup>14</sup> The AJ acknowledged Employee's September 29, 2023, request to disregard the fee petition filed by Alan Lescht. Therefore, it was not considered in her analysis of the attorney fee request.

<sup>15</sup> *Initial Decision* at 8.

of the filings, charges, and time spent on prosecuting her appeal. Employee contends that each attorney failed to protect her rights under the applicable labor laws. She asserts that this Office lacks jurisdiction to correct the misclassification of her status under the Fair Labor Standards Act (“FLSA”). Employee also requests that the Board conclude that OEA lacks jurisdiction to award or deny attorney’s fees. She further asks that the Board rule that it has no jurisdiction over criminal matters under the purview of the D.C. Office of the Attorney General and the Office of the Inspector General.<sup>16</sup>

In response, Agency submits that Employee’s submission fails to meet any of the criteria specified in Chapter 6B, Section 637.4 of the D.C. Municipal Regulations (“DCMR”) as a basis for granting her Petition for Review. It characterizes Employee’s arguments related to her FLSA status as wholly irrelevant to the instant petition. Agency agrees with the AJ’s findings that Employee is not entitled to the award of fees she incurred as a pro se litigant. Finally, it posits that the relief requested by Employee is unrelated to the fee petition at issue. Consequently, Agency asks that the petition be denied.<sup>17</sup>

#### Substantial Evidence

As discussed herein, this Board finds no basis for awarding attorney’s fees to Employee as requested in her June 21, 2023, motion. OEA Rule 637.4 provides that the Board may grant a Petition for Review when new and material evidence is available that, despite due diligence, was not available when the record closed; the decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy; the findings of the AJ are not based on substantial evidence; or the initial decision did not address all material issues of law and fact properly raised in the appeal. The Court in *Baumgartner v. Police and Firemen’s Retirement and*

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<sup>16</sup> *Employee’s Petition for Review on Attorney’s Fees* (August 19, 2024).

<sup>17</sup> *Agency’s Opposition to Employee’s Petition for Review* (September 23, 2024).

*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. While Employee's motion fails to raise any of the arguments contemplated within OEA Rule 637.4 as a basis for granting her petition, this Board finds that the Initial Decision is based on substantial evidence, and we will nonetheless address the appropriateness of her current fee request.<sup>18</sup>

#### Prevailing Party and Interest of Justice

Under D.C. Code § 1-606.08, 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." 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."<sup>19</sup>

It is undisputed that Employee is prevailing party in this case. Under OEA Rule 635.1, the October 22, 2018, Initial Decision reversing Agency's termination action became final thirty-five days after issuance. OEA's ruling was upheld on appeal by both the D.C. Superior Court and the Court of Appeals. There is also evidence in the record to support the AJ's finding that an award of attorney's fees is warranted in the interest of justice. As the AJ previously held, Agency committed a gross procedural error because it violated DPM §§ 1410.5 and 1410.6 when it failed to issue the

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<sup>18</sup> The rule provides the following: The Petition for Review shall set forth objections to the Initial Decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that: (a) New and material evidence is available that, despite due diligence, was not available when the record closed; (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation, or policy; (c) The findings of the Administrative Judge are not based on substantial evidence; or (d) The Initial Decision did not address all material issues of law and fact properly raised in the appeal.

<sup>19</sup> 2 M.S.P.R. 420 (1980).

written results of Employee's PIP within ten days of the completion of the improvement plan. Consequently, we will leave the AJ's rulings on these issues undisturbed.

Fee Recovery for Pro Se Employees

OEA Rule 615.1 states that an employee "... may appear on their own behalf, through an attorney, through a union representative, or through any other competent individual" in any proceeding before this Office. D.C. Code § 1-623.27(b)(2) also provides the following:

"If a person utilizes the services of an *attorney-at-law* in the successful prosecution of his or her claim under § 1-623.24(b) or before any court for review of any action, award, order, or decision, there shall be awarded, in addition to the award of compensation, in a compensation order, a reasonable attorney's fee...." (emphasis added).

Moreover, in *Copeland v. District of Columbia Department of Employment Services*, 3 A.3d 331 (Sept. 2, 2010), the District of Columbia Court of Appeals held that "[t]he plain language of the statute [D.C. Code § 1-623.27(b)(2)] provides for payments to 'attorney-at-law' and does not specify any other class of person eligible to receive such payments."

Here, Employee first indicated her desire to proceed in a pro se capacity after she filed the Motion to Disregard the Petition Filed by Alan Lescht and Associates, PC on October 13, 2023. Her motion was acknowledged and granted by the AJ on October 18, 2023. Employee's most recent motion for attorney's fees contains her signature only and there is no indication that she is a licensed attorney in any United States jurisdiction. Therefore, Employee was a self-represented, non-attorney litigant at time the instant petition to the Board was filed.

Employee's June 21, 2023, filing requests reimbursement for fees paid to attorneys who represented her at various junctures before OEA. She also seeks costs associated with tasks that she completed herself, including submitting documents to this Office during the prosecution of her appeal. However, nothing within the language of D.C. Code § 1-623.27 or OEA's rules allows for



the payment of attorney's fees to pro se litigants. Employee is not a licensed attorney and does not qualify as an individual who would otherwise be entitled to the payment of legal services. Additionally, Employee's request to be reimbursed for work that she completed herself is not an attorney fee request and the associated costs are therefore unrecoverable.

Finally, in *Employee v. D.C. Fire & Emergency Services Department*, OEA Matter No. 1601-0109-13AF15 (November 19, 2015), the OEA AJ, citing the holdings in *Blum v. Stenson*, 465 U.S. 886 (1984) and *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988), provided the following as it relates to fee recovery:

“Once the conclusion is reached that attorney fees should be awarded, the determination must be made on the amount of the award. 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. 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.”

As the AJ noted, even if this Board were to consider her request for reimbursement for fees already paid to other attorneys as permissible, Employee has failed to expound upon or provide supporting documentation related to the identified attorneys' itemized expenses, years of experience, or requested hourly rate, which is standard practice before this Office.<sup>20</sup> As a result,

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<sup>20</sup> See *Employee v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 1601-0017-21AF24 (February 28, 2024); *Blum v. Stenson*, 465 U.S. 886 (1984); *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988); *Employee v. Department of Employment Services*, OEA Matter No. 1601-0012-14AF22, *Opinion and Order on Attorney's Fees* (March 2, 2023); *Employee v. Department of Employment Services*, OEA Matter No. 1601-0053-22AF23 (October 31, 2024); *Employee v. Department of Public Works*, OEA Matter No. 1601-0023-22AF23 (January 3, 2024); *Employee v. Metropolitan Police Department*, OEA Matter No. 1601-0027-18AF22 (January 3, 2024); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0215-11R18R20AF22 (May 23, 2022).

this Board finds no basis for granting Employee's third Motion for Attorney's Fees.<sup>21</sup>

Consequently, we must deny Employee's petition.

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<sup>21</sup> This is not to say that Employee's previous attorneys are estopped from seeking fees before OEA. However, we note that Alan Lescht and Associates, PC has not renewed its fee request with this Office following the AJ's October 18, 2024, order granting Employee's motion to disregard the firm's fee request.

**ORDER**

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

**FOR THE BOARD:**

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Dionna Maria Lewis

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Arrington L. Dixon

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Jeanne Moorehead

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LaShon Adams

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Pia Winston

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.