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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
GROVER MASSENBURG,)	
Employee)	OEA Matter No. 1601-0004-13-AF17
)	
v.)	Date of Issuance: July 19, 2018
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
Lorraine C. Davis, Esq., Employee Representative		
Carl K. Turpin, Esq., Agency Representative		

SECOND ADDENDUM DECISION REGARDING ATTORNEY FEES AND COSTS

Grover Massenburg (“Employee”) was a Teacher at Wilson Senior High School (“Wilson”). On March 30, 2012, he observed a student displaying a handgun while in Wilson. Employee held a conversation with the student. During this conversation, the student, *inter alia*, expressed a desire to harm himself. DCPS alleged that Employee did not confiscate the weapon and he allowed the student to leave Wilson’s premises. On the day of the incident, District of Columbia Public Schools (“DCPS” or “the Agency”) authorities investigated the incident and took witness statements from all of the participants, one of whom was an Assistant Principal at Wilson.¹ DCPS further alleged that Employee failed to promptly report this incident to school administrators and that Employee failed to confiscate the gun. Employee explained that he received no training on how to handle suicidal student or individuals with weapons and that such training was not required of him by DCPS.² After a five month review of the facts of this matter, DCPS decided to remove Employee from service based on a charge of Neglect of Duty. Employee received his notice of termination from his position as a Teacher at Wilson on August 21, 2012.

Employee filed his petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) on October 2, 2012. I was initially assigned this matter on or about January 21, 2014. I convened a prehearing conference in this matter and after considering the parties’

¹ Wilson’s Principal Peter Cahall was made aware of this incident on the date that it occurred.

² See Employee’s Prehearing Statement dated February 28, 2014 at 3.

positions as presented during this conference; I decided that an evidentiary hearing was unwarranted. Accordingly, I ordered the parties to submit final legal briefs in this matter. Both parties complied. On February 10, 2015, the Undersigned issued an Initial Decision (“ID”) wherein the Undersigned REVERSED Agency’s removal action.

On March 17, 2015, DCPS filed a Petition for Review with the Board of the OEA. On June 21, 2016, the Board of OEA issued an Opinion and Order on Petition for Review (“O&O”) UPHOLDING the ID. On July 15, 2016, Employee, through counsel, filed a Motion for Attorney Fees and Costs in this matter.³ On July 21, 2016, DCPS filed a Petition for Review of the O&O with the District of Columbia Superior Court. On December 12, 2016, the decision of the OEA became final when DCPS withdrew its petition for review with the District of Columbia Superior Court. Thereafter, Employee filed a Motion for Compliance initially asserting that Agency had not fulfilled the requirements of the OEA’s final decision. Thereafter, Employee noted that DCPS eventually complied with the terms of the ID and the O&O. On September 15, 2017, the Undersigned issued an Addendum Decision regarding Compliance noting that Employee had withdrawn his motion regarding DCPS’ alleged lack of compliance with the ID and the O&O.

On December 15, 2017, Employee filed a Supplemental Motion for Attorney Fees and Costs. Thereafter, the parties entered into extended settlement deliberations, under the auspices of the OEA’s Mediation Department, in order to resolve this new impasse. On July 18, 2018, Employee through counsel submitted Employee’s Motion to Withdraw Renewed Motion and Supplemental Motion for Attorney fees and Costs. In this motion, Employee, through counsel, provides as follows: “[a]fter much negotiation, the parties on June 1, 2018, executed a settlement agreement to resolve the attorney fees and costs. In light of this settlement agreement, Employee hereby withdraws his motions for attorney fees and costs.”⁴ After reviewing the documents of record, I find 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 § 1-606.08 (2001).

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

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:

³ The initial request for Attorney Fees and Costs was dismissed without prejudice due to the fact that at the time of the addendum decision the matter was still under review before the Superior Court of the District of Columbia. *See* OEA Matter No. 1601-0004-13-AF16 (August 23, 2016).

⁴ Employee’s Motion to Withdraw Renewed Motion and Supplemental Motion for Attorney fees and Costs at 2 (July 18, 2018).

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 628.2 *id.* states:

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 motion for attorney's fees should be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

I am guided by the OEA rules in this matter. OEA 606.2⁵ provides that "the Office shall exert every possible effort to resolve matters by mediation, to the extent possible, rather than through litigation." Furthermore, OEA Rule 606.11 states that "if the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b) (2006 Repl.)." Employee, through counsel, has submitted a motion to withdraw his request for attorney fees and costs indicating that the parties have settled their differences. Accordingly, I find that Employee's Renewed and Supplemental Motion for Attorney's Fees and Costs should be dismissed in accordance with OEA Rule 606.11.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Senior Administrative Judge

⁵ 59 DCR 2129 (March 16, 2012).