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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
TEMISHA LASSITER,)	
Employee)	OEA Matter No. 1601-0039-14-AF17
)	
v.)	Date of Issuance: October 31, 2016
)	
DISTRICT DEPARTMENT OF)	
TRANSPORTATION,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	

June M. Marshall, Esq., Employee Representative
Michael O'Connell, Esq., Agency Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 20, 2013, Temisha Lassiter (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District Department of Transportation’s (“DDOT” or the “Agency”) action of removing her from service. According to DDOT, Employee was terminated for; any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of duty, pursuant to District Personnel Manual (“DPM”) §1603.3(f)(3) and §1619.1(6)(c); and any knowing or negligent material misrepresentation on other document given to a government agency: Falsification of time and attendance records pursuant to DPM §1603.3(d) and §1619.1(4)(b). This matter was initially assigned to the Undersigned on or about July 18, 2014. The parties appeared, pursuant to an Order for a Prehearing Conference on October 21, 2014. I then determined that an Evidentiary Hearing would be held on February 19, 2015. The Hearing was held as scheduled. Thereafter, the parties submitted their written closing arguments. An Initial Decision (“ID”) was issued on September 16, 2016. As part of the ID, the Undersigned ordered that Agency’s adverse action be reversed. Thereafter on October 20, 2016, DDOT filed a Petition for Review with the Board of the OEA contesting the ID. On October 27, 2016 Employee, through counsel, filed a Memorandum in Support of Employee’s Motion for Award of Attorney Fees.

JURISDICTION

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

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

D.C. Code Ann. § 1-606.8 (1999 repl.) 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.¹

In this matter, Agency filed a Petition for Review with the Board of the OEA on October 20, 2016. This matter is currently under review and a final decision has not been rendered as of yet. Thus, at this point, the question of whether Employee is a prevailing party has not been finally determined. Consequently, the motion for attorney fees is premature and must now be dismissed. However, the dismissal is without prejudice, since Employee may yet become a prevailing party. If Employee is determined to be the prevailing party, she may resubmit a motion for attorney fees to this Office.

¹ *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1601-0138-88AF92 (May 13, 1993).

ORDER

Based on the aforementioned, it is hereby **ORDERED** that Employee's Motion for Attorney Fees and Costs is **DISMISSED** *without prejudice*.

FOR THE OFFICE:

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE