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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE,)	
Employee)	OEA Matter No. 1601-0051-19-AF23
)	
v.)	Date of Issuance: February 16, 2023
)	
D.C. METROPOLITAN POLICE)	
DEPARTMENT,)	
Agency)	ERIC T. ROBINSON, ESQ.
)	SENIOR ADMINISTRATIVE JUDGE
_____)	
Marc Wilhite, Esq., Employee Representative)	
Nicole Lynch, Esq., Agency Representative)	

ADDENDUM DECISION ON ATTORNEY FEES AND COSTS

INTRODUCTION AND PROCEDURAL HISTORY

On April 29, 2019, the Metropolitan Police Department (“MPD” or the “Agency”) served the Employee, who was then serving as a Lieutenant, with its Final Agency Action advising him of the Metropolitan Police Department’s intention to reduce his rank from Lieutenant to Sergeant and transfer him to another assignment. The proposed action against Employee arose from an allegation that he violated General Order Series 120.21, Attachment A, Part A-26 (Failure to obey orders or directives issued by the Chief of Police). In particular, the January 14, 2019, Notice of Proposed Adverse Action (NPAA) alleged that Employee provided information to the Watch Commander of the First District that resulted in subordinate members participating in an unauthorized vehicular pursuit, which was allowed to continue without being continually assessed.

On May 28, 2019, Employee filed a Petition for Appeal with the Office of Employee Appeals contesting MPD’s adverse action. On May 31, 2019, a letter from the OEA Executive Director was sent to the MPD requiring it to submit its Answer to Employee’s Petition for Appeal no later than July 1, 2019. MPD timely complied. This matter was assigned to the Undersigned on September 17, 2019. On October 1, 2019, the Undersigned issued an Order Convening a Prehearing Conference for November 5, 2019. It was held as scheduled and as part of the process, the parties submitted opposing briefs addressing whether the instant matter should be decided

procedurally due to a supposed violation of the MPD's 90-day rule. In a nutshell, I found that this matter proceeded in a timely manner due to the administrative delay that is allowed while the US Attorney slowly conducted a criminal investigation that was eventually declined.

Unfortunately, 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, as well as an extension of time in order to ascertain whether this matter should be decided procedurally *vis a vis* a perceived violation of the 90-day rule. Eventually, the Evidentiary Hearing was held on July 15 and 27, 2021. On September 30, 2022, the Undersigned issued an Initial Decision ("ID") in this matter where I reversed Agency's action of demoting Employee. MPD opted not to contest the ID and it became final on or about November 4, 2023. On December 2, 2022, Employee, through counsel, filed a Motion for Attorney Fees and Costs. In this motion, Employee sought reimbursement for fees and costs incurred contesting Agency's adverse action. Due to the holiday season and press of business, Agency requested an extended period of time to respond to Employee's motion. On February 6, 2023, Employee submitted a Notice of Withdrawal of Motion for Attorney Fees and Costs. In this motion, Employee, through counsel, notes that the parties reached an agreement related to the payment of attorney fees and costs. 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 this matter should be dismissed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

I am guided by the OEA rules in this matter. OEA Rule 607.11 states that “if the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b).” Employee, through counsel, has submitted a Notice of Withdrawal indicating that the parties have settled their differences. Consequently, Employee withdrew his Motion for Attorney Fees and Costs. Accordingly, I find that Employee’s Motion for attorney’s fees should be dismissed in accordance with OEA Rule 607.11.

ORDER

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

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.

SENIOR ADMINISTRATIVE JUDGE