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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matters of:	)	
	)	
ADELAIDE OKYIRI	)	OEA Matter Nos. 1602-0064-93A03
Employee	)	1601-0100-93A03
	)	
	)	Date of Issuance: November 30, 2005
v.	)	
	)	Daryl J. Hollis, Esq.
	)	Senior Administrative Judge
D.C. PUBLIC LIBRARY	)	
Agency	)	

Michael Speker, Esq., Employee Representative  
Frank McDougald, Esq., Chief, OAG-DC Personnel & Labor Relations Section  
Grace Perry-Gaiter, Esq., Agency General Counsel

**SECOND ADDENDUM DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL HISTORY**

On March 23, 1993, Employee, Chief of Agency's Budget and Fiscal Department, filed a petition for appeal from Agency's final decision denying her grievance pertaining to a letter of warning that had been issued to her. This appeal was docketed as *Adelaide Okyiri v. D.C. Public Library*, OEA Matter No. 1602-0064-93.

On May 21, 1993, Employee filed a petition for appeal from Agency's final decision removing her from her position for insubordination and inexcusable neglect of duty. This appeal was docketed as *Adelaide Okyiri v. D.C. Public Library*, OEA Matter No. 1601-0100-

93. Both of these appeals were assigned to Administrative Judge Christopher Sterbenz in September 1994. On June 19, 1995, Judge Sterbenz issued an Initial Decision (ID) on both appeals. In Matter No. 1602-0064-93, he held that the letter of warning issued to Employee was improper, and ordered the then-Agency Director to revoke the letter in writing. In Matter No. 1601-0100-93, he reversed Employee's removal and ordered Agency to reinstate her with all applicable back pay and benefits.

On July 25, 1995, Agency filed a petition for review (PFR) of the ID with the OEA Board. On December 23, 1996, the Board issued an Opinion and Order on Petition for Review (O&O) in which it upheld Judge Sterbenz's decisions in the ID and denied Agency's PFR. The O&O became a final decision of the Office on December 28, 1996. *See* OEA Rule 636.3, 39 D.C. Reg. 7425 (1992), which was in effect in late December 1996.<sup>1</sup>

On January 24, 1997, Employee filed a Motion and Accompanying Memorandum of Points and Authorities and Supporting Documentation Requesting Attorney Fees in the Above Captioned Case in which she requested \$55,803.00 in attorney fees. This motion was docketed as *Adelaide Okyiri v. D.C. Public Library*, OEA Matter Nos. 1602-0064-93A97 & 1601-0100-93A97. Sometime thereafter, and before this attorney fees matter could be assigned to an Administrative Judge for adjudication,<sup>2</sup> Agency filed a petition for review of the Office's final decision with the D.C. Superior Court. The underlying matter then proceeded through the D.C. Courts for a number of years. It is unnecessary to set forth a detailed summary of the numerous proceedings that took place before the Courts. Suffice it to say that on or around May 21, 2003, the matter was finally decided in Employee's favor. On June 17, 2003, Employee filed an Amended Motion for Attorney Fees and Costs that in part incorporated the January 1997 motion. This motion was docketed as *Adelaide Okyiri v. D.C. Public Library*, OEA Matter Nos. 1602-0064-93A03 & 1601-0100-93A03 and was assigned to me for adjudication on June 20, 2003. At the time of that assignment, the fact that the January 1997 motion for attorney fees had never been acted upon came to light, and thus that attorney fees matter was also assigned to me for adjudication on June 20, 2003.

On June 27, 2003, I issued an Addendum Decision on Attorney Fees in which I dismissed the 1997 attorney fees motion as being duplicative. In so doing, I wrote in pertinent part as follows:

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<sup>1</sup> New Rules for the Office became effective on November 19, 1999. *See* 46 D.C. Reg. 9297 *et seq.* (1999).

<sup>2</sup> Ordinarily, a motion for attorney fees is directed to the Administrative Judge who issued the ID in the underlying matter. However, by the time the January 24, 1997 motion was filed, Judge Sterbenz had left the Office's employ.

D.C. Official Code § 1-606.08 provides that: “[An Administrative Judge of this Office] 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.” (emphasis added). “[F]or an employee to be a prevailing party, he must obtain all or a significant part of the relief sought . . .” *Zervas v. D.C. Office of Personnel*, OEA Matter No. 1602-0138-88A92 (May 14, 1993), \_\_\_ D.C. Reg. \_\_\_\_ ( ). See also *Hodnick v. Federal Mediation and Conciliation Service*, 4 M.S.P.R. 371, 375 (1980).

Here, the relief that Employee sought was the reversal of her removal and the revocation of the letter of warning. That is the relief she obtained from this Office. However, Agency submitted a timely petition for review of the Office’s final decision to the Superior Court. The matter was not finally decided until on or around May 21, 2003. Thus, at the time Employee submitted her January 1997 attorney fees motion, the question of whether she had obtained the relief that she sought had not been finally determined, and therefore, at that time she was not yet a prevailing party. Consequently, at the time the January 1997 motion was filed it was premature. However, Employee subsequently became a prevailing party, and has resubmitted an attorney fees motion that in part incorporates the January 1997 motion. Since the new motion is currently before me for adjudication, the January 1997 motion is now duplicative. There is no requirement that this Office adjudicate matters that are moot or duplicative. *Featherstone v. University of the District of Columbia*, OEA Matter No. JT-0102-93 (August 2, 1994), \_\_\_ D.C. Reg. \_\_\_\_ ( ); *Settlemyre v. Metropolitan Police Department*, OEA Matter No. J-0380-94 (December 3, 1997), \_\_\_ D.C. Reg. \_\_\_\_ ( ). However, the January 1997 claim for attorney fees will now be fully adjudicated as a result of the June 2003 motion. Thus, Employee’s right to have the former claim considered is not comprised by dismissing the 1997 motion as duplicative.

On July 10, 2003, I received Agency's Unopposed Motion to Stay Proceedings Relating to Request for Attorney's Fees Pending Settlement Efforts. That motion reads in part as follows:

Agency moves to hold the proceedings relating to Employee's [June 17, 2003] request for attorney's fees in abeyance pending settlement negotiations by the parties. We have consulted with counsel for Employee and are authorized to state that Employee consents to this motion. We have also filed similar motions with the District of Columbia Court of Appeals and the Superior Court of the District of Columbia.

On July 14, 2003, I issued an Order granting the unopposed motion to stay the attorney fees proceedings. I asked the parties to keep me apprised of the status of their negotiations on a regular basis. Thereafter, I received periodic updates from Mr. Spekter in which he told me that although the negotiations were taking longer than expected, they were moving toward an eventual agreement on, *inter alia*, the instant attorney fees motion. Finally, on November 28, 2005, Mr. Spekter called and advised me that the outstanding issues had been settled and that the attorney fees had been paid. On November 29, 2005, he submitted Employee's Notice of Settlement of Petition for Attorney's Fees and Costs. In part, that submission reads: "Since the matter of Attorney's Fees and costs have been fully settled and resolved, Counsel for Employee hereby requests that the Office of Employee Appeals note that this case has been settled and no further action by the Office is necessary." The record is closed.

### JURISDICTION

The Office has jurisdiction in these attorney fees matters pursuant to D.C. Official Code § 1-606.08 (2001).

### ISSUE

Whether these attorney fees matters may now be dismissed.

### ANALYSIS AND CONCLUSION

In addition to other issues, the parties have settled the issue of attorney fees. Pursuant to that settlement, Employee, through her attorney, has requested that "the Office . . . note that this case has been settled and no further action by the Office is necessary." That request is hereby granted and these attorney fees matters may now be dismissed.

ORDER

It is hereby ORDERED that OEA Matter Nos. 1602-0064-93A03 and 1601-0100-93A03 are DISMISSED.

FOR THE OFFICE:

  
DARYL J. HOLLIS, Esq.  
Senior Administrative Judge