

Minutes

D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING

Tuesday, March 4, 2014

Location: 1100 4th Street, SW

Room 380E

Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Gray (OEA Paralegal), William (Bill) Persina (OEA Board Chair), Sheree Price (OEA Board Vice Chair), A. Gilbert Douglass (OEA Board Member), Vera Abbott (OEA Board Member), and Patricia Hobson Wilson (OEA Board Member).

- I. Call to Order** – Bill Persina called the meeting to order at 11:05 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Gilbert Douglass moved to adopt the Agenda. Sheree Price seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The December 17, 2013 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. Old Business**
 - A. Overview of OEA's Annual Performance Hearing** – Sheila Barfield presented highlights from the agency's annual performance hearing.
- VI. New Business**
 - A. Public Comments** – No members of the public were present.
 - B. Summary of Cases** – Bill Persina read the following summaries of each case to be decided by the Board:
 - 1. Rashid Jones v. Office of the Chief Medical Examiner** – Employee was removed from his position as an Autopsy Assistant. He was charged with committing an on duty or employment-related act that he should have known was a violation of law. Additionally, he was charged with having committed an on duty or employment-related act that interfered with the efficiency of government operations. Agency alleged that while Employee was on approved sick leave, he received compensation for a total of 96 hours from another District government agency. Employee filed a Petition for Appeal with OEA on September 17, 2008. The Administrative Judge ruled to uphold the first charge; she denied the second charge; and she ordered the parties to

submit briefs that addressed the penalty of removal. Agency filed a Petition for Review with the OEA Board on June 15, 2009. The previous OEA Board granted Agency's Petition for Review and remanded the case to the Administrative Judge for further consideration of the penalty imposed on Employee.

The original Administrative Judge retired from OEA, and a new Judge was appointed. After assessing the appropriateness of the penalty, the Administrative Judge ruled to uphold Agency's removal action against Employee. Employee filed a Petition for Review of the Initial Decision on Remand on October 3, 2012 and a Supplemental Petition for Review on December 17, 2012. He contended that he did not believe that he was violating any laws and that the AJ failed to address all material issues of law and fact. Agency also filed a Petition for Review in this matter. It argued that the Initial Decision on Remand was improperly issued because the previous Opinion and Order on Petition for Review did not decide if there was substantial evidence to support the original Administrative Judge's decision to dismiss the second charge.

2. **Laura Smart v. D.C. Child and Family Services Agency** – Employee was separated from her position as a Social Work Associate pursuant to a reduction-in-force. She filed a Petition for Appeal with OEA on July 8, 2010. The Administrative Judge ruled to uphold Agency's action but ordered it to reimburse Employee for twenty-one days of back pay and benefits because it failed to provide her with the required written, thirty-day notice. Agency was ordered to file documents evidencing compliance with the order. Employee filed a Petition for Review with the OEA Board on October 5, 2012. She asserted that the Administrative Judge's findings were not based on substantial evidence, and the Initial Decision did not address all of the issues of law and fact properly raised on appeal.
3. **Ricky Williams v. D.C. Public Schools** – Employee was separated from his position as a Special Education Teacher pursuant to a reduction-in-force. He filed a Petition for Appeal with OEA on December 1, 2009. The Administrative Judge ruled to uphold Agency's action against Employee. Employee filed a Petition for Review with the OEA Board on September 4, 2012. He argued that the Initial Decision was not based on substantial evidence and that the Administrative Judge failed to consider his substantive and procedural arguments.
4. **Ernest Hunter v. D.C. Child and Family Services Agency** – Employee was separated from his position as a Contracts Compliance Officer pursuant to a reduction-in-force. He filed a Petition for Appeal alleging that the RIF action was in retaliation to his complaints of and participation in an investigation of wrongful discrimination, mismanagement, cronyism, and abuse of authority at Agency. In its answer to Employee's Petition for Appeal, Agency explained

that it followed the proper RIF procedures by providing Employee with one round of competition and a written thirty days' notice that his position was being eliminated. In response to an order from the OEA Administrative Judge (AJ), Agency submitted a Consent Order and argued that the order gave its Director the authority to approve the RIF action. The AJ agreed with Agency and found that its Director had the authority to approve the RIF pursuant to the Consent Order. She also ruled that Agency properly complied with the RIF regulations when removing Employee from his position. On October 16, 2012, Employee filed a Petition for Review with the OEA Board. Among other things, he argued that because the Administrative Order lacked the appropriate signatures, the RIF action was not properly conducted.

- 5. Khadijah Muhammad v. D.C. Government Operations Division** – Employee was charged with Unauthorized Absence totaling 1,032 hours between March 20, 2006 and September 14, 2006. Employee filed a Petition for Appeal arguing that she was ordered to bed rest by her doctor because of pregnancy complications. On May 19, 2008, the Administrative Judge (AJ) issued her Initial Decision and found that the testimonial and documentary evidence supported the conclusion that Employee submitted sufficient medical documents to give Agency notice of her illness. The AJ determined that Employee had a legitimate medical excuse to explain her absence from work. On June 23, 2008, Agency filed a Petition for Review with the OEA Board requesting that it reverse the Initial Decision because the AJ's finding that Employee was medically incapacitated was not supported by substantial evidence. The Board disagreed and ruled that since Employee adequately proved that her absence from work was a result of a legitimate medical excuse, Agency did not have cause to remove her from her position. Accordingly, Agency's Petition for Review was denied.

Employee was subsequently reinstated to her position. However, issues regarding attorney's fees and damages remained outstanding. Subsequently, the AJ issued an Addendum Decision on Attorney's Fees, where after an extensive analysis regarding a reasonable hourly rate for Employee's counsel, the AJ awarded \$150.00 per hour for services provided by Employee's counsel; \$85.00 per hour for paralegal services; and \$50.00 per hour for administrative assistant services. The AJ reviewed the fee agreement that Employee's counsel submitted and concluded that the time expended by each individual performing the work and the costs were reasonable. As a result, she awarded Employee's counsel \$21,454.90 for fees and costs. Agency disagreed with the decision and filed a Petition for Review on October 11, 2012. It argued that the number of hours claimed by Employee should be either subtracted or reduced for excessive time expended; hours billed for unnecessary or unwarranted tasks; hours billed for purely clerical tasks; hours billed for tasks before other tribunals; and hours not sufficiently detailed. Thus, it requests that the Addendum Decision on Attorney's Fees be reversed and remanded for further consideration of the number of hours awarded.

- 6. Chester Brown v. District of Columbia General Services** – Employee worked as a Maintenance Worker with Agency. On June 15, 2012, Agency issued a notice explaining that it would not extend Employee's term appointment beyond its expiration date. Employee filed a Petition for Appeal and argued that although he was a term employee, he was actually terminated for requesting fair treatment and resources for his position. Agency responded by providing that because it followed the District Personnel Regulations regarding term employees, OEA lacked jurisdiction to consider this matter. The AJ explained that in accordance with DPR § 823.7, a term employee could not be converted to a Career Service employee. As a result, Employee was properly removed from his position at the end of his term, and Agency was under no obligation to reappoint him. Accordingly, Employee's Petition for Appeal was dismissed. Employee filed a Petition for Review and explained that the law regarding term employees should be repealed or amended to ensure that they are provided with a sense of security and prior notice pertaining to their jobs.
- 7. Edwin Lehan v. D.C. Fire and EMS** – Employee worked as a Firefighter with Agency. On July 10, 2012, Employee received a notice from Agency that he was suspended for two days for an improper overtime submission. Employee filed a Petition for Appeal and contended that the Agency Trial Board did not follow District law when suspending him. Additionally, he claimed that he was improperly demoted from Sergeant to Firefighter. Agency contended that because Employee's suspension was less than ten days, in accordance with D.C. Official Code § 1-606.03, OEA lacked jurisdiction to consider this case. The Administrative Judge agreed that it could not consider appeals of suspensions for less than ten days. As for Employee's demotion claim, the AJ held that the demotion was never the subject of the current appeal and would not be considered. Furthermore, he found that an appeal of the demotion was untimely because it was filed more than seven months after the alleged action. Employee promptly filed a Petition for Review with the OEA Board. He claims that on the same day that he received the AJ's Initial Decision, he was verbally demoted from Sergeant to an unknown rank. Agency responded and again provided that OEA lacked jurisdiction to consider a two-day suspension. Therefore, it requests that the Board dismiss Employee's Petition for Review.
- C. Deliberations** - After the summaries were provided, Sheree Price moved that the meeting be closed for deliberations. Vera Abbott seconded the motion. All Board members voted in favor of closing the meeting. Bill Persina stated that in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.
- D. Open Portion of Meeting Resumed**

E. Final Votes –Bill Persina provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Rashid Jones v. Office of the Chief Medical Examiner

Employee's Petition for Review:

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass	X			
Patricia Hobson Wilson		X		

More than a quorum of Board Members voted in favor of denying Employee's Petition for Review.

Agency's Petition for Review:

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Agency's Petition for Review.

2. Laura Smart v. D.C. Child and Family Services Agency

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee's Petition for Review. However, Agency has been ordered to reimburse Employee with twenty-one days' pay and benefits for its failure to provide her with the required notice.

3. Ricky Williams v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee's Petition for Review.

4. Ernest Hunter v. D.C. Child and Family Services Agency

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

All Board Members voted in favor of granting Employee's Petition for Review. Accordingly, the Initial Decision and Agency's RIF action are reversed.

5. Khadijah Muhammad v. D.C. Government Operations Division

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

All Board Members voted in favor of granting Agency's Petition for Review and remanding the matter to the Administrative Judge for further consideration of the number of hours expended by Employee's attorney on the appeal.

6. Chester Brown v. District of Columbia General Services

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee's Petition for Review.

7. Edwin Lehan v. D.C. Fire and EMS

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of denying Employee's Petition for Review.

F. Public Comments – There were no members of the public present.

G. Adjournment – Bill Persina moved that the meeting be adjourned; Patricia Hobson Wilson seconded the motion. All members voted affirmatively to adjourn the meeting. Bill Persina adjourned the meeting at 1:20 p.m.

Respectfully Submitted,

India Gray
OEA Paralegal