

Minutes

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

Tuesday, June 10, 2014

Location: Suite 380E

1100 4th Street, SW

Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Gray (OEA Paralegal), Emmanuel Catalan (OEA Intern), 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 11:10 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Sheree Price motioned to adopt the Agenda. Vera Abbott seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The April 15, 2014 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. Old Business**
 - A. Overview of OEA's Annual Budget Hearing** – Sheila Barfield presented the highlights from the annual budget hearing that was held in April. The Mayor proposed a 6.1% increase to OEA's budget. The increase represents a cost of living increase for staff to cover 14 full-time positions. In addition, the Department of General Services is currently identifying a location for OEA's upcoming relocation.
- 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. Paula LaGrand v. Metropolitan Police Department, OEA Matter No. J-0194-12** – Employee worked as a Police Lieutenant for Agency. She received a notice of proposed adverse action stemming from charges of inefficiency and conduct unbecoming an officer. Subsequently, Employee informed Agency that she was resigning from her position. However, before the

effective date of the resignation, Employee submitted a request to rescind the resignation. Her request was ultimately denied by the Chief of Police. The AJ ruled that Employee's claim that she had a right to rescind her resignation was not supported by statute or regulation, and her appeal was dismissed. Employee filed a Petition for Review with the OEA Board on March 22, 2013. She claims that the Comprehensive Merit Personnel Act does not offer any guidance on rescinding a resignation. In addition, she provides that neither Agency nor the AJ cite any law that gave the Chief of Police the right to deny her request to rescind her resignation. It is her position that Agency's denial of her request to rescind her resignation amounted to a forced resignation. Therefore, she requests that the OEA Board grant her Petition for Review.

2. **The Estate of Bryan Edwards v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0017-06-AF10** – The merits of this matter have been previously decided by the OEA Board. The issue on appeal is the amount of the attorney's fees awarded to Employee's counsel. Agency filed a Petition for Review with the OEA Board on January 22, 2013. It argues that the hours billed for legal services performed in furtherance of litigation before the D.C. Superior Court should be subtracted. Thus, it requests that the Addendum Decision on Attorney's Fees be reversed and remanded for subtracting all hours billed for services before D.C. Superior Court. Employee's counsel filed an Answer to the Petition for Review. With regard to the hours billed for legal services performed in furtherance of litigation before the D.C. Superior Court, Employee explains that Agency failed to provide a line-by-line enumeration of its basis for objecting to the 29.1 hours. Further, Employee's counsel notes that none of the hours that Agency objected to actually involved litigation in D.C. Superior Court. Lastly, counsel argues that Agency failed to cite which statute, regulation, or policy was violated by the AJ. Therefore, he requests that the AJ's decision be affirmed.
3. **James Johnson, Sr. v. D.C. Homeland Security and Emergency Management Agency, OEA Matter No. 2401-0011-11** – Employee was an Emergency Video Interoperability for Public Safety ("VIPS") Technician who was separated from Agency pursuant to a reduction-in-force ("RIF"). Employee challenged the RIF by asserting that Agency violated a collective bargaining agreement when it reassigned him to another position within another agency without notifying him. Agency explained that the VIPS program was a District initiative that caused certain functions of various District Agencies to be consolidated with it. In particular, the Department of Real Estate Services ("DRES") provided four full time positions to support the program. DRES funded the positions for Fiscal Year ("FY") 2010, but it was not able to support the program for FY2011. As a result, Agency conducted the RIF due to lack of funds budgeted for the program for FY2011. The AJ found that in accordance with D.C. Official Code § 1-624.08, the

requirement of one round of lateral competition was inapplicable because Employee's entire competitive level was abolished. Additionally, the AJ found that Agency provided Employee the required thirty-day notice. Accordingly, the RIF action was upheld. On March 18, 2013, Employee filed a Petition for Review arguing that the record lacked substantial evidence for the AJ to conclude that he was properly placed in the abolished competitive level. He contends that he performed the same functions as other Emergency Management Specialists. Therefore, Employee requests reversal of the Initial Decision; reinstatement with back-pay; a modification of his title and series; and attorney's fees. In response, Agency provides that Employee's Notification of Personnel Action Form indicates that his position of record was Emergency VIPS Technician, not an Emergency Management Specialist. Therefore, it requests that the Petition for Review be denied.

4. Barbara Brewer v. D.C. Public Schools, OEA Matter No. 1601-0412-10 –

Employee worked as a Teacher at Agency. Agency issued a notice to Employee informing her that she would be terminated because she failed to secure a position within sixty days of being excessed; she was not a permanent status employee; and she did not receive a final rating of at least "Effective" under IMPACT, Agency's performance assessment system. Employee argued that her evaluation under IMPACT did not comply with the District of Columbia Municipal Regulations and that the IMPACT evaluation was grossly unfair. Agency explained that Employee's allegations regarding the IMPACT process were irrelevant because her termination was not based on her IMPACT rating. It argued that Employee was removed because she was excessed and failed to secure a position within sixty days of being excessed. Additionally, it claimed that Employee was not a permanent status employee. The AJ found that Employee was in the Educational Service and was still serving a probationary period which precluded her from appealing a removal action to OEA. Accordingly, Employee's appeal was dismissed. On February 27, 2013, Employee filed a Petition for Review with the OEA Board. She argues that the AJ misinterpreted the regulations when he held that OEA lacked jurisdiction. Employee provides that any employee can appeal a final Agency decision to OEA which resulted in removal. Therefore, she requests that the Board reverse the Initial Decision and hold that OEA has jurisdiction over her appeal. In response to the Petition for Review, Agency reiterates that Employee was properly excessed and that she had no statutory right to appeal to OEA because she was in a probationary status.

C. Deliberations - After the summaries were provided, Gilbert Douglass moved that the meeting be closed for deliberations. Sheree Price 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. Paula LaGrand v. Metropolitan Police Department

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.

2. The Estate of Bryan Edwards v. Department of Youth Rehabilitation 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 Agency's Petition for Review. Accordingly, Agency was ordered to file with the Board within thirty (30) days from the date upon which this decision is final documents evidencing compliance with the terms of the Order awarding Employee's counsel attorney's fees in the amount of \$38,914.00.

3. James Johnson, Sr. v. D.C. Homeland Security and Emergency Management 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.

4. Barbara Brewer 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.

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

VII. Adjournment – Vera Abbott moved that the meeting be adjourned; Gilbert Douglass seconded the motion. All members voted affirmatively to adjourn the meeting. Bill Persina adjourned the meeting at 12:45 p.m.

Respectfully Submitted,

India Gray
OEA Paralegal