

## **Minutes**

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

Tuesday, October 29, 2013

Location: OEA Hearing Room

1100 4<sup>th</sup> Street, SW

Suite 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), Alvin Gilbert Douglass, Jr. (OEA Board Member), and Vera Abbott (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** – The Agenda was adopted by the Board.
- IV. Old Business**
  - A. Vera Abbott’s Appointment** – The Committee on Government Operations held a meeting on October 22, 2013, where they considered Ms. Abbott’s reappointment to the Board. Lasheka Brown was informed by a staff member from Councilmember McDuffie’s office that the Committee voted unanimously in favor of Ms. Abbott’s appointment. A first reading of the resolution will be on November 5, 2013.
  - B. Filling Vacant Board Position** – Lasheka Brown reported that she has been in contact with Darryl Gorman, Executive Director of Boards and Commissions, regarding the vacancy that resulted from Necola Shaw’s resignation. Mr. Gorman recommended a potential nominee. Lasheka Brown met with the potential nominee on September 24, 2013, to provide her with information about the Office of Employee Appeals and to answer any questions. Lasheka Brown did not hear back from Mr. Gorman regarding the status of the appointment, but she contacted him and a staff member of Councilmember McDuffie’s office regarding the issue.
- V. New Business**
  - A. Report of Fiscal Year 2013 (“FY13”)** – Lasheka Brown reported that the OEA Administrative Judges issued 337 Initial Decisions during FY13. It took Administrative Judges an average of 12 months to issue those decisions. The OEA Board issued 26 Opinions and Orders on Petition for Review during FY13 which took an average of 9 months to issue. There were 98 Mediations

conducted; 50 of the mediation cases settled. Thus, 52% of the matters that went through mediation were settled. There were 16 decisions issued by Superior Court and 4 decisions issued by the Court of Appeals. OEA was upheld in all of those decisions. Agency's decision was reversed in 5.2% of the total OEA Initial Decisions and Opinions and Orders on Petition for Review.

Gilbert Douglass had a question regarding the Fiscal Year 2013 reports. He wanted clarification on the percentage of Agency's decisions that were reversed. Lasheka Brown informed him that of all the appeals filed with OEA, the Administrative Judges and the Board reversed 5.2% of the Agency actions appealed to OEA.

**B. Public Comments** – No members of the public were present.

**C. Summary of Cases** – Bill Persina read the following summaries of each case to be decided by the Board:

- 1. Emma Johnson v. D.C. Public Schools** - Employee was separated from her position as a Science Teacher pursuant to a reduction-in-force. She filed a Petition for Appeal with OEA on November 30, 2009. The Administrative Judge ruled to uphold Agency's action against Employee. Employee filed a Petition for Review with the OEA Board on July 16, 2012. She argued that the Initial Decision was based on an erroneous interpretation of statute, regulation, and case law; did not address her issues; and denied her procedural due process rights.
- 2. Belinda Bryant v. D.C. Public Schools** - Employee was separated from her position as a Teacher pursuant to a reduction-in-force. She filed a Petition for Appeal with OEA on December 2, 2009. The Administrative Judge upheld Agency's action but ordered it to reimburse Employee twelve days pay and benefits because it failed to prove that Employee timely received the RIF notice. Agency filed a Petition for Review with the OEA Board on July 17, 2012. It argued that proper notice was given because Employee received the notice via hand delivery on October 2, 2009 and a courtesy copy via FedEx® on October 6, 2009.
- 3. Robert Willis v. D.C. Public Schools** - Employee was separated from his position as a Science 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 July 19, 2012. He argued that the Initial Decision was based on an erroneous interpretation of statute, regulation, and case law; did not address his issues; and denied him procedural due process rights.

**4. Cynthia Miller-Carrette v. D.C. Public Schools** - Employee was terminated from her position as a Teacher due to her performance ratings of “Minimally Effective” under Agency’s IMPACT performance assessment system. She filed a Petition for Appeal with OEA on August 15, 2011. The Administrative Judge ruled that Agency failed to defend its action and reversed its decision to terminate Employee. Agency filed a Petition for Review with the OEA Board on October 4, 2013. It argued that extenuating circumstances caused a delay in defending its action.

**5. Karen Falls v. D.C. Department of General Services** - Employee was removed from her position as a Lead Protective Services Officer for neglect of duty, insubordination, incompetence, and malfeasance. She filed a Petition for Appeal with OEA on December 27, 2011. Agency motioned for the appeal to be dismissed, arguing that OEA lacked jurisdiction over Employee’s claims of workplace discrimination and retaliation. The Administrative Judge denied the motion. Agency filed a Motion for Certification of Interlocutory Appeal and Request for Stay with the OEA Board. Agency requested that the OEA Board consider whether the Administrative Judge’s denial of its motion was erroneous because it was contrary to D.C. case law and statute.

**D. Deliberations** - After the summaries were provided, Vera Abbott moved that the meeting be closed for deliberations. Gilbert Douglass 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.

**E. Open Portion of Meeting Resumed**

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

**1. Emma Johnson v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
Gilbert Douglass		X		

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

**2. Belinda Bryant v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
Gilbert Douglass		X		

All Board Members voted in favor of denying Agency’s Petition for Review; additionally, Agency was ordered to reimburse Employee for four days of back pay.

**3. Robert Willis v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
Gilbert Douglass	X			

All Board Members voted in favor of granting Employee’s Petition for Review and remanding the matter to the Administrative Judge for further proceedings.

**4. Cynthia Miller-Carrette v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X			
Sheree Price	X			
Vera Abbott	X			
Gilbert Douglass	X			

All Board Members voted in favor of granting Agency’s Petition for Review and remanding the matter to the Administrative Judge for further proceedings.

**5. Karen Falls v. D.C. Department of General Services**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
Gilbert Douglass		X		

All Board Members voted in favor of denying Agency’s Motion for Interlocutory Appeal and remanding the matter to the Administrative Judge for further proceedings

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

**VI. Adjournment** – Sheree Price 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 12:50p.m.

**Respectfully Submitted,**

**India Gray  
OEA Paralegal**