

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
MORRIS BEY	)	OEA Matter No. 1601-0118-02A05
Employee	)	
	)	
v	)	Date of Issuance: June 14, 2005
	)	
DEPARTMENT OF PARKS	)	Muriel Aikens-Arnold
AND RECREATION	)	Administrative Judge
	)	

Craig Ellis, Esq., Employee Representative  
Kevin J. Turner, Assistant Attorney General

**INITIAL DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL HISTORY**

On September 19, 2002, Employee, a Carpenter, filed a Petition for Appeal from Agency's action to remove him effective September 18, 2002 for an employment-related act that interferes with the efficiency or integrity of government operations.<sup>1</sup> This matter was assigned to this Judge on November 4, 2003 after the parties failed to reach agreement to resolve this matter through mediation.

A Hearing was held on August 31, 2004 and the record was closed effective January 28, 2005. On March 14, 2005, this Judge issued an Initial Decision (ID) in which it was concluded that Agency had failed to prove its

---

<sup>1</sup> On 10/22/02, Employee requested mediation in this matter, which was assigned to Administrative Judge Susan Hoppe King.

charges against Employee. The removal action was reversed and Agency was ordered to reinstate Employee to his position of record with all appropriate back pay and benefits.

On April 14, 2005, Employee filed a Motion for Attorney Fees with this Office. On April 18, 2005, Agency timely filed a Petition for Review of the ID with this Office's Board, where it is currently pending. As will be discussed below, Employee's Motion for Attorney Fees is premature. The record is closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.08 (2001).

### ISSUE

Whether Employee's Motion for Attorney Fees should be dismissed as being premature.

### ANALYSIS AND CONCLUSIONS

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 by the agency is warranted in the interest of justice." *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320.

"[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. 1601-0138-88A92 (May 14, 1993), \_\_ D.C. Reg. \_\_ ( ).

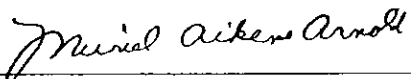
Here, the relief sought was the reversal of Employee's removal, restoration to duty, and reimbursement for loss of wages and benefits as a result of the removal. However, Agency filed a Petition for Review and, at

this point the question of whether Employee has obtained the relief which he sought has not been finally determined, and he is therefore not yet a prevailing party. Consequently, the Motion for Attorney Fees is premature and must now be dismissed. However, the dismissal will be without prejudice since Employee may yet become a prevailing party. If this occurs, he may then resubmit said motion.

ORDER

It is hereby ORDERED that Employee's Motion for Attorney Fees is DISMISSED without prejudice.

FOR THE OFFICE:

  
\_\_\_\_\_  
MURIEL AIKENS-ARNOLD, ESQ.  
Administrative Judge