

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matters of:	)	
Herbert L. Douglas,	)	
Shantell Hatton,	)	
Lowanda Hinton-Saunders,	)	OEA Matter Numbers:
Lorenzo Jennings,	)	1601-0032-08A10, 1601-0033-08 A10,
Dionne Makins,	)	1601-0034-08 A10, 1601-0035-08 A10,
Lachone Stewart, and	)	1601-0037-08 A10, 1601-0038-08 A10,
Cynthia Washington,	)	1601-0039-08 A10
Employees,	)	
	)	Joseph E. Lim, Esq.
v.	)	Senior Administrative Judge
	)	
Department of Corrections	)	Date of Issuance: March 2, 2011
Agency	)	
_____	)	

Attorneys Rorey Smith, Kevin J. Turner, Ross Buchholz, Agency Representatives  
Attorneys J. Michael Hannon, and J. Scott Hagood, Employee Representatives

**ADDENDUM DECISION ON ATTORNEY FEES**

**INTRODUCTION AND PROCEDURAL HISTORY**

On January 14, 2008, Employees appealed from Agency's (Department of Corrections or DOC) final decision, effective December 17, 2007, removing them from their positions as Correctional Officers at the D.C. Jail for "negligence," or "malfeasance." Employees were accused of negligently allowing two prison inmates to escape. Employees deny doing anything improper, asserting that they followed standard operating procedures.

After a hearing on December 8, 10, and 12, 2008, I issued an Initial Decision (ID) on June 22, 2009. I upheld Agency's removal of two employees, but reversed Agency's removal of Employees Herbert Douglas, Shantell Hatton, Lowanda Hinton-Saunders, Lorenzo Jennings, Dionne Makins, Lachonne Stewart, and Cynthia Washington.

Shortly thereafter, Agency filed a petition for review of the ID with the OEA Board. On October 25, 2010, the Board issued an Opinion and Order on Petition for Review ("O&O") in which it upheld the ID. On November 29, 2010, Agency appealed the decision to the Superior Court of the District of Columbia where it was docketed as 2010-CA-009140. That petition is currently pending before the Court. On November 8, 2010, Employee submitted a motion for attorney fees in the amount of \$349,261.00. On December 6, 2010, Agency submitted its

opposition to the fee petition. As will be discussed below, that motion is premature. The record is closed.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Code Ann. §§ 1-606.3 & 1-606.8 (1999 repl.).

### ISSUE

Whether Employee's motion for attorney fees should be dismissed as being premature.

### ANALYSIS AND CONCLUSIONS

D.C. Code Ann. § 1-606.8 (1999 repl.) 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." *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320. In their motion for attorney fees, Employees states that since the OEA Board has upheld the ID, a final decision has been rendered. However, Employees failed to mention the fact that Agency has appealed the decision to the Superior Court of the District of Columbia where it is currently pending.

Here, the relief which Employees sought was their reversal of their removal and restoration to duty. In the ID, I reversed their removal and ordered Agency to restore them to their position of record. That decision was upheld by the Board. Nevertheless, Agency submitted a timely petition for review with the Court. That petition is currently pending. Thus, at this point the question of whether Employee is a prevailing party has not been finally determined. 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, they may then resubmit their motion for attorney fees.

### ORDER

It is hereby ORDERED that Employee's motion for attorney fees is DISMISSED without prejudice.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.  
Senior Administrative Judge