

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
PAULA EDMISTON) OEA Matter No. 1601-0057-07A18
Employee)
) Date of Issuance: January 19, 2018
v.)
) Senior Administrative Judge
METROPOLITAN POLICE DEPARTMENT) Joseph E. Lim, Esq.
Agency)

Ted Williams, Esq., Employee Representative
Frank McDougald, Esq., Agency Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND PROCEDURAL HISTORY

On March 7, 2007, Employee, a former Captain in the Police force, filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) from Agency’s final decision removing her from her position. After an attempted October 25, 2007, mediation,¹ I issued an Initial Decision (“ID”) on April 30, 2008.² The ID reduced the penalty from a termination back to the Agency’s original proposed penalty of demotion. On appeal, the OEA Board upheld the ID on January 25, 2010.³

Upon appeal, the Superior Court of the District of Columbia reversed the ID’s final order and remanded the case to the undersigned to reconsider Employee’s motion for summary judgment, consistent with its opinion.⁴

On August 8, 2014, I issued an Initial Decision on Remand (“IDR”) ruling on Employee’s Motion for Summary Judgment and upholding Agency’s penalty of termination. This IDR was appealed, and on June 8, 2016, the Superior Court of the District of Columbia reversed the IDR and remanded the matter back to the undersigned for reconsideration of Employee’s motion for summary judgment, consistent with its opinion.⁵

1 Notice of Mediation/Settlement Conference (October 4, 2007).

2 *Edminston v. DC Metropolitan Police Dept.*, OEA Matter No. 1601-0057-07 (April 30, 2008).

3 *Edminston v. DC Metropolitan Police Dept.*, OEA Matter No. 1601-0057-07, *Opinion & Order on Petition for Review* (January 25, 2010).

4 *DC Metropolitan Police Dept. v. DC OEA & Edminston*, Case Number 2008 CA 004804 (D.C. Super. Ct., Oct. 9, 2013).

5 *DC Metropolitan Police Dept. v. DC OEA & Edminston*, Case Number 2014 CA 007504 (D.C. Super.

I granted the parties' request for a stay of the proceedings pending the D.C. Superior Court's ruling on a similar issue on an unrelated case. Subsequently, after several conferences held with the parties, I ordered the parties to submit their legal briefs by November 15, 2016. On December 12, 2016, I issued a Second Initial Decision on Remand which reversed Agency's termination of Employee, ordered Agency to reinstate and immediately demote Employee to the rank of lieutenant; and reimburse her all back-pay and benefits lost as a result of her termination.⁶

On January 17, 2017, Agency appealed the Second Initial Decision on Remand to the OEA Board. On November 7, 2017, the OEA Board denied Agency's appeal.⁷ On December 5, 2017, Agency appealed the OEA Board's denial with the Superior Court for the District of Columbia.⁸

On December 6, 2017, Employee filed a Consent Motion to Extend the Time for Filing an Attorney Fee Petition. On December 19, 2017, Employee filed a motion to dismiss with the Superior Court. On January 16, 2018, Employee and Intervenor Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP" or "Union") filed a Motion to Stay the Filing of a Fee Petition. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

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 634.1, 59 D.C. Reg. 2129 (2012).

In his motions related to attorney fees, Employee indicates her intention to seek attorney fees in this matter. Here, Agency has appealed the OEA Board's denial of its Petition to Appeal the Second Initial Decision on Remand with the Superior Court for the District of Columbia.

Ct., Jun. 8, 2016).

⁶ *Edminston v. DC Metropolitan Police Dept.*, OEA Matter No. 1601-0057-07R16 (December 12, 2016).

⁷ *Edminston v. DC Metropolitan Police Dept.*, OEA Matter No. 1601-0057-07R16, *Opinion & Order on Petition for Review* (November 7, 2017).

⁸ *See* Intervenor and Employee's Motion to Stay the Filing of a Fee Petition (January 16, 2018).

On June 1, 2010, Employee filed a petition for review of the addendum decision on compliance with the Superior Court of the District of Columbia as Case no. 2010 CA 004025. 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, he may then resubmit his motion for attorney fees.

ORDER

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

JOSEPH E. LIM, ESQ.
Senior Administrative Judge