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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of:)	
)	
WEBSTER A. ROGERS,)	OEA Matter No. 2401-0255-10AF16
Employee)	
)	
v.)	Date of Issuance: November 7, 2017
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	
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OPINION AND ORDER
ON REMAND

This matter has been previously before the Office of Employee (“OEA”) Board. By way of background, Webster Rogers (“Employee”) worked as a Music Teacher with D.C. Public Schools (“Agency”). On October 2, 2009, Agency notified Employee that he was being separated from his position pursuant to a Reduction-in-Force (“RIF”).

After a protracted litigation process with several levels of appeals, the OEA Administrative Judge (“AJ”) issued an Initial Decision on Remand on February 27, 2015. The AJ found that one round of lateral competition was not provided to Employee. She reasoned that Agency failed to conduct the RIF under the Abolishment Act and failed to prove that Employee was rated as an “Inadequate Performer.” She also held that Agency did not prove that Employee was considered for priority reemployment. Furthermore, she opined that Agency failed to consider Employee for the Displaced Employee Program. Therefore, the AJ ordered that

Agency's action be reversed and that it reinstate Employee to his position with back pay and benefits.¹

Agency filed a Petition for Review with the OEA Board on April 3, 2015. The Board issued its Opinion and Order on Petition for Review on July 21, 2015. It held that in accordance with District Personnel Manual ("DPM") § 2427.1, Agency was required to establish and maintain priority re-employment lists. The Board found that Agency offered nothing more than its RIF notice to prove its compliance. Additionally, it held that Employee was not afforded one round of lateral competition. Further, the Board reasoned that because Agency failed to raise the Inadequate Performer argument on Petition for Appeal or in the Superior Court for the District of Columbia ("Superior Court"), Agency's Inadequate Performer argument exceeded the scope of the remand. Moreover, the Board found that Agency failed to show that it complied with Chapter 24 of the DPM regulations when processing Employee's RIF action. Accordingly, it upheld the AJ's decision to reverse Agency's action and denied Agency's Petition for Review.²

On August 31, 2015, Employee filed a Supplemental Memorandum in Support of an Award of Attorney's Fees and Costs. He requested that OEA adjudicate the motion for attorney's fees and costs for time incurred in Superior Court. Accordingly, Employee requested that OEA and Superior Court award attorney's fees and costs for litigation.³

The AJ issued an Addendum Decision on Attorney's Fees on November 3, 2015. She found that a determination was not made that Employee was the prevailing party in this matter. As a result, she dismissed the motion for attorney's fees without prejudice because it was

¹ *Initial Decision on Remand*, p. 5-10 (February 27, 2015).

² *Opinion and Order on Petition for Review*, p. 7-13 (July 21, 2015).

³ *Employee's Supplemental Memorandum in Support of an Award of Attorney's Fees and Costs*, p. 1-2 (August 31, 2015).

prematurely filed.⁴

On August 1, 2016, the Superior Court issued an order denying Employee's Motion for an Award of Attorney's Fees and Costs. The Court found that it lacked jurisdiction to award attorney's fees. Therefore, it remanded the matter to the OEA Administrative Judge to consider whether an increased fee award was proper in light of the fact that Employee prevailed in Superior Court; and whether any award of fees or costs to Employee at the administrative level was undercut by the time and effort spent litigating this matter in Superior Court.⁵

The AJ held a status conference and requested that both parties file briefs addressing the issues on remand. Employee explained that he was wrongly terminated and spent years seeking reinstatement. As a result, he incurred \$41,858.30 in attorney's fees and \$319.18 in costs in Superior Court. Employee argued that in *Andrew Jenkins v. D.C. Public Schools*, OEA Matter No. J-0050-91AF492, *Opinion and Order on Petition for Review* (March 18, 1994), the OEA Board held that it lacked jurisdiction under D.C. Official Code § 1-606.08 to award fees incurred in Superior Court to an appellant who prevailed. However, Employee explained that after *Jenkins* was decided, it was overruled by the D.C. Court of Appeals in *Metropolitan Police Department v. Stanley*, 951 A. 2d 65 (D.C. 2008). Employee stated that in *Stanley*, a case that originated in OEA, the D.C. Court of Appeals declared that the responsibility to award fees should be placed on the trial court where the case arose, so the value of the service could be estimated in its entirety. Moreover, Employee provided that D.C. Official Code § 1-606.08 states that "the Hearing Examiner or the Arbitrator 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." He explained that the plain language in the statute gave OEA jurisdiction to

⁴Addendum Decision on Attorney Fees, p. 2-3 (November 3, 2015).

⁵*District of Columbia Public Schools v. District of Columbia Office of Employee Appeals*, 2015 CA 6565 P(MPA) (D.C. Super. Ct. August 1, 2016).

award all fees incurred in the matter, including fees incurred in Superior Court. Accordingly, Employee reasoned that the AJ should grant his Motion for Attorney's Fees in full.⁶

In its brief, Agency argued that Employee was not entitled to attorney's fees incurred in Superior Court. Agency explained that in *Jenkins*, OEA held that it did not have jurisdiction to grant attorney's fees for work done before any court or tribunal other than OEA. It contended that Employee's claim that *Stanley* overturned *Jenkins* is incorrect. Agency provided that the holding in *Stanley* stated that a reviewing court should not determine the attorney fees for hours generated at the trial court. Further, it stated that the D.C. Court of Appeals determined that it is not in the position to issue judgements on attorney fees for work not incurred at the D.C. Court of Appeals. Moreover, Agency provided that in *Channavajjal M. Prasad v. Commission on Mental Health Services*, OEA Matter No. 1601-0158-00A08 (March 13, 2009), the AJ cited to *Jenkins* and reaffirmed OEA's position that it does not have jurisdiction to grant attorney fees for work done before any court other than OEA. Accordingly, Agency requested that the attorney's fees requested by Employee for work incurred before Superior Court be denied.⁷

On December 6, 2016, Employee filed a supplemental authority notice. He explained that in a 2015 decision, the Superior Court held in *Bryant v. Office of Employee Appeals*, Case No. 2009 CA 6181 P (D.C. Super. Ct. June 16, 2015), that "petitioners who prevail in the Office of Employee Appeals . . . are entitled to attorney's fees for work done on appeal to the Superior Court and the Court of Appeals; and the amount of these fees is a factual matter for the OEA to decide." According to Employee, in *Bryant*, the Court concluded that a prevailing employee may be entitled to attorney's fees for work performed on appeal as part of employee's entitlement under D.C. Official Code § 1-606.08. It was his position that the Court held that

⁶ *Employee's Brief on Attorney's Fees Incurred in Superior Court*, p. 1-14 (November 1, 2016).

⁷ *District of Columbia Public Schools' Objections to Employee's Petition for Attorney Fees and Costs Incurred in Superior Court*, p. 2-4 (December 5, 2016).

OEA was the proper forum to determine the award of attorney's fees.⁸

Agency filed a supplemental authority notice on December 9, 2016. It explained that in *Scott Sefton v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0109-13F15R16 (October 12, 2016), the AJ issued an order that denied Employee's Petition for Attorney's Fees for hours incurred before Superior Court. Even though the Court remanded the matter to OEA to immediately enter an award for attorney's fees and costs in favor of the Employee against Agency. Additionally, Agency argued that based on the reasoning in *Jenkins*, the AJ correctly concluded that OEA did not have jurisdiction to award attorney fees for work incurred before Superior Court. Accordingly, it asserted that Employee was only entitled to attorney fees incurred before OEA and posited that Employee go back to the Superior Court to be awarded attorney's fees and costs for work incurred before that court.⁹

Employee filed a Second Supplemental Motion for Attorney's Fees and Costs on December 23, 2016. He explained that since the OEA Board's Opinion and Order on Petition for Review was issued, his counsel spent an additional 56.9 hours working on this case and has incurred an additional \$45.00 in attorney's fees in Superior Court since filing his Supplemental Memorandum in Support of his Motion for Attorney's Fees. Accordingly, Employee requested that he be awarded \$ 107,078.90 in attorney's fees and \$236.31 in costs incurred in the OEA, and \$41,903.30 in attorney's fees and \$319.18 in costs incurred in the Superior Court for the District of Columbia.¹⁰

A new AJ was assigned to the case. He issued a Second Addendum Decision on Attorney's Fees and Costs on January 13, 2017. The AJ held that Employee was the prevailing

⁸ *Employee's Notice of Supplemental Authority*, p. 1-2 (December 6, 2016).

⁹ *District of Columbia Public Schools' Notice of Supplemental Authority*, p. 1-2 (December 9, 2016).

¹⁰ *Employee's Second Supplemental Memorandum in Support of Motion for Attorney's Fees and Costs*, p. 1-5 (December 23, 2016).

party, and in the interest of justice, attorney's fees were warranted. As it related to the *Jenkins* and *Stanley* matters, the AJ determined that the D.C. Court of Appeals made clear in *Stanley* that in order to recover attorney's fees for work completed on appeal, the prevailing party should submit the request to the trial court in which the proceeding arose. Furthermore, he held that appealing his matter to Superior Court is what led to Employee prevailing in the current case. Thus, the AJ explained that “. . . Agency cannot escape financial liability for attorney fees and costs when review before Superior Court presents itself in the normal course of litigation that originates before the OEA.” Therefore, he held that the ruling in *Stanley* is mandatory authority that must be followed. Accordingly, the AJ awarded attorney's fees for work performed at OEA and Superior Court.¹¹

As it related specifically to the fees, the AJ noted that Agency did not contest the hourly rates cited by Employee's counsel. He found that the rates were reasonable and allowable pursuant to the *Laffey* Matrix and the holdings in *Copeland v. Marshall*, 641 F.2d 880 (D.C. Cir. 1980) and *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985). As for Agency's argument that Employee's counsel's fees should be reduced based on the attorney's experience and work performed before Superior Court, the AJ reasoned that although Agency's improper action was corrected, it was necessary for Employee's counsel to withstand multiple levels of review before the AJ, OEA Board, and Superior Court. The AJ provided that this was a daunting task which required Employee's counsel to expend many hours researching, strategizing, and preparing. He determined that Agency's arguments for a reduction of hours did not account for the time and effort necessary to correct the RIF action. Therefore, the AJ awarded Employee attorney's fees and costs for a total of \$149,537.69, which included fees incurred at the OEA and

¹¹ *Second Addendum Decision on Attorney's Fees*, p. 3-6 (January 13, 2017).

Superior Court.¹²

On February 17, 2017, Agency filed a Petition for Review. It argues that in accordance with *Jenkins*, OEA has consistently held since 1994 that it does not have jurisdiction to award attorney's fees for work performed in the Superior Court. Agency claims that the holding in *Stanley* provided that a reviewing court should not determine the attorney's fees for work incurred at the trial court level and that the D.C. Court of Appeals found that it was not in the position to issue an attorney's fee award for work performed outside of its court. According to Agency, the AJ in *Stanley* only awarded attorney's fees for work incurred at OEA and not Superior Court or the D.C. Court of Appeals. Furthermore, Agency contends that OEA did not award attorney's fees for work performed in the D.C. Court of Appeals in the matter of *Doney Olivieri v. District of Columbia Public Schools*, OEA Matter No. J-0137-03A09 (March 29, 2011). Agency, again, asserts that in *Sefton*, the AJ awarded attorney's fees for work performed at OEA but excluded the work incurred in Superior Court. It claimed that the AJ in the current case failed to consider the rulings in *Olivieri* and *Sefton*, and as a result, he misapplied the law in this matter. Finally, Agency explains that the AJ improperly made a sweeping finding on the issue of excessive fees instead of reviewing all of the entries to determine their reasonableness. Therefore, Agency requests that the Board deny Employee's request for fees incurred before Superior Court. Moreover, it sought to have the matter remanded for a review of its claims that portions of the fees requested are excessive.¹³

Employee filed his answer to Agency's Petition for Review on March 24, 2017. He asserts that pursuant to D.C. Official Code § 1-606.08, "if the appellant prevails and it is in the interest of justice, he or she is entitled to all reasonable fees." Employee explains that Agency

¹² The total is comprised of \$107,078.90 in attorney's fees and \$236.31 in costs incurred before the OEA and \$41,903.30 in attorney's fees and \$319.18 in costs incurred before the Superior Court. *Id.*, 4-8.

¹³ *District of Columbia Public Schools' Petition for Review*, p. 4-12 (February 17, 2017).

relies heavily on *Jenkins* even though the D.C. Court of Appeals overruled the *Jenkins* holding in *Stanley*. Employee contends that historically, Superior Court used to award attorney's fees for work performed there. However, he provides that the plain language of D.C. Official Code § 1-606.08; the holding in *Stanley*; and the ruling in *Bryant* make it clear that OEA is the proper forum to award attorney's fees for work performed at OEA and the courts. Additionally, Employee argues that Agency failed to articulate which time entries it deemed excessive and that the AJ clearly reviewed all of the requested fees and determined that they were reasonable. Accordingly, Employee requests that the Board affirm the Second Addendum Decision.¹⁴

Historical Rulings on Attorney's Fees

The D.C. Court of Appeals in *Stanley* provided a historical context of how requests for attorney's fees were handled for OEA matters that were appealed to court. The Court provided that it "has either remanded the attorney's fee petition for the trial court to consider, or has weighed the merits of the petition itself when the panel determined it was 'best situated to appraise the worth of counsel's services in providing assistance in the salient decision making.'" However, after considering the rulings on similar matters in the United States Supreme Court and federal circuit courts of appeal, the D.C. Court of Appeals determined that the following was its preferred process. The Court reasoned that:

. . . [b]ecause fee petitions raise factual questions, such as what work counsel performed, whether that work was necessary and appropriate, and how it ought to be compensated, they should presumptively be addressed first at the trial court level. Thus, we now hold that in cases where a party seeks to recover statutorily authorized attorney's fees for work completed on an appeal to this court, the request normally should be submitted to the trial court in which the proceeding arose.

As evidenced in two decisions, the Superior Court has issued decisions awarding

¹⁴Employee's Answer to the Districts Petition for Review, p. 6-17 (March 24, 2017).

attorney's fees for work performed there after the *Stanley* ruling.¹⁵ Likewise, there have been two OEA decisions on attorney's fees that have awarded fees only for work performed at OEA and not those fees amassed on appeal.¹⁶ However, these decisions do not negate *Stanley* and other recent Superior Court decisions that have remanded attorney's fee matters to OEA for consideration.¹⁷

Proper Forum to Award Attorney's Fees

As was held in *Department of Mental Health v. District of Columbia Office of Employee Appeals, et al.*, Case No. 2015 CA 007829 P(MPA)(D.C. Super. Ct. July 13, 2017), the Superior Court has no statutory authority to award attorney's fees. According to the Court, D.C. Official Code § 1-606.08 provides that, "[t]he Hearing Examiner or the Arbitrator may require the payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice." It reasoned that "a plain reading of the statute does not authorize an award of attorney's fees to a[] . . . respondent." The Court further held that the statute authorizes a Hearing Examiner to award attorney's fees; however, no authority was conferred upon the Superior Court to award fees related to the review of decisions made by OEA.

This Board finds this reasoning to be consistent with the ruling in *Stanley*, which requires that requests for attorney's fee originate at OEA. As provided in *Stanley* and *Bryant*, the AJ's ruling properly provided that OEA is the appropriate forum to award attorney's fees for work performed at OEA and the courts. Therefore, Agency's argument that the AJ erred as a matter of

¹⁵ *Pamela Dishman v. D.C. Public Schools, et al.*, 15 CA 006355 P(MPA)(D.C. Super. Ct. December 27, 2016) and *Brenda Fogle v. Office of Employee Appeals, et al.*, 2006 CA 003456 P(MPA) (D.C. Super. Ct. July 21, 2009).

¹⁶ *Doney Olivieri v. District of Columbia Department of Public Works*, OEA Matter No. J-0137-03AF09 (March 29, 2011) and *Brenda Fogle v. D.C. Public Schools*, OEA Matter No. 2401-0123-04AF09 (March 22, 2011).

¹⁷ *Department of Mental Health v. D.C. Office of Employee Appeals et al.*, 2015 CA 007829 P(MPA)(D.C. Super. Ct. September 8, 2017) and *District of Columbia Fire & Emergency Medical Services Department v. District of Columbia Office of Employee Appeals and Scott Sefton*, 2014 CA 5987 P(MPA) (D.C. Super. Ct. April 21, 2016).

law because he failed to consider the rulings in *Olivieri* and *Sefton* must fail. The AJs in *Olivieri* and *Sefton* failed to apply the D.C. Court of Appeals ruling in *Stanley* and instead relied on the older and improper holding of *Jenkins*.¹⁸ Agency is essentially requesting that OEA uphold the holding in *Olivieri* and *Sefton* while ignoring the precedential holding in *Stanley*. However, to do so would result in a true err as a matter of case law. Thus, this Board must uphold the AJ's ruling that the D.C. Court of Appeals decision in *Stanley* is mandatory. As a result, the *Stanley* decision trumps any OEA or Superior Court decision that contradicts its reasoning. Accordingly, the Office of Employee Appeals will now ensure that the *Stanley* decision is followed from this point forward. Therefore, the AJ's decision to award fees for work performed before OEA and Superior Court was proper.

Prevailing Party and Interest of Justice

In accordance with D.C. Official Code §1-606.08, an Administrative Judge “. . . 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.” Similarly, OEA Rule 634.1 provides that “an employee shall be entitled to an award of reasonable attorney fees if: (a) he or she is a prevailing party; and (b) the award is warranted in the interest of justice.” It is without question, and Agency does not contest, that Employee is the prevailing party in this matter.

Thus, we must decide if there is substantial evidence to support the AJ's finding that the award of attorney's fees was in the interest of justice.¹⁹ To determine whether attorney's fees were merited, the AJ considered the Merit Systems Protection Board's rationale in *Allen v. U.S.*

¹⁸ It should be noted that the attorney's fees issues in both *Olivieri* and *Sefton* were settled on appeal.

¹⁹ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002). The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.

Postal Services., 2 M.S.P.R. 420 (M.S.P.B. July 22, 1980) and the five factors it outlined.²⁰ The AJ found that factors one, two, and four applied to this case.²¹ Based on the record, Agency did engage in a prohibited personnel practice; Agency's action was without merit; and Agency committed a gross procedural error which prolonged the proceeding or prejudiced Employee. Therefore, this Board believes that there is substantial evidence to support the AJ's ruling. Thus, the attorney's fee award was in the interest of justice.

Reasonable Attorney's Fees

Agency argues that the AJ improperly made a sweeping finding on the issue of excessive fees instead of reviewing all of the entries to determine their reasonableness. However, it does not provide any specific examples of excessive entries. Moreover, Agency does not specifically contest the hourly rate requested. The D.C. Court of Appeals, in *Frazier v. Franklin Investment Company, Inc.*, 468 A.2d 1338 (1983), held that the determination of the reasonableness of an award is within the sound discretion of the trial court. It reasoned that the trial court has a superior understanding of the litigation.²² In this current matter, OEA's AJ is the equivalent of the trial court. The AJ has a unique and thorough understanding of the case. Therefore, this Board must rely on the AJ's determinations regarding the reasonableness of the hourly rate and time expended. He is aware of how much time each action should have taken given the

²⁰ The factors in *Allen* were:

1. Did agency engage in a prohibited personnel practice;
2. Was agency's action clearly without merit or wholly unfounded, or was the employee substantially innocent of the charges brought by the agency;
3. Did agency initiate the action against the employee in bad faith, including:
 - a. Was agency's action brought to harass the employee;
 - b. Was agency's action brought to exert improper pressure on the employee to act in certain ways;
4. Did agency commit a gross procedural error which prolonged the proceeding or severely prejudiced the employee; and
5. Did agency know or should have known that it would not prevail on the merits when it brought the proceeding.

²¹ *Second Addendum Decision on Attorney's Fees*, p. 4-5 (January 13, 2017).

²² Citing *Hensley v. Eckerhart*, 461 U.S. 424, 103 S.Ct. 1933, 1941 (1983).

complexity of the issues and the counsel's level of experience. We are simply tasked with deciding if the AJ's decision regarding these matters was based on substantial evidence.

The courts in *Blum v. Stenson*, 465 U.S. 886 (1984) and *Save Our Cumberland Mountains v. Hodel*, 857 F.2d 1516 (D.C. Cir. 1988) held that the burden of proof is on Employee's counsel to provide evidence that the rates he requested were in line with attorneys in the area for similar services and comparable skill, experience, and reputation. The *Blum* court also held that "the fees charged often are based on the product of hours devoted to the representation multiplied by the lawyer's customary rate." Moreover, OEA Rule 634.3 establishes that "an employee shall submit reasonable evidence or documentation to support the number of hours expended by the attorney on the appeal." OEA has consistently held that the number of hours reasonably expended is calculated by determining the total number of hours and subtracting all non-productive, duplicative, and excessive hours.²³ The Supreme Court of the United States in *Hensley v. Eckerhart*, 461 U.S. 424 (1983), offered guidance on this issue and explained that it is important for those making attorney's fee awards to provide a concise but clear explanation of its reasons for the fee award. The Court went on to find that "the applicant should exercise 'billing judgment' with respect to hours worked and should maintain billing time records in a manner that will enable a reviewing court to identify distinct claims."²⁴

Employee's counsel provided that he has been admitted to the bar since 1987 and was the attorney on this matter since 2012. He outlined his experience practicing employment law. He

²³ *Cocome v. D.C. Lottery and Charitable Games Control Board*, OEA Matter No. 1601-0014-84AF02 (June 5, 2003); *Hoston v. D.C. Public Schools*, OEA Matter No. 1601-0022-04AF01 (December 14, 2007); *Gurley v. D.C. Public Schools*, OEA Matter No. 1601-0008-05AF08 (June, 25, 2008); *McCray v. D.C. Public Schools*, OEA Matter No. 1601-0010-03AF07 (May 21, 2007); *Junious v. D.C. Child and Family Services*, OEA Matter No. 1601-0057-01AF07 (May 7, 2007); *Richards and Ulis v. D.C. Public Schools, Department of Transportation*, OEA Matter Nos. 1601-0063-04AF06 and 1601-0092-04AF06 (December 22, 2006) (citing *Henderson v. District of Columbia*, 493 A.2d 982 (D.C. 1985)); and *Khadejah Muhammad v. D.C. Government Operations Division*, OEA Matter No. 1601-0033-07AF11, *Opinion and Order on Petition for Review* (March 4, 2014).

²⁴ *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983).

also provided the applicable *Laffey* Matrix. Additionally, Employee's counsel submitted his billing records to the AJ which offered a descriptive list of services provided.²⁵ Counsel also noted that he reduced the number of hours to handle the case by 5% to account for redundancy, unnecessary work, or for preparation of motions that were unsuccessful. Furthermore, Employee's counsel provided that his firm regularly reduces rates by 25% or more for government employees who are victims of discrimination.²⁶ After a thorough examination of the fees requested, the AJ held that the time reported by Employee's counsel actually spent on this case was reasonable. Furthermore, he held that the time entries were valid expenditures of time used to make reasonable, zealous legal arguments before OEA and Superior Court.²⁷ This Board believes that the details of the services outlined by counsel allowed the AJ to easily discern if charges were excessive or duplicative in nature.

It is the position of this Board that Agency offered nothing more than mere, general allegations that the fees were excessive. By contrast, Employee's counsel offered a detailed account of the procedural history or work performed on this case to which Agency did not object or respond. Therefore, we uphold the AJ's ruling that the fees requested are reasonable.

The AJ correctly relied on the holding in *Stanley* to award attorney's fees for work performed at OEA and in Superior Court. There is substantial evidence in the record to support the AJ's findings that the fees were reasonable and in the interest of justice. Accordingly, this Board must deny Agency's request to deny fees for work performed in Superior Court and to remand the matter for further consideration of excessive fees.

²⁵ It should be noted that counsel included his rates and experience, as well as those of other attorneys and staff members within his office.

²⁶ *Employee's Supplemental Memorandum in Support of an Award of Attorney's Fees and Costs* (August 31, 2015).

²⁷ *Second Addendum Decision on Attorney's Fees*, p. 6-7 (January 13, 2017).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

Jelani Freeman

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.