**DISTRICT OF COLUMBIA**

**OFFICE OF EMPLOYEE APPEALS**

**NOTICE OF PUBLIC MEETING**

The District of Columbia Office of Employee Appeals will hold a meeting on March 6, 2025, at 9:30 a.m. The Board will meet remotely. Below is the agenda for the meeting.

<https://dcnet.webex.com/dcnet/j.php?MTID=m0a55d894fe1e046b42299ba9d0ea44b0>

Password: Board (26274 when dialing from a phone or video system)

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Smartphone/Tablets or iPad user must first go to the App Store, download the Webex App (Cisco Webex Meetings), enter the Access Code, and enter your name, email address, and click Join. It is recommended that a laptop or desktop computer be utilized for this platform.

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Questions about the meeting may be directed to wynter.clarke@dc.gov.

**Agenda**

D.C. OFFICE OF EMPLOYEE APPEALS (“OEA”) BOARD MEETING

Thursday, March 6, 2025, at 9:30 a.m.

Location: Virtual Meeting via Webex

1. **Call to Order**
2. **Ascertainment of Quorum**
3. **Adoption of Agenda**
4. **Minutes Reviewed from Previous Meeting**

1. **New Business**
	1. **Public Comments on Petitions for Review**
	2. **Summary of Cases**
		1. **Employee v. D.C. Department of Corrections, OEA Matter No. 1601-0020-24 –** Employee worked as a Correctional Officer with the Department of Corrections (“Agency”). On December 7, 2023, Agency issued a final notice of decision suspending Employee for thirty (30) days. Employee was charged with violating District of Columbia Municipal Regulations (“DCMR”) § 1607.2(d) failure/refusal to follow instructions – negligence and §1607.2(e) neglect of duty. The charges stemmed from a March 7, 2023, incident wherein Employee failed to check the restraints of an inmate which ultimately resulted in the inmate escaping from Howard University Hospital. Employee was subsequently suspended without pay from December 11, 2023, until January 10, 2024.

On January 8, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He asserted that the suspension penalty was too severe. Additionally, Employee contended that Agency’s adverse action was without merit because it lacked evidence to support its claim. Therefore, Employee requested back pay, attorney’s fees, and that the adverse action be removed from his personnel file.

Agency filed an Answer to the Petition for Appeal on February 7, 2024. It argued that Employee failed to maintain physical custody and control of an inmate held at an unsecured medical facility. Therefore, it concluded that a thirty-day suspension was appropriate based on the Table of Illustrative Actions. Consequently, Agency requested that OEA uphold its suspension action.

Prior to issuing an Initial Decision, the OEA Administrative Judge (“AJ”) ordered both parties to submit briefs on jurisdiction. On July 16, 2024, the AJ issued an Initial Decision. He held that in accordance with D.C. Code § 1-616.52(e), Employee could not simultaneously review a matter before OEA and through a negotiated grievance procedure. The AJ provided that § 1-616.52(f) provided that once an avenue of review is first selected, the review in another venue would not be permissible. Because Employee initially appealed through Agency’s grievance procedure, the AJ ruled that OEA lacked jurisdiction over the matter. Consequently, the Petition for Appeal was dismissed.

Employee filed a Petition for Review on August 15, 2024. He asserts that the Public Employee Relations Board (“PERB”) decertified the Fraternal Order of Police/Department of Corrections Labor Committee (“FOP/DOC Union”) on May 20, 2024. Because of the decertification, Agency has declined to arbitrate a matter that falls within the arbitration agreement because the Collective Bargaining Agreement (“CBA”) is null and void. Therefore, Employee requests that the matter be remanded for adjudication on the merits and that he receive back pay.

On September 15, 2024, Agency filed a Response to Employee’s Petition for Review. It concedes that PERB revoked the FOP/DOC Union’s certification as an exclusive bargaining representative on May 20, 2024. Agency submits that it is unable to proceed with Employee’s grievance and demand for arbitration. It acknowledges that Employee’s appeal to OEA was timely. As a result, it no longer contests OEA’s jurisdiction over the matter.

Employee filed a Motion for Reconsideration on September 26, 2024. He requests that the motion supplement the Petition for Review since Agency provided in its response that it no longer contests OEA’s jurisdiction. Therefore, Employee requests that the Initial Decision be overturned, the matter be resolved based on the facts and law, and that he receive back pay.

* + 1. **Employee v.** **D.C. Office of the Attorney General, OEA Matter No. 1601-0050-16AF23 –** Employee worked as a Support Enforcement Specialist with the D.C. Office of the Attorney General (“Agency”). On February 24, 2016, Agency issued an Advance Notice of Proposed Removal to Employee for “failing to satisfactorily perform one or more of the duties of [her] position” and “any on-duty employment-related act or omission that interferes with the efficiency or integrity of operations.” The charges were based on Employee’s failure to successfully complete the standards identified in her Performance Improvement Plan (“PIP”). On April 20, 2016, Agency issued its Final Decision on Proposed Removal, sustaining the charges against Employee. Her termination was effective on April 25, 2016.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 24, 2016. On October 22, 2018, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s termination action. Thereafter, Employee and Agency sought review of the Initial Decision with the OEA Board. On July 16, 2019, the Board issued an order upholding the Initial Decision. Agency then filed an appeal with the Superior Court for the District of Columbia on August 13, 2019. On July 2, 2020, the Court denied Agency’s petition and affirmed OEA’s ruling reversing Employee’s termination. Agency subsequently appealed to the District of Columbia Court of Appeals. On May 23, 2023, the Court affirmed the Superior Court’s ruling.

On June 21, 2023, Employee, acting in a pro se capacity, filed a third Motion for Attorney’s Fees and Costs with OEA. Employee’s motion included reimbursement requests for services rendered from the following: David Branch, Esq.; William Dansie, Esq.; Alan Lescht and Associates, PC; Berry & Berry, PLLC; David Shapiro, Esq.; and witness Christoper Tate.

Agency submitted its response to the fee petition on July 31, 2023. It asserted that although Employee was the prevailing party in this matter, an award of fees was not required in the interest of justice. Specifically, Agency opined that none of the factors outlined in *Allen v. United States Postal Service,* 2 M.S.P.R. 420 (1980), applied to this matter because it did not engage in a prohibited personnel practice; its termination action was not taken without merit or wholly unfounded; Agency did not act in bad faith; and it did not commit a gross procedural error. It further posited that Employee could not be reimbursed for services that she rendered herself. Therefore, it believed that an award of fees was not warranted.

During a September 20, 2023, status conference, Employee was ordered to submit a supplemental brief to include the fee requests from the attorneys who previously represented her before OEA. Agency was also directed to submit a report regarding the status of Employee’s reinstatement to her position of record. On September 29, 2023, Alan Lescht and Associates, PC filed a fee petition requesting $54,524.50 in attorney’s fees for work associated with prosecuting Employee’s appeal. However, on October 13, 2023, Employee filed a Motion to Disregard the petition filed for attorney fees as well as a motion for additional time to file her own supplemental brief. In her filings, Employee claimed *inter alia* that the petition was filed without her consent; Alan Lescht & Associates was not rehired to represent her; the firm’s actions were fabricated; and firm attorney, Sara Safriet, Esq., deliberately failed to represent Employee truthfully in 2016 and 2017.

On October 18, 2023, the AJ issued an order scheduling a status conference to discuss the outstanding issues related to attorney’s fees and compliance with the October 22, 2018, Initial Decision. After several continuances, the AJ held a conference on February 21, 2024, to ascertain the status of Employee’s fee request. On March 8, 2024, Employee submitted a brief detailing her basis for requesting attorney’s fees. She reiterated her desire to be reimbursed in accordance with the amounts reflected in her June 21, 2023, motion. Employee also contended that an award was warranted because she was the prevailing party; she paid retainer fees and other costs to three attorneys associated with proceedings before OEA; and the retained attorneys who engaged in unprofessional conduct and failed to protect Employee’s interests in accordance with the law. Hence, Employee reasoned that she was entitled to be reimbursed for the legal costs that she incurred to secure representation.

The AJ issued a Third Addendum Decision on Attorney’s Fees on July 16, 2024. First, she highlighted OEA Rule § 639.1 and D.C. Code § 1-606.08, which collectively provide that an employee shall be entitled to an award of reasonable attorney’s fees if they are the prevailing party, and the award is warranted in the interest of justice. As it related to the prevailing party requirement, the AJ provided that OEA’s Initial Decision reversed Agency’s termination action; the ruling was upheld by Superior Court on July 2, 2020; and the Court of Appeals affirmed the reversal of Employee’s termination on July 2, 2020. Therefore, she concluded that Employee was the prevailing party in this matter.

Next, the AJ relied on the factors provided in *Allen v. United States Postal Service*,which serve as directional markers to determine whether a petitioner is entitled to attorney’s fees in the interest of justice. Specifically, she outlined that Agency violated *Allen* factor No. 4, – gross procedural error – because it failed to follow all applicable District laws, rules, and regulations in the administration of Employee’s termination action. As such, she held that an award of fees was appropriate in the interest of justice. However, the AJ went on to explain that while Employee was previously represented by Alan Lescht & Associates, PC and Danise & Danise, LLP, both attorneys withdrew their appearances in 2018. Further, the AJ noted that Employee’s motion for attorney’s fees also requested reimbursement for out-of-pocket expenses paid to David Branch, Esq., Berry & Berry, PLLC, and Dave Shapiro, Esq.

After reviewing the record, the AJ held that D.C. Code § 1-606.08 and OEA Rule 639 did not provide for an award for fees for employees representing themselves. The AJ reasoned that while Employee previously retained legal representation throughout this matter, she required the withdrawal of her representation by those attorneys. Therefore, she deemed Employee to be a pro se litigant at the time the third Motion for Attorney’s Fees was filed. Moreover, the AJ provided that Employee’s Motion sought reimbursement for fees paid to attorneys who represented her during her appeal, as well reimbursement for fees and services that she completed herself. Thus, the AJ concluded that although attorney’s fees were warranted in this case, as a pro se litigant, Employee was not entitled to an award for the out-of-pocket monies she paid for legal services. Assuming *arguendo* Employee could be awarded fees, the AJ nonetheless ruled that the documentation submitted was insufficient to support such an award. As a result, Employee’s June 21, 2023, Motion for Attorney’s Fees was denied.

Employee disagreed with the AJ’s ruling and filed a Petition for Review of the Third Addendum Decision on Attorney’s Fees with the OEA Board on August 19, 2024. She argues that the attorneys hired to represent her participated in professional misconduct and misinformed her of the filings, charges, and time spent on prosecuting her appeal. Employee contends that each attorney failed to protect her rights under the applicable labor laws. She asserts that this Office lacks jurisdiction to correct the misclassification of her status under the Fair Labor Standards Act (“FLSA”). Employee also requests that the Board conclude that OEA lacks jurisdiction to award or deny attorney’s fees. She further asks that the Board rule that it has no jurisdiction over criminal matters under the purview of the D.C. Office of the Attorney General and the Office of the Inspector General.

In response, Agency submits that Employee’s submission fails to meet any of the criterial specified in Chapter 6B, Section 637.4 of the D.C. Municipal Regulations (“DCMR”) as a basis for granting her Petition for Review. It characterizes Employee’s arguments related to her FLSA status as wholly irrelevant to the instant petition. Agency agrees with the AJ’s findings that Employee is not entitled to the award of fees she incurred as a pro se litigant. Finally, it posits that the relief requested by Employee is unrelated to the fee petition at issue. Consequently, Agency asks that the petition be denied.

* + 1. **Employee v.** **D.C. Office of the Attorney General, OEA Matter No. 1601-0050-16C23 –** Employee worked as a Support Enforcement Specialist with the D.C. Office of the Attorney General (“Agency”). On February 24, 2016, Agency issued an Advance Notice of Proposed Removal to Employee for “failing to satisfactorily perform one or more of the duties of [her] position” and “any on-duty employment-related act or omission that interferes with the efficiency or integrity of operations.” The charges were based on Employee’s failure to successfully complete the standards specified in her Performance Improvement Plan (“PIP”). On April 20, 2016, Agency issued its Final Decision on Proposed Removal, sustaining the charges against Employee. Her termination was effective on April 25, 2016.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 24, 2016. On October 22, 2018, the OEA Administrative Judge (“AJ”) issued an Initial Decision reversing Agency’s termination action. Thereafter, Employee and Agency sought review of the Initial Decision with the OEA Board. On July 16, 2019, the Board issued an order upholding the Initial Decision. Agency then filed an appeal with the Superior Court for the District of Columbia on August 13, 2019. On July 2, 2020, the Court denied Agency’s petition and affirmed OEA’s ruling reversing Employee’s termination. Agency subsequently appealed to the District of Columbia Court of Appeals. On May 23, 2023, the Court affirmed the Superior Court’s ruling.

Employee filed a Motion to Enforce the Order from the District of Columbia Court of Appeals with this Office on July 21, 2023, wherein she argued that Agency failed to comply with the order to reinstate her with back pay and benefits. The AJ subsequently ordered the parties to submit briefs addressing both the compliance issue as well as a separate attorney fee request submitted by Employee. On November 27, 2023, Agency filed a Supplemental Motion in Lieu of Brief requesting that the AJ’s briefing order be vacated. It explained that on November 22, 2023, Employee was issued an offer letter of reinstatement as a Case Management Specialist, CS-301-11/10. In response, the AJ issued a January 2, 2024, order granting Employee’s request for an extension time to address any outstanding compliance issues. Employee submitted a filing on January 29, 2024; however, the AJ assessed that additional status conferences were required to resolve the matter.

During a February 21, 2024, status conference, Employee indicated that she had yet to submit the required documents requested by Agency to effectuate her back pay, stating that it was illegal to do so under the District Personnel Manual (“DPM”). Employee further asserted that she refused to accept Agency’s offer of reinstatement because Agency failed to place her in her previous position within thirty days after the Court of Appeal’s decision became final. The AJ informed Employee that pursuant to DPM Instruction No. 11B-80, an employee’s failure to submit the required documentation necessary to calculate backpay would preclude them from receiving the amount owed. She also reminded Employee that that the instant compliance matter was initiated following her own Motion for Enforcement, and that the purpose of the process was to address the outstanding reinstatement and back pay issues. As a result, Employee was again ordered to provide a response to the AJ’s concerns no later than March 8, 2024. Employee’s response brief outlined her arguments pertinent to Agency’s alleged acts of misconduct but did not address the compliance issues.

The AJ issued an Addendum Decision on Compliance on July 16, 2024. She explained that Employee filed a Motion for Enforcement after the Court of Appeals issued its May 23, 2023, order affirming the reversal of Agency’s termination action. The AJ stated that while Agency indicated that it could not initially locate a position identical to that held by Employee at the time of termination, the same position was ultimately identified. According to the AJ, Agency sent written notice to Employee on November 22, 2023, which provided that she was being reinstated to her previous position effective January 16, 2024. She went on to discuss how Agency’s letter informed Employee that she was still required to submit the required documentation to process the restoration of backpay and benefits in accordance with Chapter 6B, Section 1149 of the D.C. Municipal Regulations (“DCMR”); that her orientation would begin on January 16, 2024; and that Employee was required sign the offer of reinstatement within five business days of the offer, or it would expire.

In assessing whether Agency complied with the reinstatement requirements, the AJ held that Employee refused to accept the position Agency identified in the November 22, 2023, letter of reinstatement, instead offering unrelated assertions of Agency’s wrongdoing, fraud, forgery, and other illegal activities. The AJ characterized Employee’s claim that it would be illegal for her to complete the paperwork to calculate backpay as wholly unfounded. Moreover, because Employee refused to submit the required paperwork as of the date of the addendum decision, the AJ concluded that this Office had no further measures for which it could take to ensure that Employee received the backpay owed to her. As a result, she ruled that Agency provided Employee reinstatement to her previous position of record with correct salary and grade/step; Agency complied with the October 22, 2018, Initial Decision to reinstate Employee; and Employee’s refusal to accept the position was her own choice and not because of Agency’s failure to comply. Since Agency complied with the Initial Decision, the AJ denied Employee’s Motion for Enforcement.

Employee subsequently filed a Petition for Review of the Addendum Decision on Compliance on August 19, 2024. She presents arguments related to her alleged misclassification under the Fair Labor Standards Act (“FLSA”). Employee also contends that Agency committed acts of fraud, forgery, retaliation, revenge, and concealment of evidence, all of which serve as a basis for reversing her removal. As a result, she requests that the Initial Decision be declared invalid.

In response, Agency submits that Employee’s petition related to compliance should be dismissed. It asserts that OEA’s rules do not provide an avenue for appealing decisions on compliance to the Board. Therefore, Agency maintains that OEA is unable to address Employee’s arguments related to its compliance with the October 22, 2018, Initial Decision.

* 1. **Deliberations** – This portion of the meeting will be closed to the public for deliberations.

in accordance with D.C. Code § 2-575(b)(13).

* 1. **Open Portion Resumes**
	2. **Final Votes on Cases**
	3. **Public Comments**
1. **Adjournment**