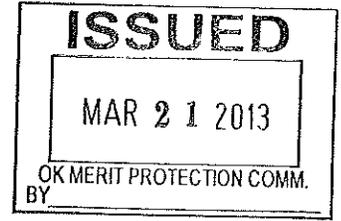


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION
STATE OF OKLAHOMA**

RICKY SANDERS,)
Appellant,)
)
v.)
)
OKLAHOMA DEPARTMENT OF)
MENTAL HEALTH AND)
SUBSTANCE ABUSE SERVICES,)
Appellee.)
)

Case No. MPC 12-224
and 12-228



ADDENDUM DECISION

This matter comes on for decision before the duly appointed, undersigned Administrative Law Judge for the Oklahoma Merit Protection Commission, upon Motion for Attorney Fees by the Appellant, Ricky Sanders, by and through counsel, Melvin Hall. The Appellee, Oklahoma Department of Mental Health and Substance Abuse Services, appears by and through counsel, C. Allen Shaffer objecting to the award of attorney fees.

After careful consideration of the Motion and Response, including all attachments, as well as the entire record below, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

FINDINGS OF FACT

1. Appellant Ricky Sanders (hereinafter "Sanders") was a permanent, classified state employee of the Oklahoma Department of Mental Health and Substance Abuse Services (hereinafter "the Dept."), appealing an adverse disciplinary action of termination. An administrative hearing was held and testimony of witnesses was presented, along with exhibits.
2. A Final Order was issued granting the Appellant's Motion for Summary Judgment and sustaining the appeal, prior to the conclusion of the administrative hearing. The findings relevant to this Motion were that the Dept. was in violation of jurisdictional requirements in imposing the discipline. Although testimony was provided in the record regarding the misconduct of the Appellant, there were no specific findings of whether discipline was warranted or whether the discipline so imposed was appropriate.

3. There have been objections filed regarding the timeliness of the Motions for Attorney Fees and Response, stemming from confusion regarding the Stay contained in the Final Order and the reconsideration by the full Commission. For purposes of this Order, all motions and responses are deemed to be timely and are considered in making this decision.

3. Appellant argues that he should be considered the prevailing party in that he received all of the relief he sought. Appellee apparently does not dispute that position. For purposes of this Motion, the preponderance of the evidence shows that Appellant did in fact receive the relief he requested and the Appellant will therefore be found to be the prevailing party.

4. In order to be eligible for an award of attorney fees and costs, there must be a finding that the nonprevailing party's position was without reasonable basis or was frivolous pursuant to OAC 455:10-15-1 (d), Standards, which states as follows:

“The without reasonable basis or frivolous standard includes, but is not limited to:

- (1) where the nonprevailing party's action was clearly without merit or was wholly unfounded;
- (2) where the nonprevailing party initiated an action against the prevailing party in bad faith, including where the action was brought to harass or intimidate the prevailing party;
- (3) where the nonprevailing party committed a gross procedural error which prolonged the proceeding or severely prejudiced the prevailing party; and
- (4) where the nonprevailing party knew or should have known he or she would not prevail on the merits of the action taken.”

5. The determination of whether the action was without reasonable basis or frivolous must be made on an objection basis from a review of the entire record. The findings and discussion contained in the Final Order are incorporated by reference herein for that purpose. It must also be noted that evidence and testimony relating to Sanders' misconduct is part of the record and was considered in making this decision.

6. There is no evidence that the action of the Dept. was clearly without merit or was wholly unfounded, was initiated in bad faith or was brought to harass or intimidate Sanders. Further, there is no evidence that the Dept. knew or should have known it would not prevail on the merits of the action, as the matter was not determined on the “merits”.

7. Pursuant to the Merit Rule above cited, to be eligible for an award of attorney fees, there must be “a gross procedural error which prolonged the proceeding or severely prejudiced” Sanders, as the prevailing party. Sanders argues that the Dept. committed a gross procedural error because the procedural errors were pointed out by the Appellant prior to the Dept.'s final

action, thereby prolonging the proceedings. Sanders does not present any evidence or argument that he was severely prejudiced by the procedural error.

8. The Dept. argues that the procedural errors were not “gross” in that it had sufficient, reasonable cause to discipline Sanders for his behavior. Further, the Dept. argues that the errors did not prolong the proceedings nor did the error “seriously prejudice” the employee. In support, the Dept. argues that because Sanders was ultimately reinstated to his position with full back pay and benefits, within a reasonable amount of time, he was not prejudiced. The Dept. also argues that it had a “good-faith” belief that it was acting in compliance with the Merit Rules. These arguments are persuasive, especially given the seriousness of the alleged misconduct of the employee and the Dept.’s underlying purpose for taking the action.

8. It is clear that the appeal was sustained because of a procedural error committed by the Dept. However, in granting the Motion for Summary Judgment, the undersigned advised Sanders that the decision did not in any way condone or excuse his behavior and that he had “dodged a bullet” as a result of the error.

9. After review of the entire record of this case, the undersigned does not find that the Dept.’s action rises to the level of being “gross” error as the errors did not prolong the proceedings nor seriously prejudice Sanders.

10. As a result of the above findings, it is unnecessary to address the remaining issues regarding reasonableness of the fees.

CONCLUSIONS OF LAW

1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and the subject matter in this cause and the filing of the Motion was timely.

2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.

3. The burden of proof regarding this Motion is upon Sanders pursuant to OAC 455:10-15-1 and Appellant has failed to meet his burden of proof.

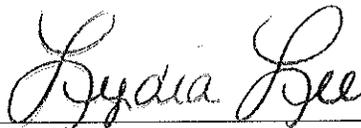
4. Following application of the standards established in Title 74 O.S. § 840-6.8 and OAC 455:10-15-1 and 455:10-15-4, the undersigned Administrative Law Judge, after review of the pleadings and the entire record, finds that there is insufficient evidence to support a finding or

conclusion that the actions of the Dept. were clearly without merit, were wholly unfounded, were initiated in bad faith or were brought to harass or intimidate Sanders. Further, there is insufficient evidence to support a finding or conclusion that the Dept. knew or should have known that it would not prevail on the merits of this matter. Finally, there is insufficient evidence to support a finding or conclusion that the Dept. committed a “gross” procedural error which prolonged the proceeding or severely Sanders.

5. Sanders has failed to meet his burden of proof to show that the Dept.’s position was without reasonable basis or was frivolous as indicated in this Order.

ORDER

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the Application for Attorney Fees and Costs of Appellant Ricky Sanders, MPC 12-224 and MPC 12-228 be **DENIED**.



Lydia Lee
Administrative Law Judge
Oklahoma Merit Protection Commission