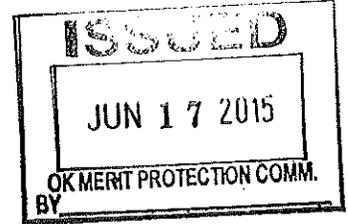


BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA

CLARA GOLETTO, )  
)  
APPELLANT, )  
)  
V. ) MPC-14-193  
)  
DEPARTMENT OF VETERANS )  
AFFAIRS, )  
)  
APPELLEE. )



ORDER DENYING APPLICATION FOR ATTORNEY FEES AND COSTS

This matter comes before the undersigned Administrative Law Judge pursuant to Appellant's Application for Attorney Fees and Costs.

**A. Standard for Awarding Attorney Fees**

Although Oklahoma law provides for prevailing party attorney fee shifting in matters before the Merit Protection Commission, it limits such an award to cases where "the position of the nonprevailing party was without reasonable basis or was frivolous."

74 O.S. § 840-6.8. Regulations define "without reasonable basis or frivolous" as including, but not being 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.

**B. Analysis**

Appellant quotes portions of the Final Order in which the undersigned notes that, with respect to the issue of comingling the cash funds and resident funds, the Agency failed to demonstrate either that a written policy prohibited it or that Appellant was trained not to do it. Accordingly, with respect to this issue, the Agency failed to satisfy its burden of proof. The undersigned did not, however, find Appellant violated no such policy, only that any violation did not warrant termination due to the lack of evidence of training or a written policy prohibiting the conduct.

With respect to the totals in the cash box and meal ticket box, Appellant rightly points out the undersigned criticized the Agency for its internal investigation and its failure to determine the actual amount of the disbursements made from the cash box. By failing in these regards, the Agency was unable to meet its burden of proof to establish that termination was warranted. However, the Agency's inability to sustain its burden of proof does not automatically mean the Agency's position is without reasonable basis or frivolous. Otherwise, fees would be awarded in every case against the nonprevailing party.

In evaluating the evidence, the undersigned cannot come to the conclusion that the Agency's position is groundless, as claimed by the Appellant. First, Appellant clearly made errors. Second, a reasonable inference from the evidence is that Appellant tried to cover up her mistake by changing numbers, but upon recalling the \$8 activity fee, realized the changed numbers would not work, so she changed them back. Third, in the email to Ms. Watson, Appellant claims she was making change for meal tickets from the

cash drawer, but forgot to place the correct change in the meal ticket box. No one provided any explanation how, with the amounts of the meal ticket purchases being \$40, \$20 and \$2, it makes sense that the amount of \$15 ended up in the wrong box. Finally, there were inconsistencies in the story told by Appellant in questioning by different supervisors.

The undersigned found only that the Agency failed to meet its burden of proof in support of the termination, not that Appellant did nothing wrong. This court finds the appeal was not without reasonable basis or frivolous. Accordingly, under the standard required for the award of attorney fees, no fees may be awarded in this case.

Appellant's Application for Attorney Fees and Costs is **DENIED**.

**IT IS SO ORDERED** this 16<sup>th</sup> day of June, 2015.



---

**R. Scott Thompson**  
**Administrative Law Judge**  
Oklahoma Merit Protection Commission  
3545 N.W. 58<sup>th</sup> Street  
Oklahoma City, OK 73112