

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2127:

Lindley

AS INTRODUCED

An Act relating to the Oklahoma Personnel Act; amending 74 O.S. 2001, Section 840-6.8, which relates to the Oklahoma Merit Protection Commission; clarifying process of payment of attorney fees under certain circumstances; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 74 O.S. 2001, Section 840-6.8, is amended to read as follows:

Section 840-6.8 A. The presiding officer of any hearing or Alternative Dispute Resolution Program proceeding before the Oklahoma Merit Protection Commission may require payment by the agency of reasonable attorney fees ~~and costs to the prevailing party~~ if the appellant is the prevailing party and the position of the nonprevailing party of the agency was without reasonable basis or was frivolous.

B. Requests by prevailing ~~parties~~ appellants for payment of attorney fees ~~and costs~~ shall be filed by motion with a copy served on the agency and other parties appellees within ten (10) days of the date that the decision is issued. ~~A~~ The agency or other appellees may file a responsive pleading ~~may be filed~~ within ten (10) days of the date the motion is ~~filed with the Oklahoma Merit Protection Commission~~ received. The motion shall be filed at the office of the Oklahoma Merit Protection Commission to the attention of the presiding officer and the ruling on the motion shall be made in an addendum decision.

C. The motion for fees ~~and costs~~ shall state why the ~~prevailing party~~ appellant believes he or she is entitled to an award under this statute and shall be supported by evidence substantiating the amount of the request. Such evidence shall include the following:

1. Accurate and current time records;

2. A copy of the terms of any fee agreement between the ~~party~~ appellant and the attorney;

3. The attorney's customary billing rate for similar work, provided the attorney has a billing practice to report; and

4. Evidence of the prevailing community rate sufficient to establish a market value for the services rendered.

D. If the Oklahoma Merit Protection Commission determines that the appeal is frivolous, ~~any party~~ the appellant may be assessed attorney fees and costs of the action.

E. A petition for judicial review by the Oklahoma Merit Protection Commission of the addendum decision shall be filed in accordance with Article II of the Administrative Procedures Act, within ten (10) days of the issue date of said decision.

SECTION 2. This act shall become effective November 1, 2004.

49-2-7233            GH            01/15/04