

GOVERNMENT OF THE DISTRICT OF COLUMBIA
CONTRACT APPEALS BOARD

APPEAL OF:

EFFIE FORDE, ESQ.)	
)	CAB No. D-1216
Under Term Agreement for Employment)	
Of Expert/Consultant dated January 29, 2003)	

For the Appellant: Effie Forde, Esq., *pro se*. For the District of Columbia Public Schools: Erika Pierson, Esq., Deputy General Counsel.

Opinion by Chief Administrative Judge Jonathan D. Zischkau, with Administrative Judge Warren J. Nash, concurring.

OPINION

LexisNexis Filing ID 10551046

Appellant Effie Forde, Esq., entered into a contract with the District of Columbia Public Schools ("DCPS") to provide services as a special education hearing officer. The contract period was to be February 3, 2003, through September 30, 2004. However, DCPS terminated the contract on March 21, 2003. Forde appealed from a deemed denial of two claims for wrongful termination and unpaid contract balances. In her complaint, Forde seeks \$6,000 for unpaid performance during the weeks of March 17 and March 24, 2003, and \$142,500 for wrongful termination. We sustain Forde's claim for \$3,000 for unpaid performance costs and \$28.60 in winding up costs, and deny her claim for wrongful termination.

BACKGROUND

The parties agree that on January 29, 2003, Forde entered into a contract with DCPS to provide 20 hours per week of legal services as a special education hearing officer, for a fixed price of \$1,500 per week. (02-18-2004 Forde Aff. at 1; 09-08-2003 DCPS Dispositive Motion, at 2; 12-11-2003 Cashmon Aff. ¶ 6, at 1-2). The terms of the contract can be discerned from a document entitled "Term Agreement for Employment of Expert/Consultant" which is signed by Forde and dated January 29, 2003, and a document entitled "Request for Purchase Order for Engaging Services of Expert/Consultant" which is signed by the contracting officer's technical representative, John Cashmon, and dated January 24, 2003. The latter document sets forth the price term of \$1,500 per week. The Term Agreement states with regard to performance and payment:

[DCPS] agrees to hire Effie E. Forde, as an expert in accordance with the terms and conditions of this agreement. This contract is made in accordance with established policies and procedures. Services will be monitored while in process to ensure they are in accordance with the consummated agreement. If services have not been completed in accordance with the agreement, payment will be denied, but only after the expert has been informed in writing (to include full justification, outlining in detail the services which were not completed as expected).

The Term Agreement contains the following termination clause:

This Contract may be terminated at any time during the contractual period, at the request of the hiring authority or when services are no longer required by DCPS. The Contractee may also terminate this contract by providing two weeks notice, in writing to the Student Hearing Office.

(Complaint Ex. 1). The Term Agreement was prepared by Cashmon and contains a signature block for Debor Dosunmu, the DCPS contracting officer, but the copy in the record is not signed by him. (02-09-2004 DCPS Submission (Cashmon Aff. ¶5)). We find from the record that Dosunmu was aware of the contract documents and ratified them. (02-09-2004 DCPS Submission; 02-27-2004 Brief of Appellant, at 10). Cashmon used the same Term Agreement form to contract independent hearing officer services from 7 other licensed attorneys besides Forde during January 2003. The agreements all provided that the hearing officers would work 20 hours per week and be compensated at a fixed weekly amount of \$1,500, to be invoiced bi-weekly. (Cashmon Aff. ¶¶ 6-7).

Ms. Forde began performance on February 3, 2003. (02-09-2004 DCPS Submission (04-07-2003 Forde “Compensation” Letter to Wendy Gee and John Cashmon)). Soon after the hearing officers began their performance, Cashmon determined that DCPS needed additional hours to be worked due to the heavy workload. Therefore, in mid-February, Cashmon offered each hearing officer the opportunity to increase hours from 20 to 32 per week with an increase in weekly compensation to \$3,000. The other seven hearing officers immediately accepted the offer and began working the increased hours but no contract modifications were ever executed to reflect those changes. Forde expressed some reluctance to enter into the arrangement due to concerns regarding her outside legal practice. (Cashmon Aff. ¶ 9; 02-09-2004 DCPS Submission (04-07-2003 Forde “Compensation” Letter to Wendy Gee and John Cashmon)). Forde subsequently orally accepted the increased hours arrangement in mid-March 2003, with the understanding that she would begin providing 32 hours of work for DCPS starting the week of March 17, 2003.

The record indicates that Forde provided 20 hours of weekly services for the weeks of February 3, February 10, February 17, February 24, March 3, and March 10, 2003. She invoiced biweekly for those services using a standard form letter entitled “Certification of Services Rendered” which are dated February 14 (for the period February 3-14), February 26 (for the period February 17-28), and March 17 (for the period March 3-14). As an example, the February 14, 2003 “Request for Payment Expert/Consultant Agreement” form is addressed to the DCPS Controller, and states in pertinent part:

This is to certify that the services contracted for, between myself and the District of Columbia Public Schools, have been duly rendered for the period as stated in the contractual agreement dated January 29, 2003. It is hereby requested that payment be made in accordance with the terms of the contract. Attached you will find all applicable receipts and required supporting documents for the period 2/3/03-2/14/03. Request payment in the amount of \$3,000.00.

It is signed by Forde, and below her signature is an “Approved” section which reads:

I certify that the contractor has satisfactorily performed the contracted services rendered during the period Feb. 3-14, 2003 and should be paid \$3,000.00.

Under this language, Cashmon signed and dated the approval section. There is a separate document apparently attached to the Request for Payment form which is entitled “Certification of Services Rendered”, dated February 14, 2003, on Forde’s letterhead, which describes briefly the names of the cases which were heard by her and for which she submitted hearing officer decisions to the Student Hearing Office on February 12, 2003.

Forde agrees that she was paid \$1,500 per week for her services through March 14, 2003. (02-18-2004 Forde Aff. ¶ 10).

There appears to be no dispute that for the week of March 17-21, 2003, Forde provided the increased 32 hours of service with the understanding that her payment would be \$3,000 per week. However, during this same week, DCPS decided to terminate Forde’s contract. In a letter of March 21, 2003, Cashmon states:

This letter is to inform you that, effective 21 March 2003, the Office of Compliance is terminating your contract with [DCPS]. In order to receive your final payment for the services that you have rendered, the hearing officer determinations for the cases that you have heard must be submitted not later than the close of business on Friday, 28 March; together with any Student Hearing Office materials that you may possess.

(Complaint Ex. 2). Cashmon states that the decision to terminate Forde’s contract was in response to “concerns” from DCPS’s and parents’ counsel who appeared before her in the special education hearings she was conducting. We find from the record that Dosunmu was aware of the termination notice and ratified it. (02-09-2004 DCPS Submission (04-07-2003 Forde Termination Claim Letter to Dosunmu)). For the week of March 17-21, 2003, Forde submitted a certification dated March 24, 2003, stating that she presided over various hearings and submitted certain decisions in her cases, including decisions that she had started to prepare during the previous period but had not submitted until the week of March 17. In a March 25, 2003 letter, Forde states that she came to the Student Hearing Office on March 20 and 21 but was not assigned any hearings. (02-09-2004 DCPS Submission (03-25-2003 Forde Letter to Wendy Gee)). There is a Request for Payment form in the amount of \$3,000 which is signed by Forde but not signed by Cashmon. Cashmon states that the invoice for the week of March 17 was rejected because the DCPS Chief Hearing Officer had to reconstruct several hearings and issue written hearing officer decisions because Forde failed to provide them to the Student Hearing Office. (Cashmon Aff. ¶ 10). DCPS provides no additional details. Forde submitted another Request for Payment dated March 31, 2003, for an additional \$3,000 for the week of March 24, 2003. (Appellant’s Ex. 9). The record also contains receipts of postage expenses incurred by Forde in the amounts of \$4.30 and \$24.30. (Appellant’s Exs. 12, 14).

On April 7, 2003, Forde submitted two separate claims, one for wrongful termination addressed to Gee, Cashmon, and Dosunmu, and another for compensation, addressed to Gee and

Cashmon. With regard to the termination, Forde contended that her termination was unlawful because it was done without justification, notice, and good faith, and the notice was not signed by Dosunmu, the contracting officer. She further points out that the contracting officer also did not sign the original contract. Forde requests as relief that she be paid \$147,000 which she contends is the maximum amount of compensation she would have received had the contract not been terminated. In the other April 7 claim letter, entitled "Compensation", she states that she submitted "invoices for the month of March 2003 and up through the period of April 4, 2003 which have not been paid." Forde also requested that she be compensated at the rate of \$3,000 per week throughout the entire period of February 3 – April 4, 2003. There is no indication that DCPS ever responded to the April 7, 2003 claim letters. On July 18, 2003, Forde filed a combined complaint and notice of appeal from a deemed denial of her claims. Her complaint, as supplemented, seeks only unpaid amounts totaling \$6,000 for the weeks of March 17 and March 24, 2003.

The parties have requested that the Board decide the case on the written record.

DISCUSSION

We exercise jurisdiction over this appeal pursuant to D.C. Code § 2-309.03(a)(2).

Termination

Forde claims that the termination of her contract was unjustified and that DCPS failed to provide notice to her prior to the termination. The termination clause authorizes DCPS to terminate the contract at will and such a termination will be treated under District procurement law as a convenience termination in the absence of evidence that a termination for default was intended. In this case, although DCPS indicated concerns with Forde's performance, the record is clear that DCPS is not pursuing a default termination but rather a convenience termination. Forde intimates bad faith on the part of DCPS and Cashmon, but we find the record devoid of any evidence of bad faith. Forde has clearly not sustained her burden on bad faith. Forde is not entitled to receive contract payments for periods beyond her actual performance of services. Thus, Forde's claim for \$142,500 for termination damages is without merit. However, Forde is entitled to her winding up costs resulting from the termination. She has established with evidence in the record a total of \$28.60 in postage expenses.

Unpaid Contract Balance Claim

Forde claims unpaid contract balances totaling \$6,000 for services performed during the weeks of March 17 and March 24, 2003. DCPS rejected her claim for payment for the week of March 17 because, according to DCPS, the Chief Hearing Officer had to reconstruct several of Forde's hearings and issue written hearing officer decisions which Forde failed to provide to the Student Hearing Office. The Term Agreement provides that payment may be denied only after the hearing officer "has been informed in writing (to include full justification, outlining in detail the services which were not completed as expected)." DCPS's rejection of payment for the March 17 work week is not supported by the type of detail required by the contract. We sustain Forde's claim for \$3,000 for the week of March 17. We deny Forde's claim for \$3,000 for the week of March 24 because Forde has not sustained her burden of showing that she performed 32 hours of hearing

officer services for that week.

CONCLUSION

Forde is entitled to unpaid contract payments of \$3,000 for the week of March 17, 2003, plus winding up costs from the termination in the amount of \$28.60. Accordingly, we sustain Forde's claim in the amount of \$3,028.60, plus 4 percent interest per annum from July 18, 2003.

SO ORDERED.

DATED: February 10, 2006

/s/ Jonathan D. Zischkau
JONATHAN D. ZISCHKAU
Chief Administrative Judge

CONCURRING:

/s/ Warren J. Nash
WARREN J. NASH
Administrative Judge