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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹)	
)	OEA Matter No. 1601-0053-22C23
v.)	
)	Date of Issuance: March 12, 2026
)	
D.C. DEPARTMENT OF EMPLOYMENT)	
SERVICES,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Tax Examiner with the Department of Employment Services (“Agency”). On April 14, 2022, he received a Final Agency Decision removing him from his position pursuant to District Personnel Manual (“DPM”), 6-B § 1605.4(f)(2): Unauthorized absences of five (5) workdays or more. The effective date of his termination was April 14, 2022.²

On May 13, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”).³ On June 22, 2022, Agency filed its Answer to Employee’s Petition for

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² *Petition for Appeal*, p. 18-24 (May 13, 2022).

³ Employee argued that Agency violated his rights under the Americans with Disabilities Act and the D.C. Human Rights Act, due to his medical disabilities. Employee claimed that he provided medical documentation from his doctor supporting his need to telework and to have a reasonable accommodation due to his illness. However, Agency denied the request. As a result, Employee requested that he be reinstated to his previous position and receive backpay. *Id.*,

Appeal.⁴ The OEA Administrative Judge (“AJ”) issued an Initial Decision on May 2, 2023, reversing Agency’s action.⁵ On June 15, 2023, Employee filed a Motion for Attorney’s Fees.⁶ On August 18, 2023, the AJ issued a Post-Status Conference Order Requesting Briefs Regarding Compliance, which required the parties to address the calculation of backpay.⁷

On September 1, 2023, Employee filed his brief. He asserted that he ceased working on July 12, 2021, because his request for a reasonable accommodation was never granted. As a result of his inability to work, Employee explained that he used various types of leave to cover his absences. He argued that Agency only compensated him for forty (40) hours of annual leave; however, he contended that he was still owed seventy-six (76) hours of additional leave, including medical and retirement benefits.⁸ Over the course of several filings, Agency asserted that back pay calculations are conducted by D.C. Human Resources (“DCHR”) and the Office of Pay and Retirement Services (“OPRS”) and that once finalized, Employee’s benefits would be restored to the appropriate balance prior to separation.⁹ It also contended that because Employee was non-competitively appointed to a Not to Exceed (“NTE”) term position, it could not return Employee to his position of record. Additionally, it explained that Employee would receive backpay through the end of his NTE term, which ended on July 21, 2023.¹⁰

The AJ issued an Addendum Decision on Compliance on October 30, 2024. She

p. 7-10.

⁴Agency asserted that Employee failed to return to work as directed; request leave in advance to cover his absences; provide medical documentation covering the unauthorized absence; and seek a reasonable accommodation to cover the unauthorized absences. *Agency’s Answer to Employee’s Petition for Appeal*, p.1-5 (June 22, 2022).

⁵ The AJ found that Agency failed to follow the Office of Disabilities Rights’ guidelines in processing Employee’s reasonable accommodation request, and it failed to consider whether Employee’s illness should have been attributed to leave without pay or charged against his annual or sick leave. Accordingly, the AJ reversed Agency’s adverse action and ordered that Employee receive back pay and benefits lost as a result of the termination. *Initial Decision*, p. 6-13 (May 2, 2023).

⁶ *Employee’s Motion in Support of Fee Petition* (June 15, 2023).

⁷ *Post-Status Conference Order for Briefs Regarding Compliance* (August 18, 2023).

⁸ *Employee’s Motion for Correct Back Pay Restoration* (September 1, 2023).

⁹ *Agency’s Position Regarding Correct Back Pay Motion* (September 5, 2023).

¹⁰ *Third Status Report Regarding Compliance with Post-Status Conference Order* (February 16, 2024).

determined that Employee's appointment was a NTE term position. The AJ found that Employee was not hired through open competition but through a non-competitive process, as evidenced in the record. Moreover, she noted that Employee's offer letter indicated that he was in a Career Service, Term Position. Accordingly, the AJ concluded that Agency provided Employee with a backpay payment of \$58,114.60 plus \$1,765.36 for a bonus, which Employee received through direct deposit. As a result, she determined that Agency met the requirements for compliance. Consequently, the AJ dismissed Employee's Motion for Compliance.¹¹

On October 29, 2025, Employee filed a Petition for Review. He asserts that new and material evidence is available that was not available when the record was closed. However, Employee makes many of the same assertions presented throughout his appeal. He maintains that he was hired through open competition and that his other co-workers are still employed.¹²

Agency filed its Answer to Employee's Petition for Review on December 3, 2025. It opines Employee failed to state a claim upon which relief could be granted. Specifically, Agency explains that the relief Employee requested is beyond OEA's jurisdiction because his term limit ended on July 21, 2023. It provides that OEA cannot convert employees from term to permanent appointments. Additionally, Agency asserts that Employee's appeal is untimely. It contends that pursuant to OEA Rule 637.2, a party may file a Petition for Review of the Initial Decision with the OEA Board within thirty-five (35) calendar days. Agency argues that Employee's appeal was filed eleven months and twenty-nine days after the prescribed 35-calendar day deadline. As a result, it requests that Employee's petition be denied.¹³

¹¹ *Addendum Decision on Compliance*, p. 7-8 (October 30, 2024).

¹² *Employee's Petition for Review*, p. 1-2 (October 29, 2025).

¹³ *The Department of Employment Services Answer to Employee's Petition for Review*, p.1-5 (December 3, 2025). Employee filed a response to Agency's answer and argues that Agency presented a false narrative and false documentation. *Employee Reply to DOES Answer to Employee's Petition for Review* (December 24, 2025).

Procedurally, Employee filed a Petition for Review after the AJ's Addendum Decision on Compliance. OEA Rule 640 addresses issues on compliance and enforcement of OEA's final decision. Section 640 provides no procedural avenue for an employee to appeal an Addendum Decision on Compliance to the OEA Board. Thus, a party is permitted to file a Petition for Review of an Initial Decision; however, there is no OEA Rule that permits a party to file a Petition for Review of an Addendum Decision on Compliance. The OEA Board held in *Delores Junious v. D.C. Child and Family Services*, OEA Matter No. 1601-0057-01C07, *Opinion and Order on Petition for Review* (January 25, 2010); *Willie Porter v. Department of Mental Health*, OEA Matter No. 1601-0046-12C16, *Opinion and Order on Compliance* (December 3, 2019); *Laura Jackson v. D.C. Department of Health*, OEA Matter No. 2401-0020-10R17C19, *Opinion and Order on Petition for Review* (June 30, 2020); *Employee v. Department of Small and Local Business Development*, OEA Matter No. J-0009-18R20, *Second Opinion and Order on Petition for Review* (June 17, 2021); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0215-11R18R20C21, *Opinion and Order on Petition for Review* (December 17, 2021), that an addendum decision on compliance cannot be appealed to the OEA Board where the AJ has specifically determined that Agency has complied with its order.

The AJ in this matter held that as a term employee, who was hired through a non-competitive process, Employee was entitled to payment through July 2023, which was the end of his four-year term. Accordingly, she ruled that Agency met the requirements for compliance, including payment of the awarded back pay and bonus. The Board in *Porter* and *Jackson* reasoned that if an Administrative Judge has determined that an agency adhered to an order on compliance, then the employee's procedural remedies are exhausted because the terms of the AJ's order have been satisfied. The issue of Agency's compliance was already decided by the Administrative

Judge. Consequently, we must deny Employee's Petition for Review.¹⁴

¹⁴ If Employee intends for the Petition for Review to be an appeal the Initial Decision, and not an appeal of the Addendum Decision on Compliance, OEA Rule section 635 addresses the finality of decisions issued by the Administrative Judge. Specifically, OEA Rule 635.2 provides that "the initial decision shall become final thirty-five (35) calendar days after issuance. Moreover, OEA Rule 637.2 provides that "*any party* to the proceeding may serve and file . . . a Petition for Review of an *Initial Decision* with the Board within thirty-five (35) calendar days of issuance of the Initial Decision (emphasis added)." As this Board has previously held in *Employeev. Department of Small and Local Business Development*, OEA Matter No. J-0009-18R20, *Second Opinion and Order on Petition for Review* (June 17, 2021), because either party may file a petition of the Initial Decision, Employee had the opportunity to appeal the Initial Decision before the requisite deadline. He did not. The AJ issued the Initial Decision on May 2, 2023, and she issued an Addendum Decision on Compliance on October 30, 2024. However, it was not until October of 2025 that Employee filed a Petition of Review. Employee's petition was over two years after the Initial Decision became final and after a compliance order was issued. Therefore, it cannot be considered by the Board.

Assuming arguendo that the Board could consider Employee's argument, the record clearly supports the AJ's ruling that he was not competitively appointed through open competition for all of the reasons outlined in her Addendum Decision on Compliance. *Addendum Decision on Compliance*, p. 7-8 (October 30, 2024).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.