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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
HASSAN ABDULLAH,)	
Employee)	OEA Matter No. 1601-0126-13R17
)	
v.)	Date of Issuance: July 19, 2017
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	MONICA DOHNJI, Esq.
_____)	Senior Administrative Judge
Lee Jackson, Esq., Employee Representative		
Carl K. Turpin, Esq., Agency Representative		

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL BACKGROUND

On July 30, 2013, Hassan Abdullah (“Employee”) filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Public Schools’ (“DCPS” or “Agency”) decision to terminate him from his position as Teacher at Garrison Elementary School, effective August 10, 2013. Employee was terminated for having an “Ineffective” rating under IMPACT, DC Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during school 2012-2013. On September 9, 2013, Agency submitted its Answer to Employee’s Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge (“AJ”) on May 14, 2014. A Status/Prehearing Conference was held in this matter on June 18, 2014, wherein, Employee notified the undersigned that he received a letter from Agency in January 2014, reinstating him to his previous position of record, along with back pay. The parties requested that the matter be rescheduled for a later date so the parties can engage in settlement talks. After several months of negotiations, the parties notified the undersigned that they were not able to reach a settlement in this matter.

Additionally, Agency notified the undersigned that OEA does not have jurisdiction over this matter because Employee voluntarily retired. In an Order dated February 24, 2015, Employee was required to submit a brief addressing the jurisdiction issue in this matter. Agency also had the option to submit a reply brief. Both parties submitted their respective briefs. Agency withdrew its jurisdiction claim in its brief, conceding that OEA has jurisdiction over this matter.

Subsequently, a Status/Prehearing Conference was held on May 6, 2015. Following the Status/Prehearing Conference, the undersigned AJ issued a Post Status Conference Order requiring

the parties to address the issues raised during the Conference. On June 5, 2015, Employee filed a Motion to Clarify or Correct Post Status Conference Order. The undersigned ruled on Employee's Motion in an Order dated June 8, 2015. Both parties submitted their respective briefs. On September 23, 2015, I issued an Initial Decision ("ID") wherein, the undersigned held that Agency was liable for back pay from Employee's effective date of termination until February 20, 2014.

On October 28, 2015, Employee filed a Petition for Review with OEA's Board. Agency filed a Response to Employee's Petition for Review on December 2, 2015. On March 7, 2017, the OEA Board issued an Opinion and Order on Petition for Review ("O&O"), remanding this matter to the undersigned. Citing to *Walker v. Office of Chief Information Technology Officer*, 127 A.3d 524 (2015), the OEA Board explained that

"...the record does not provide a clear, particularized offer for Employee until August 18, 2015. Thus, as provided in the aforementioned analysis, this Board does not believe that the AJ's decision was based on substantial evidence. Accordingly, as is consistent with the ruling in *Walker*, if the AJ believed that Employee should have accepted the position sooner in an effort to mitigate, she is required to make additional findings. Thus, we must remand the matter to the AJ for her to consider the extent to which Employee was required to have taken the position prior to August 20, 2015, as a mitigation measure; to make findings that identified the position and the date upon which it was truly offered; to explain why Employee's non-acceptance of the position prior to August 20, 2015, was unreasonable; and to explore whether Employee taking the position prior to the August 20, 2015 offer would have prejudiced his ongoing legal claims against the District."¹

Subsequently, a Status/Prehearing Conference was held in this matter on July 10, 2017, with both parties present. The undersigned AJ notified the parties that an Initial Decision on Remand would be issued in compliance with the OEA Board's O&O. The undersigned also explained that no further proceedings or documentation was required from the parties, unless the parties had some specific documentation in support of their position that they wanted the undersigned to consider before issuing the ID. Agency's representative requested that the record be held open for two (2) weeks so it could decide whether or not Agency wanted to submit additional information. This request was granted. Thereafter, in an email dated July 13, 2017, Agency's representative informed the undersigned that it will not submit additional documentation in support of its position. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

¹ *Hassan Abdullah v. District of Columbia Public Schools*, OEA Matter No. 1601-0126-13, Opinion and Order on Petition for Review, March 7, 2017.

ISSUE

Whether Employee is entitled to back pay after January 2014.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

The March 7, 2017, O&O provides that Employee was reinstated effective August 20, 2015 based on the official letter issued on August 18, 2015. Thus, the back pay period spans from August 10, 2013, when he was terminated, to August 20, 2015, when his reinstatement became effective. Employee concurs with these dates, and without any objection from Agency, or additional documentation from Agency disputing the validity of the August 20, 2015 date as explained in the O&O, I conclude that Agency is liable for back pay from August 10, 2013, when Employee was terminated to August 20, 2015, when he was reinstated.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency shall reimburse Employee all back-pay and benefits lost from the period of August 10, 2013 to August 20, 2015, as a result of the separation; and
2. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge