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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
RICHARD HUNT,	)	
Employee	)	OEA Matter No. 2401-0172-95X
	)	
v.	)	Date of Issuance: October 22, 2009
	)	
D.C. GENERAL HOSPITAL,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
_____	)	

Barbara B. Hutchinson, Esq., Employee Representative  
Frank McDougald, Esq. Agency Representative

**ADDENDUM DECISION ON COMPLIANCE**

INTRODUCTION AND PROCEDURAL BACKGROUND

The pertinent facts of this matter are as follows. On September 2, 2004, the Honorable Senior Administrative Judge Daryl J. Hollis, issued an Addendum Decision (“AD”) in the above-captioned matter. According to the AD, Richard Hunt (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) on May 25, 1995, contesting Agency’s action of separating him from service pursuant to a reduction in force (“RIF”). Judge Hollis ruled in Employee’s favor as part of the AD and ordered the Agency to do the following:

It is hereby Ordered that:

1. Since Agency erred in May 1995 by failing to afford Employee his retreat rights to one of the two Accountant, DS-510-11 positions occupied at the time by Wilson Akindojuntimi and Marva Baird, Agency must now

determine the current status of these positions; and

2. If either of these positions currently exists, Agency shall place Employee in the position retroactive to the date of his release in May 1995, with all back pay and benefits due him; or
3. If neither of these positions currently exists, determine the date on which the latter of the two positions ceased to exist and award Employee all back pay benefits of that position due him from the date of his release in May 1995 until the date on which the latter position was eliminated; and
4. Agency file with this Office within 60 days from the date on which this decision becomes final, documents showing compliance with the terms of this Order.

AD at 18 -19. (footnotes omitted).

Agency then sought review of the AD through the Board of the OEA. On December 21, 2005, the Board of the OEA issued its Opinion and Order wherein the AD was upheld. Agency then appealed this matter to the District of Columbia Superior Court (“the Court”). On December 24, 2008, the Honorable Judge Judith Bartnoff issued an Order wherein, *inter alia*, she affirmed the Final Decision issued by the OEA in this matter. The Agency did not seek further review of this matter. On March 19, 2009, Employee, through counsel, filed a Motion for Enforcement and Compliance. To date, Agency has not filed a written response to said motion.

On or around September 22, 2009, this matter was assigned to the undersigned Administrative Judge. After initially noting the amount of time that has elapsed since Judge Bartnoff’s Order, juxtaposed with the amount of time since the Employee filed his March 19, 2009, Motion for Enforcement and Compliance, I determined that it would be prudent to hold a status conference whereby Agency would have an opportunity to explain its conduct to date. On October 20, 2009, the undersigned held a status conference in this matter in order to determine whether or not Agency had complied with the AD. During this conference, the Agency, through counsel, admitted that it had not, to date provided Employee with payment of the back-pay and benefits due him pursuant to the AD. Further, Agency counsel posited that it would take it at least 30 days in which to provide an estimate of what it believes Employee is due in this matter. I found this timeline unacceptable.

#### JURISDICTION

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

ISSUE

Whether this matter should be certified to the General Counsel for enforcement.

ANALYSIS AND CONCLUSION

I find that the Agency has allowed this matter to languish without affirmatively acting in a both reasonable and diligent manner to resolve it in a timely fashion. This is further exacerbated by the fact that Agency has failed to respond to Employee's Motion for Enforcement and Compliance in a timely manner.

OEA Rule § 636.1, 46 D.C. Reg. at 9321 (1999) reads as follows:

Unless the Office's final decision is appealed to the District of Columbia Superior Court, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final.

OEA Rule 636.3, *id.*, provides that:

The agency shall have fifteen (15) business days to respond to the employee's motion.

OEA Rule 636.6, *id.*, provides that:

Failure by the agency to file an answer to the motion for enforcement shall be construed as an admission of the employee's allegations.

OEA Rule 636.8, *id.*, provides in pertinent part as follows:

If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Code § 1-606.2.

In a compliance matter, the Administrative Judge's sole duty is to determine whether or not the Agency has complied with the OEA's Final Decision. According to the Employee's uncontested Motion for Enforcement and Compliance, there is a strong likelihood that the Agency has not complied with the Final Decision. Further, the Agency to date has not submitted a written brief in response to the Employee's Motion for Enforcement and Compliance. Agency's failure to respond is now in excess of the 15 business days as provided for by OEA Rule 636.3, *supra*. This is in spite of the fact that the Agency was duly served a copy of the Employee's Motion for Enforcement. Consequently, pursuant to OEA Rule 636.8, *supra*, this matter is hereby certified to the

Office of Employee Appeals General Counsel for appropriate action.

ORDER

It is hereby ORDERED that this matter be certified to the General Counsel for enforcement of the Final Decision.

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Administrative Judge