

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
HAZEL MEBANE	)	OEA Matter No. 2401-0206-04
Employee	)	
	)	Date of Issuance: September 29, 2005
v.	)	
	)	
DISTRICT OF COLUMBIA PUBLIC	)	
SCHOOLS	)	
Agency	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Hazel Mebane (“Employee”) was separated from D.C. Public Schools (“Agency”) through a reduction-in-force (“RIF”) action. On August 3, 2004, Employee filed a Petition for Appeal against Agency alleging that her competitive ranking was “cloaked in secrecy” and that she was not provided with her competitive level documents. Employee provided several letters of recommendation and certificates of appreciation and participation along with her Petition for Appeal. Employee did not submit a copy of the Final Agency Decision from which she was appealing.

On August 6, 2004, the Administrative Judge issued an Order requesting Employee to submit a copy of the Final Agency Decision. A copy of the decision was ordered to be rendered by the close of business on August 23, 2004, or Employee's case would be dismissed. Employee failed to submit the requested documents. As a result, the Administrative Judge rendered an initial decision dismissing Employee's case for failure to prosecute. He provided that "Employee did not exercise the diligence expected of an appellant pursuing an appeal before this Office . . . ."<sup>1</sup>

On September 17, 2004, the Office of Employee Appeals ("OEA") received a letter from Employee to Agency requesting copies of the Competitive Level Documentation Form ("CLDF") and her Professional Performance Evaluation Process ("PPEP"). Employee provided in this letter that the Administrative Judge requested these documents from her. Although neither of the documents requested by Employee is the actual document requested by the Administrative Judge, she still waited until after the August 23, 2004 deadline to secure these documents. Employee's records do not provide that she made a verbal or written request of a copy of the Final Agency Decision.

On September 30, 2004, Employee filed a Petition for Review alleging that her Due Process rights were violated as a result of not being informed of nor offered the opportunity to compete for a position with Agency. It was not until October 8, 2004, that our office received documents from Employee that included the Final Agency Decision.

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<sup>1</sup> *Initial Decision*, p. 2 (August 31, 2004).

The Final Agency Decision was dated May 27, 2004, with June 30, 2004 listed as the effective date of termination. Employee should have received a copy of this decision from the Agency on or around the date of the letter. If she had not received a copy of the Final Agency Decision, it would seem that she would have requested this document in addition to the CLDF and PPEP.

OEA Rules speak directly to the issue of final agency decisions. OEA Rule 609.2(e) provides:

“A petition of appeal made without the use of the form of the Office shall be in writing and contain the following information:

... (e) A copy of the agency’s notice of final decision”

Moreover, OEA Rule 609.4 provides that “the Office shall not consider the filing of a petition for appeal complete until the employee provides all of the information required under Rule 609.2 and 609.3.”

In *Copeland v. Department of Corrections*, OEA Matter No. 2401-0056-02 (March 5, 2003), \_\_\_ D.C. Reg. \_\_\_ ( ), the OEA Board provided that if an employee fails to comply with OEA rules and their case is dismissed for failure to prosecute, then they would have to uphold the dismissal. Additionally, the OEA has previously ruled in *Scott v. D.C. Public Schools*, OEA Matter No. 2401-0047-03 (March 15, 2004), \_\_\_ D.C. Reg. \_\_\_ ( ) and *Miller v. D.C. Public Schools*, OEA Matter No. 2401-0134-04 (August 27, 2004) \_\_\_ D.C. Reg. \_\_\_ ( ), that a matter may be dismissed when a party fails to submit a Final Agency Decision after being ordered to do so.

As for the Due Process violation argument, the OEA lacks the jurisdiction to render any decision in this matter. Employee failed to provide the basic documents

necessary to establish a basis for an appeal. Therefore, Employee's Due Process argument is not viable and cannot be entertained.

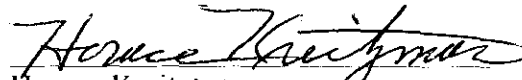
The Board has authority to exercise its discretion on a case-by-case basis when a party fails to comply with an Administrative Judge's order. Employee was given ample notice to supply the Final Agency Decision and was informed of the consequences of not doing so. However, she neglected to provide the document and did not offer a reasonable rationale for her failure to comply with the order. Therefore, we hereby deny Employee's Petition for Review.

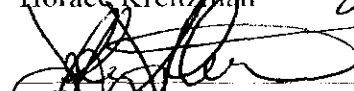
**ORDER**

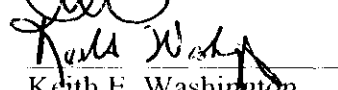
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

  
\_\_\_\_\_  
Brian Lederer, Chair

  
\_\_\_\_\_  
Horace Kreitzman

  
\_\_\_\_\_  
Jeffrey J. Stewart

  
\_\_\_\_\_  
Keith E. Washington

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.