

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager 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:)	
WANDA HOSTON,)	OEA Matter No. 1601-0022-04
Employee)	
v.)	Date of Issuance: January 26, 2007
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Wanda Hoston (“Employee”) worked as a social worker with the District of Columbia Public Schools (“Agency”). On November 25, 2003, she received a notice of termination from Agency. Employee was charged with incompetence due to her inability or failure to perform her duties of employment satisfactorily. The notice went on to state that she did not possess a social worker license to work within D.C. and that her employment was contingent upon her satisfying the licensing requirements.¹ In addition to her termination notice, Employee received a Leave Without Pay form which provided

¹ The only appeal rights that were referenced in the notice of termination letter was Employee’s right to file a grievance.

that her position would be held open until January 30, 2004, for her to prepare and take the necessary examination to obtain her license to work in D.C.²

On December 29, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). She requested a reversal of her termination because she possessed the necessary license to perform her employment duties within D.C. Employee reasoned that according to the District of Columbia Municipal Regulations, Title 5, Section 1660.1 she was only required to possess a master’s degree and valid license. It was her position that since she provided both to Agency, she should not have been terminated.³

Agency disagreed and filed its response to Employee’s Petition for Appeal on September 20, 2004. It argued that Employee was terminated under the terms of the collective bargaining agreement, therefore, she could not appeal her case to OEA. Agency also argued that Employee lacked the required certification to maintain her social worker license under the certification standards for teachers.⁴

After a Pre-hearing Conference held on February 1, 2005, Employee filed a Motion for Summary Judgment. She asserted that Agency’s decision to terminate her was not supported by any evidence. She reasoned that there was no genuine issue of

² If Employee failed to present the required license on January 30th, then her termination would be upheld.

³ *Petition for Appeal* (December 29, 2003). Employee attached copies of a license issued on August 1, 2003, from the Department of Health from the Health Care Licensing and Customer Service Division of the Board of Social Work; this license expired on July 31, 2005. She also included a similar license from the same entity that was issued on January 1, 2003 and expired on December 31, 2004. Likewise, she attached a license from the D.C. Public Schools Office of Human Resources and Teacher Education and Licensure Branch that was issued on March 24, 2000 and expired on February 28, 2005. Additionally, she included a copy of her Masters in Social Work degree along with her transcript from Howard University. Finally, she attached copies of certificates from the National Board of Addiction Examiners; the District of Columbia Certification Board for Professional Alcohol and Drug Counselors; and the American Psychotherapy Association.

⁴ *Agency Response to Employee Petition of Appeal*, p. 2 (September 20, 2004).

material fact because she was a licensed social worker who met all of Agency's requirements. Employee also pointed out that the vacancy announcement to which she responded required applicants to have a Master's degree in social work; a D.C. Government Department of Health License; and hold or be eligible to hold a D.C. Public School education certification.

Agency then argued that Employee lacked the valid master's level social work license issued by the District. Employee admitted that she only possessed an associate level license in social work. However, she argued that she was permitted to practice with the associate license from the time she was hired by Agency. She also argued that the vacancy announcement did not specify that a master's level license was needed. Furthermore, according to Employee, Agency certified that she met the regulations as required by the Board of Education to work for Agency.⁵ Therefore, it was Employee's contention that Agency could not show how she was deficient in any of the outlined requirements.

On March 7, 2005, Agency responded by asserting that it could require an employee to maintain a particular license in order to perform the work of the position. It went on to state that the social work associate degree applied to those employees with a bachelor degree. Although Employee possessed a Master's degree, she failed to take or pass the graduate level examination.⁶

The Administrative Judge ("AJ") issued an Initial Decision on April 7, 2005, and granted Employee's Motion for Summary Judgment. She reasoned that there was no real

⁵ *Appellant's Motion for Summary Judgment*, Exhibit #3 (February 23, 2005).

⁶ *Agency Response to Motion*, p.1 (March 7, 2005).

dispute that Employee had a social work associate license issued by the D.C. Department of Health; that she had a Master's degree; and that she was certified by Agency to provide services as a school social worker. The only outstanding issue was whether Employee was required to complete an examination commensurate with her Master's degree. The AJ held that Agency did not inform Employee that she was to take the examination until they sent a second notice of termination. Therefore, because Agency did not rely on the second notice when Employee was initially terminated, she was essentially denied due process. Furthermore, the AJ found that Agency could not provide language from the vacancy announcement that it required an examination. Consequently, she ruled that Agency reinstate Employee and reimburse her all pay and benefits lost as a result of her removal.⁷

Agency responded by filing a Petition for Review. In its petition it stated that a request to the Board of Social Work was submitted to determine if an examination was required in addition to the Master's degree. Agency argued that depending on the response from the Board of Social Work, the AJ's Initial Decision may have been based on an erroneous interpretation of the regulation. Moreover, Agency argued that it should have been afforded a hearing to present testimony on the certification issue.⁸ Employee disagreed and filed a Response to Agency's Petition for Review.⁹

As the AJ provided in her Initial Decision, the only issue of contention in this case

⁷ *Initial Decision*, p. 3-5 (April 7, 2005).

⁸ *Petition for Review*, p. 2 (May 13, 2005).

⁹ According to Employee, Agency presented no new or material evidence nor did it prove that the AJ's decision was based on erroneous evidence. Employee also provided certification from Agency received on May 27, 2005. She claims that she supplied the same documents that she previously submitted to Agency, her Master's degree and social worker associate license, and again it sent her social worker certification.

was whether an examination was required for Employee to receive a valid license to practice social work within Agency. As previously stated, Agency failed to include the examination requirement in its initial notice to terminate Employee. Furthermore, it is obvious from Agency's Petition for Review that it was not sure that an examination was required at the time it terminated Employee. Agency submitted a letter to the Board of Social Work on May 9, 2005, to inquire about the examination requirement. On its face this letter shows that Agency was still not clear on the requirements almost two years after terminating Employee.

The termination process in this situation should have been used only when Agency could clearly show that Employee lacked the requirements to continue employment. Since the issue of the examination requirement was still in question, Employee was, therefore, improperly terminated. This Board will not allow any agency to terminate an employee while using the appeals process to determine if they had reasonable grounds to do so. This is not only unfair, but it is an abuse of the appeals process. Therefore, we uphold the AJ's decision to reinstate Employee.

ORDER

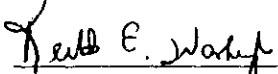
Accordingly, it is hereby **ORDERED** that Agency's Petition for Review
is **DENIED**.

FOR THE BOARD:

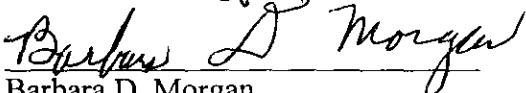


Brian Lederer, Chair

Horace Kreitzman



Keith E. Washington



Barbara D. Morgan

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.