

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:	)	
	)	
EMPLOYEE, <sup>1</sup>	)	
Employee	)	
	)	OEA Matter No. 1601-0001-20C23
v.	)	
	)	Date of Issuance: February 6, 2024
D.C. DEPARTMENT OF EMPLOYMENT	)	
SERVICES,	)	
Agency	)	MICHELLE R. HARRIS, ESQ.
	)	Senior Administrative Judge
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Darin Newson, Employee, <i>Pro se</i>		
Tonya A. Robinson, Esq., Agency Representative		

**ADDENDUM DECISION ON COMPLIANCE**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 10, 2019, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Employment Services’ (“DOES” or “Agency”) decision to terminate him from service effective September 18, 2019. This matter was initially assigned to Administrative Judge (“AJ”) Arien Cannon (“AJ Cannon”) and was later assigned to the undersigned on September 8, 2022. On January 3, 2023, I issued an Initial Decision (“ID”) reversing Agency’s adverse action. Agency did not file an appeal; thus, this decision became final 35 days following the issuance of the ID.<sup>2</sup> On March 27, 2023, Agency filed a Status Report-Compliance with Final Order. Agency asserted therein that Employee had failed to provide documents it needed to process the backpay and benefits owed to Employee as a result of the final order in the ID. Accordingly, I issued an Order on April 6, 2023, scheduling a Status Conference for April 18, 2023, to discuss the issues raised by Agency. On April 14, 2023, Agency filed a Motion to Continue the Status Conference citing to schedule conflicts. I issued an Order on April 18, 2023, rescheduling the matter to April 20, 2023. Both parties appeared on April 20, 2023, as required.

During the Status Conference, it was determined that Employee had submitted all the requisite documentation, but there had been a miscommunication at the Agency regarding the receipt of those documents. Agency’s representative noted during the Status Conference that she would work to ascertain the information and would provide more information regarding what else might be needed to

<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.  
<sup>2</sup> OEA Rule 635.2, 6-B DCMR Ch. 600 (December 27, 2021)

process Employee's backpay and benefits. Following the Status Conference, I issued an Order on April 20, 2023, requiring the parties to provide a status update on or before May 2, 2023. Following email correspondence, it was determined that more documentation was needed, but that the process was moving forward. On June 30, 2023, Agency filed a Second Status Report-Compliance with Final Order. Agency cited therein that all required documents had been sent to the D.C. Department of Human Resources ("DCHR") for approval and transmission to the Office of Pay and Retirement Services ("OPRS"). Agency further cited that "it is not anticipated that anything further will be required from Employee or DOES in order to comply with the final order."<sup>3</sup>

Following several months of communications regarding the status of this matter, the undersigned advised Agency that a Status Report was required. Agency subsequently filed a Status Report on September 25, 2023, wherein it noted Employee's backpay package had been approved by the D.C. Office of Human Resources ("DCHR") and had been forwarded to the Office of Pay and Retirement Services ("OPRS"). Agency also cited that on September 20, 2023, the Deputy Director of OPRS advised that the OPRS had ninety (90) days to review the submitted information.<sup>4</sup> On November 6, 2023, Agency filed a third Status Report in this matter. Agency asserted that on November 1, 2023, OPRS notified Agency of a discrepancy it found in its review of Employee's backpay package.<sup>5</sup> Agency further asserted that OPRS contacted DCHR to resolve the matter but did not offer a timeline for the resolution of the issue.<sup>6</sup> Agency noted that it would continue to follow up with OPRS every two (2) weeks and provide a Status Report on or before November 20, 2023, and every two (2) weeks thereafter until the matter was resolved.<sup>7</sup>

Agency did not file a report on November 20, 2023, and as a result the undersigned inquired via email of the status of the report. On December 14, 2023, Agency filed a fourth Status Report. Agency provided in that report that on December 6, 2023, "DCHR/OPRS contacted DOES regarding Employee's intentions with respect to restoration of benefits."<sup>8</sup> Agency noted that the agreement cited that Employee wanted benefits restored, but that Employee had previously noted he did not want benefits to be restored. Agency asserted that it contacted Employee that same day to inquire further about this issue. Agency also cited that on December 11, 2023, DOES HR and Employee resolved the benefit restoration issue.<sup>9</sup> Agency also provided that the revised Benefits Restoration Agreement was submitted to DCHR and OPRS. Agency further noted that OPRS cited that this matter was being expedited but did not have a specified completion date. Agency asserted it would file a Status Report with this Office on or before January 14, 2024.<sup>10</sup>

On January 9, 2024, Agency sent an email to the undersigned and Employee citing that the backpay and annual leave payout had been mailed to Agency. Agency asserted that once confirmation of receipt by Employee had been ascertained, it would file a final status report. Agency did not file a Status Report by January 14, 2024. As a result, on January 25, 2024, the undersigned issued an Order requiring Agency to file a Status Report regarding this matter by or before February 5, 2024. Further, that Order required Agency to provide confirmation of Employee's receipt of his backpay. On February 2, 2024, Agency filed its fifth and final Status Report. Agency asserted the following:

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<sup>3</sup> Agency's Second Status Report on Compliance (June 30, 2023).

<sup>4</sup> Agency's Status Report (September 25, 2023).

<sup>5</sup> Agency's Third Status Report (November 6, 2023).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> Agency's Fourth Status Report (December 14, 2023).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

1. On December 20, 2023, backpay and annual leave payout was mailed to [Employee] by OPRS.
2. On January 8, 2024, [Employee] confirmed receipt of the backpay and annual leave payout.
3. On January 26, 2024, [Employee] resigned from DOES, effective February 10, 2023.<sup>11</sup>

The undersigned has determined that an Evidentiary Hearing in this matter is not warranted. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether this matter for compliance should be dismissed.

### ANALYSIS AND CONCLUSION

OEA Rule 640<sup>12</sup> addresses compliance and enforcement of Orders issued by this office. OEA Rule 640.1 provides that unless the Office's final decision is appealed to the Superior Court of the District of Columbia, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final. Here, an Initial Decision was issued on January 3, 2023, which reversed Agency's decision to remove Employee and ordered that Employee be reinstated. Agency did not file an appeal therefore; it became the final decision of this Office. Agency cited in a Status Report filed on March 27, 2023, that it had not fulfilled the order of the Initial Decision due to Employee's failure to provide documentation, thus initiating a compliance matter before this Office. However, following a Status Conference held in this matter on April 20, 2023, the undersigned determined that Employee had provided all required documentation. Agency cited in its June 30, 2023, Second Status Report on Compliance that "all required documents had been submitted and that it was not anticipated that anything further would be required from Employee or Agency."

Following several submissions to DCHR and OPRS over the course of several months, Employee's backpay package was finalized and mailed to Employee on December 20, 2023. Agency submitted five (5) status reports over the period between March 2023 through February 2024. In its fifth and final Status Report filed on February 2, 2024, Agency asserted that Employee's backpay and annual leave payout had been mailed on December 20, 2023. Further, Agency affirmed that Employee confirmed receipt of the backpay on January 8, 2024. Additionally, Agency cited that Employee submitted his resignation from Agency on January 26, 2024, with a February 10, 2023, effective date. Agency averred that it had finally complied with the January 3, 2023, Initial Decision and that this matter should be dismissed.

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<sup>11</sup>Agency noted a date of February 10, 2023; however, the undersigned believes that this may be representative of a scrivener's error and that the date should reflect 2024. That noted, assuming arguendo it was not an error, the date of the resignation as it relates to the restoration of the backpay owed to Employee would be irrelevant for the purposes of this decision regarding Agency's compliance with the January 3, 2023, Initial Decision.

<sup>12</sup> 6-B DCMR Ch. 600 (December 27, 2021)

Upon consideration of the aforementioned information relayed in the numerous status reports in this matter and the confirmation of Employee's receipt of backpay; I find that as of February 2, 2024, Agency has complied with the January 3, 2023, Initial Decision/Order. As a result, I further find that this compliance matter should be dismissed.

**ORDER**

Accordingly, it is hereby **ORDERED** that since Employee has received all back pay, this matter for compliance is **DISMISSED**.

FOR THE OFFICE:

**/s/ Michelle R. Harris**  
Michelle R. Harris, Esq.  
Senior Administrative Judge