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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
DOROTHY GREER,)	
Employee)	OEA Matter No. 2401-0025-11C13
)	
v.)	Date of Issuance: July 30, 2013
)	
D.C. DEPARTMENT OF HOUSING)	STEPHANIE HARRIS, Esq.
& COMMUNITY DEVELOPMENT,)	Administrative Judge
Agency)	
)	
Dorothy Greer, Employee <i>Pro Se</i>		
Vonda J. Orders, Esq., Agency Representative		

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On November 24, 2010, Dorothy Greer (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Housing & Community Development’s (“Agency”) decision to abolish her position through a Reduction-in-Force (“RIF”). Employee’s RIF Notice was dated November 8, 2010, with an effective date of December 10, 2010. In its Answer dated January 10, 2011, Agency contended that OEA lacked jurisdiction in this matter because Employee was not separated through a RIF.

Subsequently, on September 24, 2012, I issued an Order requiring Employee to address the jurisdiction issue in this matter. Both parties complied and timely submitted their brief. Based on a review of the record, I determined that no further proceedings were needed and the matter could be decided based upon the documents of record. On February 11, 2013, I issued an Initial Decision (“February 11th ID”) in this matter, requiring that:

1. Agency reimburse Employee three (3) days pay and benefits commensurate with her last position of record for failure to provide Employee with a thirty (30) days notice prior to the effective date of the RIF; 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.

On April 9, 2013, Agency submitted its brief on compliance, along with documents evidencing compliance with the February 11th ID.¹ Thereafter, on April 12, 2013, Employee submitted a Motion to Compel, arguing that Agency had not complied with the February 11th ID. On May 17, 2013, I issued an Order requesting the parties to attend a Status Conference on June 4, 2013, to discuss the issue of compliance and to bring documents in support of their positions. Both parties were in attendance for the Status Conference. Agency provided several documents in support of its position that it has complied with the February 11th ID. However, Employee contends that Agency's documentary evidence does not show compliance with the February 11th ID. I issued a Post Status Conference Order on June 14, 2013, where I allowed the parties to voluntarily submit their Status Conference arguments in writing. This voluntary response was due on or before June 28, 2013. As of the date of this decision, no submissions have been provided by either party. I have determined that there are no further proceedings required for this matter and the record is now closed.

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.

FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 632.1, 59 DCR 2129 (March 16, 2012) reads as follows:

632.1 The initial decision shall become final thirty-five (35) calendar days after issuance.

OEA Rule 635.1, *id.* reads as follows:

635.1 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.

OEA Rule 635.2, *id.*, further read as follows:

635.2 If any agency fails to comply with the final decision of the Office within the time period specified in § 635.1, the employee may file a motion to enforce the

¹ See Agency's Submission Evidencing Compliance with Final Decision (April 9, 2013).

final decision. The motion shall be directed to the Administrative Judge who decided the appeal.

In a compliance matter, the Administrative Judge's role is to determine whether or not the agency has complied with the Office's final decision. In this case, the record shows that neither party filed an appeal with the OEA Board or the Superior Court of the District of Columbia, thus the February 11th ID became final thirty-five (35) calendar days after issuance on March 19, 2013.² Therefore, Agency had thirty calendar days from the date that the ID became finalized to show evidence of compliance with the February 11th ID.

Agency filed its Submission Evidencing Compliance With Final Decision on April 9, 2013, which was within the thirty (30) day timeframe from when the February 11th ID became final. In its submission, Agency submits that there was no break in service for Employee's compensation during the RIF notice period and submits documentary evidence consisting of Employee's paystubs during the RIF Notice period, November 8, 2010 through December 10, 2010.³ Agency notes that although Employee's was erroneously terminated as a result of the RIF, there was no break in pay for the above-referenced period. I find that Agency's documentary evidence confirms that there was no break in service or compensation for Employee.

Employee does not dispute that there was no break in her pay, however, in her Motion to Compel Compliance, Employee argues that Agency has not complied, noting that Agency has failed to adhere to the terms of the February 11th ID, noting that more than thirty days has passed since the date the February 11th ID became final, on or about March 15, 2013. The undersigned disagrees with Employee's argument. As noted above, Agency's April 9, 2013, submission was within the thirty (30) day timeframe from when the February 11th ID became final. Employee also argues that Agency was barred from submitting additional evidence in this matter because the record was closed. The undersigned finds that Agency's submission of documentary evidence was limited to purposes of showing compliance, and therefore is not considered new evidence in terms of the merits of the February 11th ID. And as such, I conclude that Employee's Motion for Compliance be dismissed.

ORDER

Based on these findings and conclusions, and consistent with this analysis, it is hereby **ORDERED** that Employee's Motion for Compliance be **DISMISSED**.

FOR THE OFFICE:

STEPHANIE N. HARRIS, Esq.
Administrative Judge

² See OEA Rule 632.1, 59 DCR 2129 (March 16, 2012).

³ Agency's Submission Evidencing Compliance with Final Decision, Attachments 2-1 through 2-6 (April 9, 2013).