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

_____	)	
In the Matter of:	)	
	)	
MADELEINE FRANCOIS,	)	
Employee	)	OEA Matter No. 1601-0007-18C20
	)	
v.	)	Date of Issuance: February 17, 2021
	)	
OFFICE OF THE STATE	)	MICHELLE R. HARRIS, ESQ.
SUPERINTENDENT OF EDUCATION,	)	Administrative Judge
Agency	)	
_____	)	

Denise M. Clark, Esq., Employee Representative  
Hillary Hoffman-Peak, Esq., Agency Representative

**ADDENDUM DECISION ON COMPLIANCE<sup>1</sup>**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 13, 2017, Madeleine Francois (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her from her position as a Bus Attendant, effective close of business September 18, 2017. On October 31, 2018, the undersigned issued an Initial Decision reversing Agency’s action. On December 3, 2018, Agency filed a Petition for Review of the Initial Decision with the OEA Board. The Board issued its Opinion and Order on Review (“O&O”) on July 16, 2019, denying Agency’s Petition for Review. Agency filed a Petition for Review of Agency Decision in the Superior Court for the District of Columbia on August 19, 2019.

On August 5, 2019, Employee, by and through her counsel, filed a Motion for Attorney’s Fees in the above-captioned matter. On August 19, 2019, the undersigned Administrative Judge issued an Order requiring Agency to respond to Employee’s Motion. On August 30, 2019, Agency responded and indicated therein that it was attempting to settle this matter and cited that it had filed an appeal of this matter to the Superior Court for the District of Columbia. On December 16, 2019, this matter was dismissed in the Superior Court for the District of Columbia following Agency’s submission of a Consent Praecipe, wherein it voluntarily withdrew its Petition for Review of Agency Decision. This matter was then forwarded to the undersigned Administrative Judge regarding the outstanding Attorney Fees and Costs Motion. On January

<sup>1</sup> This Initial Decision was issued during the District of Columbia’s COVID-19 State of Emergency.

27, 2020, I issued an Order requiring the parties to submit a response to Employee's Motion for Attorney Fees and Costs. Responses were due on or before February 18, 2020. Agency submitted its response on February 18, 2020, and indicated therein that it "has a check ready for Ms. Clark." Counsel for Employee submitted her response on March 9, 2020, and confirmed that the "Agency has satisfied the petition for attorneys' fees which it did not oppose."<sup>2</sup>

In the March 9, 2020 correspondence, Employee's counsel indicated that there was a compliance issue regarding Employee's backpay. Accordingly, on March 10, 2020, I issued an Order requiring Agency to submit a response on or before March 23, 2020. Following several additional orders for submissions and status conferences in this matter, on September 3, 2020, Agency filed a notice of Employee's backpay and that it had been sent via direct deposit. The following is representative of the procedural history in this matter following the September 3, 2020 issuance of the backpay award:

1. On September 17, 2020, Employee, by and through her counsel, confirmed receipt of the check, but indicated that they believed the amount of the award was incorrect.
2. On September 18, 2020, OSSE provided the backpay award calculation worksheet that was completed by the Office of Pay and Retirement Services (OPRS). Employee's counsel asked for time to review and respond on or before September 25, 2020.
3. On September 28, 2020 and October 1, 2020, the undersigned sent a follow up email regarding the status of Employee's review of the matter.
4. On October 2, 2020, Employee's counsel responded and indicated therein that it questioned the deduction of Employee's outside earnings and unemployment. Employee's counsel also noted that the backpay award was not deposited into Employee's Wells Fargo account, but had been placed on a debit card for which Employee was being charged a fee.
5. The undersigned replied and asked that Agency submit a response by October 7, 2020. On October 5, 2020, Employee provided a document regarding the questions that were raised.
6. Agency replied that it contacted OPRS and would provide more follow-up information. On October 16, 2020, and October 21, 2020, the undersigned sent follow-up correspondence to ascertain whether Agency had received the information from OPRS.
7. On October 21, 2020, Agency replied and indicated that the OPRS representative responsible for this matter had been out of the office on sick leave. They would provide an update as soon as OPRS sent the information. I advised Agency's representative to please notify the undersigned if there was no response received by October 26, 2020.
8. On October 27, 2020, the undersigned followed up again with Agency and advised that I would need to schedule a Status Conference since OPRS had still not provided an update. Agency responded that same day and included a document from OPRS regarding the calculations and deductions of the backpay award. I also inquired as to whether there was additional information regarding the backpay award on the debit card. I also advised Employee's counsel to review the documentation provided and to

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<sup>2</sup> An Addendum Decision for Attorney Fees was issued on April 30, 2020.

submit a response. On October 28, 2020, Agency responded and indicated that OPRS said that “the debit card can be taken to the person’s bank and they can request a cash advance from the card to their account. The only thing they need is the total amount for the cash advance.” Additionally, Agency noted that if a backpay award was issued onto a debit card, that there was no direct deposit available.

9. On November 9, 2020, the undersigned sent correspondence to ascertain whether Employee’s counsel had reviewed the information provided.
10. On November 10, 2020, Employee’s counsel responded and indicated that while the OPRS documents explained the process that “it is unclear how the District is allowed to offset worker’s compensation payments when the courts have concluded it is collateral to any back pay calculation.”
11. Based upon Employee’s assertion, I issued an Order on November 10, 2020 requiring the parties to submit briefs on this issue. Employee’s brief was due by November 23, 2020, and Agency’s brief was due by December 7, 2020.
12. On November 19, 2020, Employee’s counsel sent correspondence and indicated the following: “...[i]n our research concerning the issues we have raised, we identified a DC regulation and a court of appeals case interpreting it. Unfortunately for DC workers, unemployment is not collateral. Therefore, we are withdrawing that dispute.” Additionally, Employee’s counsel indicated that Employee “has been advised by OPRS that her pay rate is \$24.16 an hour, but it appears the backpay calculation is at \$23.16. On her behalf we request that this be reviewed and adjusted. Further, we request that she be issued a check. The USABank card cannot be used to move the entire amount she is due to her bank as it is limited to withdrawals of \$500 at a time. Additionally, she is charged additional fees when using the card. These additional fees are not part of the backpay calculation set forth in the DC regulation attached here. Consequently, [Employee] is not recovering the full amount of the backpay due to the fees she is incurring.”
13. Based on Employee’s November 19, 2020 correspondence, I requested that Agency follow up regarding the pay discrepancy and the issuance of a paper check. Agency indicated that it would need to check with Payroll and OPRS.
14. On December 7, 2020, Agency replied and indicated that the pay discrepancy was based upon Employee’s work location.<sup>3</sup> I asked Employee’s counsel to review and respond to this information by December 15, 2020.
15. On December 9, 2020, Agency’s representative sent correspondence and indicated that if Employee had not withdrawn funds, that a paper check could be issued and could be

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<sup>3</sup> Agency’s representative Quiyana Hall noted the following: “Upon Ms. Francois separation, her pay rate was \$19.44 - which was a Fifth Street pay rate. All subsequent calculations for her back-pay were done at a Fifth Street rate, ending with the pay rate \$24.16. Upon Ms. Francois’s return effective 1/19/2020, it was ruled per her settlement that she was not able to return to Fifth Street, changing her pay rate to \$23.16 from that date going forward. Please note, the Fifth Street bus terminal location yields a higher rate of pay for staff that are assigned there (approx. \$1 per hour) due to additional trainings/certifications required to operate out of that location (i.e. – American Sign Language (ASL), wheelchair and/or tracheostomy experience.)”

completed within 14 to 21 days. The total balance on the card was needed to begin processing.

16. Employee's counsel responded on December 9, 2020 and noted she was awaiting confirmation from Employee about the balance on the card. Further, counsel advised that Agency's statements regarding the pay difference due to the different work location was not in alignment with the Initial Decision. Agency responded and sent documentation that it relied upon for its action.
17. Upon consideration of the parties' submissions, I determined a Status Hearing was warranted. I issued an Order on December 11, 2020, scheduling a virtual Status Hearing for December 15, 2020.
18. On December 14, 2020, Agency sent correspondence that Employee's backpay award would be issued to a paper check and would be available for pick up by Friday, December 18, 2020.
19. During the Status Conference held on December 15, 2020, the parties discussed the outstanding issues regarding the pay. The parties agreed that Employee should be placed back on the pay scale she was on before she was wrongfully terminated.<sup>4</sup> Additionally, Agency would provide a retroactive check for the difference in the pay change to Employee. Agency advised that the processing for these resolutions should be complete by the end of January 2021.
20. On December 23, 2020, Agency representative indicated that the backpay check was available for pick up on December 24, 2020.
21. On December 24, 2020, Agency sent correspondence confirming Employee's receipt of the check and provided documentation of the executed pay correction form.

### JURISDICTION

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

### ISSUE

Whether Employee's March 9, 2020 request for compliance should be dismissed.

### ANALYSIS AND CONCLUSION

OEA Rule 635<sup>5</sup> addresses compliance and enforcement of Orders issued by this office. OEA Rule 635.1 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 October 31, 2018, which reversed Agency's decision to remove Employee and ordered that Employee be reinstated. On December

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<sup>4</sup> It was noted that pursuant to the Collective Bargaining Agreement (CBA) for the Union, each year bus attendants are subject to a bid-based process for terminal placement. As a result, all bus attendants are subject to a different pay scale based upon the assignment following this bid process.

<sup>5</sup> 59 DCR 2129 (March 16, 2012)."

3, 2018, Agency filed a Petition for Review of the Initial Decision with the OEA Board. The Board issued its Opinion and Order on Review (“O&O”) on July 16, 2019, denying Agency’s Petition for Review and required that Agency reinstate Employee and reimburse all back pay and benefits lost as a result of her removal. Agency appealed the Board’s O&O to the Superior Court for the District of Columbia; but later withdrew its Petition, therefore, the O&O became the final decision of this Office.

On March 9, 2020, Employee, by and through her counsel, indicated that she had not received her backpay. On March 10, 2020, I issued an Order requiring Agency’s response. On March 23, 2020, Agency responded and noted that it required documentation from Employee to process her backpay. I issued an Order on March 25, 2020, requiring an update be submitted by April 6, 2020. On April 6, 2020, Agency replied and indicated that it still needed the document from Employee to process backpay. On June 26, 2020, I issued an Order requiring the parties to submit an update regarding the status of Employee’s backpay. Following several responses submitted by Employee and Agency, I issued an Order on July 27, 2020, scheduling a Status Conference for August 10, 2020.

During the Status Conference, Agency’s Human Resources (HR) representative, Quiyana Hall (“Ms. Hall”) indicated that there had been a miscommunication about the documents that were needed. There were documents submitted for Employee’s return to work, but these were not the documents needed for the processing of backpay. Agency indicated that it only needed Employee’s 2019 Tax documents to process backpay. The undersigned noted during the conference that Agency had not previously noted that these documents were required. Employee sent the required documents the same day, and Agency reviewed and indicated it had everything it needed to move forward with processing backpay. On August 18, 2020, Ms. Hall sent correspondence indicating that DCHR had approved Employee’s backpay package and that it had been sent to the Office of Pay and Retirement Services (“OPRS”) for processing.

Despite the extensive delays in Agency’s processing of Employee’s backpay in this matter, Employee received backpay as of September 3, 2020. Following the receipt of the backpay award, Employee raised additional issues with the calculation and with the issuance of the award to a debit card. Employee later withdrew her issue regarding the calculation of the award, but raised issues regarding the pay scale to which she was returned to work<sup>6</sup>. Following correspondence via email and a Status Conference held on December 15, 2020, it was determined that Employee would be returned to her previous pay scale (\$24.16) as required by the Initial Decision in this matter. Further, Employee would receive a retroactive check for the difference in pay. On December 24, 2020, Employee retrieved the backpay award via paper check and also executed the pay correction form required to make the adjustments to the pay rate as agreed upon. Based on the foregoing, I find that Agency has now complied with this Office’s October 31, 2018 Initial Decision, and Employee’s March 9, 2020 request for compliance should be dismissed as resolved.

### **ORDER**

Accordingly, it is hereby **ORDERED** that since Employee has been reinstated and has received all back pay and benefits, Employee’s March 9, 2020 request for compliance is **DISMISSED**.

FOR THE OFFICE:

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Michelle R. Harris, Esq.  
Administrative Judge

<sup>6</sup> See. Procedural History at Pages 2-4.