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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE)	OEA Matter No. 1601-0053-17C21
Employee)	
v.)	Date of Issuance: May 9, 2022
)	
DISTRICT OF COLUMBIA DEPARTMENT)	Lois Hochhauser, Esq.
OF GENERAL SERVICES)	Administrative Judge
Agency)	
C. Vaughn Adams, Esq., Agency Representative)	
Daniel S. Crowley, Esq., Employee Representative)	

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a petition with the Office of Employee Appeals (“OEA”) on May 26, 2017, appealing the final decision of the District of Columbia Department of General Services, (“Agency”) to terminate his employment. Following her appointment, this Administrative Judge (“AJ”) directed the parties to present written and/or oral arguments on several issues. In the *Initial Decision* (“ID”), issued on June 6, 2019, the AJ reversed the removal, ordered Employee’s reinstatement, and awarded him back pay and the restoration of any benefits lost as a result of the removal. Agency was directed to submit documentation of compliance with this Office by a stated deadline. Agency sought review of the *ID* by the Board, which dismissed the request on January 14, 2020. Agency then filed an appeal with the Superior Court of the District of Columbia. On February 3, 2021, the Court denied the appeal.

On February 13, 2020, Employee filed a motion for an award of attorney fees. The matter was stayed pending a decision by the Superior Court. After the Court denied Agency’s petition, the parties filed additional pleadings, and then engaged in settlement discussions. On July 7, 2021, they notified the AJ that they resolved the matter, and Employee asked to withdraw his fee request. The *Addendum Decision on Attorney Fees*, issued on July 21, 2021, dismissed Employee’s fee request.

Employee filed this *Petition for Enforcement of Decision and Order* on September 7, 2021, alleging that Agency had not reinstated him, issued back pay or restored his lost benefits, as ordered in the *ID*. He asked that the matter be referred to the OEA General Counsel for enforcement. On September 13, 2021, the AJ issued an *Order*, directing Agency to submit documentation of full compliance; or if compliance was not achieved, to state the reasons for its failure to comply and the date that compliance would be achieved. In its response, Agency sought dismissal of the *Petition*, conceded that it had not achieved full compliance, but that it had “done all it could to speed up” the process, and “delays [were] outside of [its] control.”

In the November 19, 2021 *Order*, the AJ notified Agency that it was responsible for achieving compliance, and had failed to do so. She directed that by December 3, 2021, Agency

identify any item not in compliance and the person responsible for achieving compliance of that item. She further directed that for any item that Agency projected would still not be in compliance by December 21, 2021, Agency submit a notarized statement from the responsible employee explaining why the deadline could not be met. She stated that the responsible employees would be required to present testimony at a hearing in January 2022. Employee was directed to submit his response, if any, by December 30, 2021.

In its December 13, 2021 response, Agency stated that with the exception of one item, it had achieved full compliance, and that compliance on the remaining item would be met in the immediate future. Employee did not file a response. On March 18, 2022, the AJ issued an *Order*, "to confirm that Employee did not respond [to the November 19 *Order*] because compliance was achieved." The AJ directed Employee to respond by April 7, 2022, and notified him that his failure to respond by the stated deadline "shall be considered concurrence that his *Petition for Enforcement* should be dismissed based on Agency's compliance." The parties were advised that the record would close on April 7, 2022, unless they were notified to the contrary. Employee did not file a response or contact the AJ to seek an extension of time. The record closed on April 7, 2022.

JURISDICTION

The Office has jurisdiction pursuant to D.C. Official Code §1-606.03 (2001).

ISSUE

Should this petition for enforcement be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Employee, through counsel, vigorously represented his interests before this Office in challenging his removal, seeking attorney fees, and requesting enforcement. He consistently met filing deadlines, and represented his position in telephone conferences, email exchanges and at proceedings. The AJ was reasonably confident that his failure to respond to the November 19 *Order* therefore was intentional, but to be certain, she issued the March 18 *Order*, explicitly notifying Employee that his failure to respond would be deemed concurrence that his enforcement request should be dismissed based on Agency's compliance. Employee did not file a response, and did not contact the AJ to seek an extension. These *Orders* were sent by first class mail to the addresses provided by Employee. None was returned and both are presumed to have been received in a timely manner. The AJ finds, therefore, that Employee concurs that this *Petition for Enforcement* should be dismissed since he no longer disputes that Agency is in compliance. The AJ concludes Employee's *Petition for Enforcement* should therefore be dismissed.

ORDER

Based on the findings, discussion and conclusions herein, this *Petition for Enforcement of Decision and Order* request is hereby dismissed.

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge