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DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

QUEEN GLYMPH Employee)	
)	
v.)	OEA Matter No.: 1601-0154-00
)	
DISTRICT OF COLUMBIA)	Date: April 19, 2011
COMMISSION ON MENTAL HEALTH)	
Agency)	Rohulamin Quander, Esq.
)	Senior Administrative Judge
)	

Richard Swick, Esq., Employee Representative
Kevin Turner, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On August 28, 2000, Employee filed a Petition for Appeal before the Office of Employee Appeals (the “Office” or “OEA”), alleging that she was wrongfully removed from her position as a Program Analyst, DS-0343-12/10, by the District of Columbia Commission on Mental Health (the “Agency”). Agency assiduously denied Employee’s allegations, responding that Employee was terminated due to Incompetency (Medical), i.e., her inability to perform her job as a result of an on-the-job injury that she sustained. Agency cited D.C. Personnel Regulation 827.5, to justify its removal action based upon Employee’s alleged inability to perform the duties of her position due to medical reasons.¹ This matter has been in litigation for several years, well beyond the normal two

¹ 827.3 An agency shall carry an employee covered by § 827.1(b) on leave without pay for two (2) years from the date of commencement of compensation, or from the time compensable disability recurs if the recurrence begins after the employee resumes full-time employment with the District government,

year consideration for the awarding of worker's compensation benefits. However, due to the litigation in federal court, and the subsequent difficulties that Agency and Employee continue to experience while seeking to ultimately resolve this dispute, Employee's current compensation status is unknown, and not determinative in the outcome of the matter under consideration

The matter was assigned to Daryl Hollis, a Senior Administrative Judge, formerly employed by the Office. Judge Hollis, in the discharge of his judicial responsibilities, convened periodic status conferences. He also convened at least one Pre-Hearing Conference conducted on February 4, 2003. On February 5, 2003, the day after the Pre-Hearing Conference, Judge Hollis issued a Memorandum To The Record, which he shared with both counsel and Employee.

In his Memorandum, Judge Hollis stated:

A prehearing was conducted in the above-captioned matter on February 4, 2003. At that proceeding, I was advised that a matter that may resolve the instant case is currently in litigation before the U.S. District Court for the District of Columbia. The federal case is *Queen Glymph v. District of Columbia*, C.A. No. 01-1333 (RMU). In the interest of judicial economy, and with the parties' consent, I am holding the instant matter in abeyance pending the outcome of the federal case. I am asking the employee's representative to keep me apprised of the progress of the federal case.

On June 27, 2005, the federal court issued a decision in the above referred matter, ruling in Employee's favor. The court also found that Employee was a qualified individual with a disability under the Americans with Disabilities Act, and that Agency had failed to provide a reasonable accommodation to Employee as sought during her employment tenure. The additional specific details of the ruling need not be addressed in this current Order, other than to state that Agency was directed to reinstate the Employee, and place her in a suitable position. However, the matter was complicated by several facts, including: 1) that the Commission on Mental Health had been abolished, and there were apparently no immediately comparable, suitable positions to place Employee into; 2) what was the extent of Employee's entitlement to reinstatement, given that her position was ultimately abolished as a component of the termination of the Commission.

This matter was assigned to me when Judge Hollis retired. I convened two Status Conferences, the most recent on September 15, 2010. Further, I have communicated with respective counsel, as recent as March 30, 2011. Respective legal counsel have been

827.5 At the end of the two-year (2-year) period specified in § 827.3, an agency shall initiate appropriate action under chapter 16 of these regulations.

unable to come to terms on the issue of suitable placement, reasonable accommodations, and when Employee will return to work.

OEA has evaluated this eleven year old matter, and the sustained pendency of outcome, but sees no immediate movement that the Office can address or resolve. The Office does not see any benefit that this OEA can award to the Employee, who has already obtained substantial relief from the federal court, including an Order that reflected her entitlement to reinstatement, back pay and benefits, and a provision for the awarding of reasonable attorney fees.

ORDER

The foregoing having been considered, I conclude that this matter needs to be closed by the Office, as there is no further relief that OEA can provide at this time. It is so ORDERED

FOR THE OFFICE

ROHULAMIN QUANDER, ESQ.
Senior Administrative Judge