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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Kenya Fulford-Cutbertson)	OEA Matter No. 1601-0010-13C15
Employee)	
)	Date of Issuance: May 28, 2015
v.)	
)	Senior Administrative Judge
Department of Corrections)	Joseph E. Lim, Esq.
Agency)	
_____)	
J. Michael Hannon, Esq., Employee Representative)	
Lindsey Neinast, Esq., Agency Representative)	

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND STATEMENT OF FACTS

On October 11, 2012, Kenya Fulford-Cutbertson (“Employee”), a former Correctional Officer, filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) from Department of Corrections’ (“Agency” or “DOC”) final decision removing her from her position. This matter was assigned to me on January 21, 2014. I conducted a Prehearing Conference on April 10, 2014, and ordered the parties to submit briefs on the penalty issue.

On December 19, 2014, I issued an Initial Decision (“ID”) in Matter No. 1601-0010-13, in which I reversed Agency’s action against Employee for its failure to prove its charge. On February 20, 2015, Agency filed a petition for review of the ID with the Superior Court of the District of Columbia where it is now pending. On February 26, 2015, Employee submitted a motion for compliance, complaining that Agency had not put her back to work. On March 3, 2015, I ordered Agency to respond to Employee’s motion. Agency filed its response on April 10, 2015. On April 29, 2015, Employee filed a request to withdraw her motion for compliance. The record is closed.

JURISDICTION

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

ISSUE

Whether the motion for compliance should be dismissed.

ANALYSIS AND CONCLUSION

OEA Rule 635.7, 59 D.C. Reg. 2129, states that in a compliance matter the Administrative Judge “shall take all necessary steps to determine whether the final decision is being complied with and shall issue a written opinion on the matter.”

OEA Rule 635.2 allows an employee to file a motion to enforce a final decision if the agency has failed to comply with the final decision within 30 days from the date the decision became final. Petitions for Review are permitted to be filed when a party wishes to appeal an Initial Decision to the Board. According to OEA Rule 633.1 such appeal must be taken “within thirty-five (35) calendar days of issuance of the initial decision.” If a Petition for Review is not filed with the Board, D.C. Code § 1-606.03(c) provides that the Initial Decision shall become final 35 calendar days after issuance. *See also OEA Rule 632.1.*

However, OEA Rule 632.2, 59 D.C. Reg. 2129, states that “*The initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within thirty-five (35) calendar days after issuance of the initial decision. Italics supplied.*”

Because Agency has filed an appeal, the ID is not yet final. Therefore, I conclude that Employee’s motion for compliance is premature and must be dismissed. Employee acknowledges as much and thus wishes to withdraw her motion for compliance. The dismissal is without prejudice, because if and when the ID is upheld and no further appeals are taken, then Agency is bound by my Order set forth in the November 21, 2014, ID. If it subsequently becomes necessary for Employee to file a new motion for compliance, she may do so at the appropriate time.

ORDER

It is hereby ORDERED that Employee’s Motion for Compliance is DISMISSED without prejudice.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge