

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
Alfred Gurley	)	OEA Matter No. 1601-0008-05C08
Employee	)	
	)	Date of Issuance: December 31, 2008
v.	)	
	)	Joseph E. Lim, Esq.
D.C. PUBLIC SCHOOLS	)	Senior Administrative Judge
Agency	)	
_____	)	

Barbara Hutchinson, Esq., Employee Representative  
Harriet Segar, Esq., Agency Representative

**ADDENDUM DECISION ON COMPLIANCE**

INTRODUCTION AND PROCEDURAL HISTORY

On November 24, 2004, Employee, an Investigator with the District of Columbia Public Schools, filed a petition for appeal from Agency’s final decision separating him from Government service due to inexcusable neglect of duty, insubordination, and absence without leave.

After Agency failed to file an Answer to Employee’s Appeal within the stated deadline, I issued an Initial Decision (ID) on March 21, 2005, and ordered Agency to reverse its action against Employee within 30 days of the date on which this decision becomes final and to restore to Employee all pay and benefits of which he was deprived because of the termination. Agency appealed, but the OEA Board upheld the ID on April 14, 2008. See *Gurley v. D.C. Public Schools*, 1601-0008-05, *Opinion and Order on Petition for Review* (April 14, 2008), D.C. Reg. ( ). Agency did not appeal the Decision, and, as per OEA Rule 633.3, it became final five (5) business days after issuance of the last denial.

On August 22, 2008, Employee filed a motion for compliance, complaining that Agency had not reversed its removal action nor given him his back pay and benefits. In its October 13, 2008 response to my Show Cause Order, Agency admitted that it had not complied with the ID but that they were working on it. On December 2, 1008, I received Employee’s 2<sup>nd</sup> Motion to Enforce Decision, complaining that Agency still has not complied with the ID within its own requested deadline. In its December 31, 2008, response, Agency stated that Employee had resigned from his former position effective July 30, 2008, but admitted that they still had not yet paid Employee’s back pay. The record is 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.

ANALYSIS AND CONCLUSION

OEA Rule § 636.1, 46 D.C. Reg. at 9321 (1999) reads as follows:

636.1 Unless the Office's final decision is appealed to the District of Columbia Superior Court, 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 636.8, *id.*, reads in pertinent part as follows:

If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Code § 1-606.2.

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. Here, there is no question that Agency did not comply with the final decision within the 30-day time frame, nor has it done so to date. Therefore, pursuant to OEA Rule 636.8, *supra*, this matter is certified to the Office's General Counsel for appropriate action.

ORDER

It is hereby ORDERED that this matter be certified to the General Counsel.

FOR THE OFFICE:

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JOSEPH E. LIM, Esq.  
Senior Administrative Judge