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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0084-18C23
)	
v.)	Date of Issuance: May 10, 2023 ²
)	
D.C. PUBLIC SCHOOLS,)	MONICA DOHNJI, ESQ.
Agency)	Senior Administrative Judge
_____)	
Thomas Martin, Esq., Employee Representative ³	
Nicole Dillard, Esq., Agency Representative	

SECOND ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On August 24, 2018, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Public Schools’ (“Agency”) decision to terminate her from her position as a Teacher, effective July 27, 2018. Employee was terminated for having an ‘Ineffective’ rating under IMPACT, D.C. Public Schools’ Effective Assessment System for School-Based Personnel (“IMPACT”), during the 2017-2018 school year. On September 13, 2018, Agency filed its Motion to Dismiss and Answer to Employee’s Petition for Appeal.⁴

I was assigned this matter on October 3, 2018. A Status/Prehearing Conference was held on November 14, 2018, wherein, the Agency requested that the matter be referred to mediation.⁵ On November 16, 2018, the undersigned issued an Order Convening a Prehearing Conference for January 8, 2019.⁶ A

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² This decision was initially issued on April 18, 2023, however, due to an error in the case number, this May 10, 2023, Second Addendum Decision on Compliance is issued for the sole purpose of correcting the case number on the first page and in the header section.

³Employee was previously represented by attorney F. Douglas Hartnett, Esq., however, he withdrew his representation of Employee on January 30, 2023.

⁴ Agency noted in its Motion to Dismiss that OEA did not have jurisdiction over Employee’s’ Excessing claim as she had appealed the Excessing issue through the grievance process.

⁵ A preliminary brief submission schedule was agreed upon by the parties during the Prehearing Conference, pending the outcome of the Mediation Conference.

⁶ On January 7, 2018, Agency’s representative informed the undersigned via email that the parties were still working on the terms of the settlement agreement. As such, the parties were notified by the undersigned via email that the Prehearing Conference scheduled for January 8, 2019, was cancelled. The undersigned also requested that the parties submit a status update by January 30, 2019.

Mediation Conference was held on December 4, 2018. On December 21, 2018, Agency notified the undersigned that a settlement agreement had been sent to Employee for her review and signature.⁷ After numerous email communications between the undersigned and the parties regarding the status of the settlement agreement, and requests for more time to continue negotiations, the undersigned issued an Order on June 4, 2019, scheduling a Status/Prehearing Conference for June 24, 2019. Per the parties' email request, a Telephonic Status Conference was convened on June 21, 2019, with all parties present. As a result, the June 24, 2019, Status/Prehearing Conference was cancelled. Following the Telephonic Conference on June 21, 2019, Mr. Lee W. Jackson, filed a Withdrawal of Representation as Employee's representative. On July 1, 2019, the undersigned issued an Order scheduling a Prehearing Conference for July 22, 2019.

In an email dated July 18, 2019, the undersigned was informed by Mr. Hartnett that he had been retained as counsel by Employee. On July 19, 2019, Mr. Hartnett filed an Entry of Appearance on behalf of Employee, along with his Motion to Reschedule Pre-Hearing Conference. On July 22, 2019, the undersigned issued an Order Convening a Prehearing Conference for August 12, 2019. Both parties were present for the scheduled conference. During that conference, the undersigned determined that an Evidentiary Hearing was warranted and issued an Order Convening an Evidentiary Hearing for November 4, 2019. On October 28, 2019, Mr. Hartnett filed a Withdrawal of Counsel by Employee's Consent, noting that Employee was prepared to resume her representation *pro se*.

A Telephonic Conference was held on October 28, 2019, with Employee and Agency's representative, wherein, Agency noted that it would withdraw its opposition to Employee's Petition for Appeal. Agency was ordered to file its withdrawal in writing with OEA. On November 5, 2019, Agency filed its Motion for Withdrawal of its Opposition of IMPACT Termination Appeal. Agency noted that "[a]t this time, DCPS concedes liability in [Employee's] IMPACT matter. As such, [Employee] will be placed into a teaching position" Agency reiterated in a footnote that "[Employee] may note that she has grieved her Excess, however, that matter is not before the OEA. [Employee] grieved her Excess through the grievance process outlined in the Collective Bargaining Agreement Article section 4.5...."⁸ On November 8, 2019, Employee filed a Partial Opposition to Agency's Motion to Withdraw its Opposition of IMPACT Termination Appeal.⁹ Considering Agency's acceptance of liability with regards to Employee's IMPACT evaluation, on November 18, 2019, I issued an Initial Decision ("ID") reversing Agency's decision to terminate Employee, pursuant to IMPACT.

On February 10, 2020, Mr. Hartnett again entered his appearance as Employee's representative and filed Employee's Petition for Enforcement. Employee noted that Agency had failed to fully comply with the November 18, 2019, ID. On February 24, 2020, Agency filed its Response to Employee's Petition for Enforcement and Motion for Leave. Thereafter, I issued an Order scheduling a Status Conference for April 27, 2020. Due to the COVID-19 State of Emergency, the Status Conference was converted to a Telephonic Status Conference. Both parties were present for the Telephonic Status Conference. During the Telephonic Status Conference, Employee requested time to submit a brief addressing the issues raised during the April 27, 2020, call. On May 22, 2020, Employee filed her Supplemental Petition for Enforcement. Thereafter, Agency filed a Response to Employee's Supplemental Petition for Enforcement. On July 2, 2020, I issued an Addendum Decision on Compliance finding that Agency had reinstated Employee to her last position of

⁷ On January 11, 2019, the undersigned received a designation of Employee Representative, noting that Employee was now represented by Mr. Lee W. Jackson.

⁸ See Agency's Motion for Withdrawal of its Opposition of IMPACT Termination Appeal (November 5, 2019).

⁹ Employee highlighted that Agency intended to reinstate her in a "Not to Exceed" position, instead of the position she occupied prior to her termination pursuant to IMPACT. I found that Employee's current argument was premature because it dealt with a compliance issue. I explained to Employee that upon issuance of the instant Initial Decision, Agency had 30 days from the date the decision became final to comply. If Agency failed to comply at that time, then Employee could file a Motion for Enforcement.

record or a comparable position in compliance with the November 18, 2019, ID. Regarding Employee's restoration of back pay and benefits, I found that Agency had not complied with the November 18, 2019 ID. Agency was ordered to pay out Employee's backpay and benefits lost for the seventeen (17) months she was out of work.

Agency submitted documentation evidencing compliance with the July 2, 2020, Addendum Decision on Compliance on January 13, 2021, and March 15, 2021.¹⁰ Thereafter, on March 16, 2021, Employee emailed the undersigned stating that Agency had not fully complied with the November 18, 2019 ID.¹¹ Employee requested that Agency reinstate her healthcare and life insurance benefits from August 2018 until November 15, 2020, so she could have five (5) years of consecutive healthcare insurance prior to retirement. On the same day, Agency's representative responded to Employee's email stating that Agency was not obligated to continue Employee's health benefits until November 2020. Agency further noted that it could not allow Employee to buy a year of health insurance, and that the November 18, 2019 ID did not provide for such, in order to make Employee whole. Additionally, Agency provided that the affidavit of outside earnings Employee completed was for her reinstatement that occurred between December 2019 through June 2020. Agency also asserted that Employee's date of separation, per her excessing was prior to November 2020. Employee did not respond to Agency's email and this matter was considered closed.

On January 23, 2023, Employee, through her new attorney, filed Motion for Compliance requesting that Agency reinstate her to a permanent teacher position at DCPS, restore all her benefits, and provide documentation evidencing compliance. Following several email exchanges between the undersigned and the parties, Employee was ordered to provide this Office with the specific reasons for her challenge to Agency's backpay worksheet. On February 13, 2023, Employee, through counsel, filed Employee's Response to Show Cause Email. Agency waived its rights to respond to Employee's filing. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency has fully complied with the November 18, 2019 ID.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule 635.9, provides that:

If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the

¹⁰ In January of 2021, the undersigned requested that Agency provide proof of compliance in this matter. On January 13, 2021, Agency's representative informed the undersigned that due to a clerical error in the July 2, 2021, Addendum Decision on Compliance, Agency initially paid Employee for four (4) months, instead of 17 months. Agency's representative provided this Office with the backpay worksheet of its first calculation of backpay and benefits for the period of July 29, 2019, to January 3, 2020. Agency's representative also noted that it was working to calculate and payout the remainder of the back pay. On March 15, 2021, Agency emailed another backpay worksheet of Employee's backpay calculation. The document included backpay and benefits calculation for the period of July 30, 2018, to July 28, 2019.

¹¹ Employee stated in her email that according to the backpay worksheet Agency submitted as proof of compliance, healthcare insurance benefits were not deducted. She also asserted that she signed an affidavit wherein, all her benefits such as the purchase of service for one (1) year should have been deducted from the backpay award.

General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Official Code § 1-606.02 (2006 Repl.)

In her February 13, 2023, Response to Show Cause Email, Employee stated that: (1) Agency provided her with incorrect information when she sought to retire from Agency and for that reason, she should not be penalized; (2) Employee should have had five (5) years of consecutive health insurance from November 8, 2015 to November 8, 2020; (3) Agency should pay her backpay salary of \$162,000 for seventeen (17) months; and (4) as of December 2020, Employee was still listed as an active employee in Agency's internal payroll system – PeopleSoft and still receiving healthcare benefits. Employee asserts that she would like to retire immediately and that she is still considered as an active DCPS employee.

Reinstatement¹²

As provided in the July 2, 2021 Addendum Decision on Compliance, the undersigned found that by reinstating Employee to a teaching position for one (1) year, Agency complied with the November 18, 2019 ID. Prior to her removal from Agency on July 27, 2018, due to IMPACT, Employee had been notified that her position would be excessed effective August 22, 2020. Employee was provided with three (3) options in her excess letter which included the opportunity to take an extra year placement, during which she would be placed at a DCPS school while she continued to pursue a budgeted position. Based on the record, Employee chose the option to be placed at a DCPS school for an extra year. Thus, I find that Employee's employment status at DCPS was that of an excessed Employee, prior to the initiation of her removal pursuant to an Ineffective IMPACT rating. Agency's acceptance of liability to the IMPACT action did not change Employee's status as an excessed employee.

On December 20, 2019, Agency issued a letter to Employee, informing her that she had been placed at Ida Wells Middle School effective December 22, 2019. The letter further noted that the assignment would expire at the conclusion of the 2019-2020 school year unless she was hired into a school-based position on a permanent basis. This is in compliance with the terms outlined in the May 2018 Excess notice. Thus, I find that she has been reinstated to a position in accordance with the May 2018 Excess Notice. Accordingly, I further find that the issue of Employee's reinstatement as provided in the November 18, 2019 ID is now **MOOT**.

Back pay and benefits

Regarding the reimbursement of all of Employee's backpay and benefits, I find that Employee is entitled to a reimbursement of all of her back pay and benefits. Agency has provided this Office with two (2) backpay and benefit worksheets which covers the periods of July 30, 2018, to July 28, 2019; and July 29, 2019, to January 3, 2020.¹³ Employee has not specified any errors in the submitted worksheets. Employee explains that she was entitled to \$162,000 for seventeen (17) months and she requests that Agency pay out that amount to her. The first backpay worksheet provided by Agency on January 13, 2021, highlighted that the total backpay due Employee for the period of July 29, 2019, to January 3, 2020 was \$49,946.80 before any deductions. Because Employee had been collecting retirement benefits while this matter was pending before this Office, Agency deducted the retirement benefits paid out (\$36,848) to Employee from the

¹² Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) (“The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence”).

¹³ See, Agency's emails dated January 13, 2021, and March 15, 2021.

backpay amount due. Agency also deducted the sum of \$11,232 for ‘unemployment’ from the backpay amount due. Following the deductions, Employee’s adjusted amount due was \$1,866.80. Agency then deducted \$1,866.80 for 8% Teachers Pre-Retirement with medical, bringing Employee’s net backpay amount due to \$0.

The second backpay worksheet submitted by Agency on March 15, 2021, listed \$112,538 as the total backpay amount due for the period of July 30, 2018, to July 28, 2019. Agency deducted the sum of \$7,141.17 for Outside Earnings; \$42,697 for Teach Rtmt. – Plan Q (8%); \$9,003.04 for 8% Teachers Pre-Retirement with medical; bringing Employee’s taxable wage during this period to \$53,696.79. Agency further deducted \$11,813.29 as Federal Tax; \$4,805.86 for Maryland State taxes and \$778.60 for Medicare, bringing Employee’s net backpay amount due to \$36,299.03. In an email dated February 18, 2021, between Agency’s representative and Agency’s Payroll Specialist, Glendell Bailey; Ms. Bailey informed Agency’s representative that Employee would be paid the amount owed by February 25, 2021. This email was forwarded to Employee’s former representative and the undersigned by Agency’s representative on the same day. For almost a year, Employee did not assert that she did not receive a net backpay check of \$36,299.03 as provided by Agency in the March 15, 2021 Worksheet. Instead, Employee’s current representative claimed in her February 13, 2023 Response to Show Cause Email, that Agency should pay her backpay salary of \$162,000 for seventeen (17) months, without reconciling all the deductions. Specifically, Employee’s current representative failed to indentify to any specific information within the worksheet that was incorrectly calculated. Accordingly, I find that Agency has provided sufficient evidence in support of its assertion that it has fully complied with the back-pay requirement as ordered in the November 18, 2019 ID.

Benefits

Employee asserted that she should have had five (5) years of consecutive health insurance from November 8, 2015, to November 8, 2020. Employee also noted in her email to the undersigned on March 16, 2021, that she had requested to buy one (1) year of health insurance. Employee is requesting that the undersigned force Agency to provide her with an additional year of health insurance after she was reinstated as required by the November 18, 2019 ID. As previously noted, Employee was reinstated on December 22, 2019, therefore, I find that Agency is under no obligation under the November 18, 2019 ID to provide Employee with an additional one (1) year of health insurance to cover the 2020 period.

Regarding the misinformation that Employee alleged was provided to her by Agency when she sought to retire, I find that this Office does not have jurisdiction over this matter.¹⁴ Nonetheless, when Employee was terminated in 2018, the undersigned issued an ID on November 18, 2019, on the merits of the case, reinstating Employee. Agency complied with the November 18, 2019 ID when it reinstated Employee in December of 2019. Additionally, Employee stated that she is still listed in Agency’s internal payroll system as an active employee. This Office has previously held that it lacks jurisdiction to entertain any post-RIF activity which may have occurred at an agency.¹⁵ Similarly, I find that this Office lacks jurisdiction to entertain post compliance activities that may have occurred at an agency. Further, it is an established matter

¹⁴ Employee retired from Agency on the same day as the effective date of her termination. However, this information was not disclosed to the undersigned while the termination matter was pending before this Office. The undersigned only learned of Employee’s retirement during the first compliance matter. In *Ella Cuff v. Department of General Services*, OEA Matter No. 1601-0009-12, *Opinion and Order on Petition for Review* (March 29, 2016), the Board reasoned that when a retirement action is back dated to the effective date of Employee’s termination action, it essentially nullifies the termination. OEA has previously held that retirements that occur after a removal action are valid. See *Hsiao Zen Lu v. Department of General Services*, OEA Matter No. J-0153-13 (November 25, 2013).

¹⁵ *Williamson v. DCPS*, OEA Matter No. 2401-0089-04 (January 5, 2005); *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003).

of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press her claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

ORDER

Based on the aforementioned, I conclude that Agency has fully complied with the November 18, 2019 ID. Accordingly, Employee's second request for enforcement/compliance is **DISMISSED**.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge