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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DOROTHY GREER,	)	
Employee	)	OEA Matter No. 2401-0086-11C13
	)	
v.	)	Date of Issuance: January 15, 2013
	)	
D.C. DEPARTMENT OF HOUSING	)	MONICA DOHNJI, Esq.
& COMMUNITY DEVELOPMENT,	)	Administrative Judge
Agency	)	
_____	)	
Dorothy Greer, Employee <i>Pro Se</i>		
Vonda J. Orders, Esq., Agency Representative		

**ADDENDUM DECISION ON COMPLIANCE**

**INTRODUCTION AND PROCEDURAL HISTORY**

On March 17, 2011, Dorothy Greer (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Housing & Community Development’s (“Agency”) decision to abolish her position through a Reduction-in-Force (“RIF”). The effective date of the RIF was March 14, 2011. In its Answer dated April 20, 2011, Agency noted that Employee was not separated pursuant to a RIF, thus, OEA does not have jurisdiction over Employee’s Petition for Appeal. Subsequently, I issued an Order requiring Employee to address the jurisdiction issue in this matter. On August 21, 2012, Employee submitted a response to the Order. Since this matter could be decided based upon the documents of record, no proceedings were conducted. I issued an Initial Decision (“ID”) in this matter on August 24, 2012, requiring that:

1. Agency reimburse Employee two (2) days pay and benefits commensurate with her last position of record for failure to provide Employee with a thirty (30) days notice prior to the effective date of the RIF; and
2. Agency reimburse Employee back pay for the period of March 14, 2011 to March 21, 2011, commensurate with her last position of record, for erroneously abolishing her position through a RIF; and

3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

On October 31, 2012, Agency submitted its brief on compliance, along with documents evidencing compliance with the ID.<sup>1</sup> Thereafter, on November 23, 2012, Employee submitted a Motion to Compel, arguing that Agency had not complied with the ID. On November 28, 2012, I issued an Order requesting the parties to attend a Status Conference on December 18, 2012 to discuss the issue of compliance. The parties were advised to bring documents in support of their positions. Both parties were in attendance. Agency provided documentary evidence in support of its position that it has complied with the ID. Employee on the other hand insisted that Agency has not complied. 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.

### FINDING OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

OEA Rule § 635.1, 59 DCR 2129 (March 16, 2012) reads as follows:

635.1 Unless the Office's final decision is appealed to the Superior Court of the District of Columbia, 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 635.2, *id.*, further read as follows:

635.2 If any agency fails to comply with the final decision of the Office within the time period specified in § 635.1, the employee may file a motion to enforce the final decision. The motion shall be directed to the Administrative Judge who decided the appeal.

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, Employee argues that Agency has not complied, noting that Agency has failed to adhere to the terms of the ID. Agency on the other hand maintains that it has complied with the terms of the ID. In support of its position, Agency has submitted Employee's paystubs for the disputed period of March 14, 2011 – March 22, 2011.<sup>2</sup> Agency notes that although Employee's was erroneously terminated as a result of the RIF, there was no break in pay for the above-referenced period. Employee does not dispute that there was no break in her pay, however, she alleges that because Agency did not file a notice of compliance with this Office within thirty (30) days from the date of the ID as required, Agency has not complied. While I do agree with Employee that

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<sup>1</sup> See Agency's Response to OEA Order dated August 24, 2012 made final September 28, 2012 (October 31, 2012).

<sup>2</sup> *Id.*

Agency's notice of compliance is untimely since it was submitted more than thirty (30) days from the date of the ID, I find that this constitutes harmless error since Agency has now submitted said notice. Moreover, according to OEA Rule 635.2 *supra*, If any agency fails to comply with the final decision of the Office within the time period specified in § 635.3, the employee may file a motion to enforce the final decision. Here, although Agency was late in submitting its motion on compliance as required by the ID, the motion was still received by this office prior to Employee's motion to enforce the final decision. Consequently, I find that this issue is moot. In addition, contrary to Employee's assertion, I find that Agency has fully complied with the final decision as evidenced in its October 31, 2012, brief on compliance. And as such, I conclude that Employee's Motion for Compliance be dismissed.

ORDER

Based on these findings and conclusions, and consistent with this analysis, it is hereby **ORDERED** that Employee's Motion for Compliance be **DISMISSED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge