THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0017-21C24
	)	
v.	)	Date of Issuance: January 20, 2026
	)	
D.C. DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS[2],	)	Monica Dohnji, Esq.
Agency	)	Senior Administrative Judge
	)	

Donna Beasley, Esq., Employee's Representative
Stephen Milak, Esq., Agency's Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On March 11, 2021, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Department of Consumer and Regulatory Affairs' ("DCRA" or "Agency") decision to terminate him from his position as an Elevator Inspector, effective February 13, 2021. Employee was charged with: "Unavailability for work due to medical reasons. Unauthorized absence of five (5) workdays or more."[3]

On April 18, 2023, I issued an Initial Decision ("ID"), reversing Agency's decision to terminate Employee. Agency appealed the ID to the OEA Board. On November 16, 2023, the OEA Board issued an Opinion and Order on Petition for Review ("O&O") dismissing Agency's Petition for Review.[4] Agency did not appeal the Board's decision. On March 13, 2024, Employee filed a Motion for Compliance and Enforcement of the April 18, 2023, Order citing that he had not been reinstated, and that he had not received his backpay and benefits. On April 3, 2024, Agency filed an

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] This Agency no longer exists as it was split into two (2) separate agencies in 2022 - Department of Licensing and Consumer Protection and the Department of Buildings.
[3] 6B District of Columbia Municipal Regulation ("DCMR") §§ 1605.4(f)(2) and 1607.2(f)(4).
[4] *Employee v. D.C. Department of Consumer and Regulatory Affairs*, OEA Matter No. 1601-0017-21, Opinion and Order on Petition for Review (November 16, 2023).

Opposition to Employee's Motion for Compliance requesting that Employee's Motion be denied or in the alternative, held in abeyance until Employee's fitness for duty evaluation was completed.

On April 19, 2024, the undersigned issued an Order Convening a Status Conference for May 14, 2024. Both parties were in attendance. Thereafter, on May 16, 2024, I issued a Post Status Conference Order requiring the parties to engage in the interactive process prescribed in 6-B DCMR § 2006.2. The Order also required the parties to submit a status update on their progress. On June 14, 2024, the parties filed a Joint Status Report noting that the parties needed additional time to continue with the interactive process. The parties proposed filing another status report by July 26, 2024. Thereafter, on June 21, 2024, the undersigned issued an Order wherein, I granted the parties' request to file another status report by July 26, 2024. The parties filed a Second Joint Status Report on July 26, 2024, proposing to file another status update by August 23, 2024. The parties filed a Third Joint Status Report on September 3, 2024, requesting to file another status report by October 11, 2024. On September 17, 2024, the undersigned issued an Order granting the parties' request to file another status report by October 11, 2024. The parties filed a Fourth Status Report on October 11, 2024, citing that the parties will continue to work together until a mutually agreeable resolution is achieved or either party determines that a mutually agreeable resolution is not possible. The parties further requested until November 15, 2024, to file another status report. On October 29, 2024, the undersigned issued an Order granting the parties' request to file another status report by November 15, 2024. The parties filed a Fifth Joint Status Report on November 15, 2024, requesting to file another status report on December 20, 2024. On November 25, 2024, the undersigned issued an Order granting the parties' Fifth Joint Status Report.[5]

On December 20, 2024, the parties submitted a Sixth Joint Status Report, proposing to file another status report by February 21, 2025. On February 5, 2025, the undersigned issued an Order granting the parties' Sixth Joint Status Report. Subsequently, the parties filed a Seventh Joint Status Report on February 21, 2025, proposing to file another status report by April 21, 2025. Since the parties did not file a status report on April 21, 2025, as noted in their Seventh Joint Status Report, on April 30, 2025, the undersigned issued an Order scheduling a Status Conference for May 19, 2025. Thereafter, on May 5, 2025, the parties filed the Eighth Status Report, proposing to file another status report by July 6, 2025. Both parties were present for the May 19, 2025, Status Conference. On May 28, 2025, the undersigned issued a Second Post Status/Prehearing Conference Order requiring the parties to submit briefs in this matter. Agency's brief was due by July 7, 2025; Employee's brief was due by July 28, 2025; and Agency had the option to file a sur-reply brief by August 11, 2025.

On June 30, 2025, Agency filed a Consent Motion for Extension requesting a three (3) week extension to file its brief. This request was granted in an Order dated July 1, 2025, and the briefing schedule was adjusted as follows: Agency's brief was now due by July 28, 2025; Employee's brief was now due by August 18, 2025; and Agency's sur-reply brief was now due by September 1, 2025. Agency filed its Statement on Compliance on July 28, 2025. On August 18, 2025, Employee filed his Motion to Extend Due Date of Employee's Brief to August 20, 2025. Thereafter, on August 20, 2025, Employee filed another Motion to Extend Due Date of Employee's Brief to August 21, 2025.

[5] Due to personal extenuating circumstances requiring the undersigned's absence, on December 12, 2024, AJ Harris issued a Notice Regarding Temporary Abeyance of Proceedings to the parties until my return.

Employee filed his Response to Agency's Final Statement on Compliance on August 21, 2025. On August 29, 2025, Agency filed a Motion for Extension, requesting an additional two (2) weeks to file its sur-reply brief, citing health reasons. On September 2, 2025, Employee filed an Opposition to Agency's Motion for Extension. On September 3, 2025, Agency filed Agency's Motion for Leave to File a Reply to Employee's Opposition and Reply to Employee's Opposition.[6] Agency filed Agency's Reply Regarding Compliance on September 15, 2025. 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 April 18, 2023, Initial Decision.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW[7]

Employee filed a Motion for Compliance and Enforcement on March 13, 2024, asserting that Agency had not fully complied with the April 18, 2023, Order ("ID"). Employee argued therein that he had not been reinstated, and that he had not received his backpay and benefits. Employee concluded that the total backpay Agency owed to him as of November 16, 2023, was three hundred ninety thousand six hundred seventy-nine dollars and fourteen cents. ($390,679.14). Agency filed its Opposition to Employee's Motion for Compliance on April 3, 2024, wherein, Agency requested that Employee's Motion be denied or in the alternative, held in abeyance until Employee's fitness for duty evaluation is completed. Agency asserted that Employee must undergo a Fitness-For-Duty evaluation before Agency can comply with the April 18, 2023, ID. Agency further asserted that Employee's entitlement to backpay and benefits was contingent on the outcome of his Fitness-For-Duty evaluation. Agency also explained that it believed Employee was not likely to be entitled to a full award of backpay.

Agency's Position[8]

Agency argues in its brief that it complied with the April 18, 2023, ID's Order for Employee's reinstatement. Agency cites that pursuant to 6-B DCMR § 2000.2, each District employee must be able to complete the essential function of their job with or without reasonable accommodation. Agency further cites that pursuant to 6-B DCMR § 2004.2, the personnel authority may require an individual to undergo medical evaluation whenever there is an objectively reasonable concern about the employee's ability to meet the established physical requirements of the job. Agency also notes that pursuant to 6-B DCMR § 2004.3, the personnel authority may disqualify or

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[6] These Motions are now MOOT.

[7] 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").

[8] *See.* Agency's Statement of Compliance (July 28, 2025) and Agency's Reply Regarding Compliance (September 15, 2025).

separate an employee if the employee cannot meet the established physical requirements of their job. Agency asserts that, upon consultation with the District of Columbia Department of Human Resources ("DCHR"), it was determined that before complying with the April 18, 2023, ID, Employee needed to undergo a fitness-for-duty evaluation. Agency avers that Employee notified Agency in 2019 of his disability and that he could no longer work because of his disability. Agency cites that Dr. Griffiths stated in his 2020 note to Agency that Employee would not be able to return to his position due to his disability. Thus, Agency states that it had an objectively reasonable concern about Employee's continued ability to meet the established physical requirements of his job.

Agency asserts that as part of the fitness-for-duty, Dr. Griffiths was provided with the position description of the Code Compliance Specialist (Elevator) position[9], as well as all the forms, which were needed to apprise Agency of whether Employee was able to perform the essential functions of his position, with or without accommodation. Agency avers that Dr. Griffiths stated in all the reports he completed that Employee could not perform the essential functions of his Code Compliance Specialist (Elevator) position and that Employee needed a light duty position reviewing charts and general desk work.[10] Agency also notes that Dr. Jagadeesan's May 15, 2025, medical report largely mirrored Dr. Griffiths' assessment.[11] Agency contends that because both Dr. Griffiths and Dr. Jagadeesan determined that Employee was permanently incapable of performing the essential functions of the Code Compliance Specialist (Elevator) position, Agency was required to consider whether Employee could be reasonably accommodated, pursuant to 6-B DCMR § 2006.

Agency contends that while both Dr. Griffiths and Dr. Jagadeesan stated that Employee had various work restrictions, neither identified any accommodations that would enable Employee to perform the essential functions of the Code Compliance Specialist (Elevator) position, including the essential function of performing onsite inspection of various apparatuses. Agency also cites that Employee did not identify any accommodation that will enable him to perform the essential functions of the Code Compliance Specialist (Elevator) position. Agency avers that it concluded in its Second Determination issued to Employee that no reasonable accommodation existed that would enable Employee to fulfill the essential function of the Code Compliance Specialist (Elevator) position.

In addition, Agency avers that while both doctors indicated that Employee would need a 'desk' position, and Employee has also requested that his current position be converted to a light-duty position or he be reassigned to a light-duty position, pursuant to the D.C. Office of Disability Rights ("ODR") Manual[12], Agency is not required to do so, if this entails removing essential functions from his position. Agency argues that due to budgetary constraints and operational needs, it is unable to convert the Code Compliance Specialist (Elevator) position to a light-duty position or create a new light-duty position for Employee.

Agency asserts that the only accommodation it could consider was to reassign Employee to a vacant position within Agency. Citing to case law, Agency highlights that Employee has failed to identify any vacancy within Agency that he could be reassigned to and for which he is qualified and

[9] Agency's Statement of Compliance, *supra*, at Attachment 1.
[10] *Id*. at Attachment 6.
[11] *Id*. at Attachment 16.
[12] Agency cites that the ODR highlights that there is no requirement to create a light-duty position or any other position.

suitable for. Agency states that during a meeting with Employee, it identified several potential vacancies for Employee's consideration, and that Employee through multiple rounds of discovery, was able to obtain information on Agency vacancies. Agency notes that Employee asked to be considered for the Building Code Inspector, the Combination Code Compliance Specialist and Housing Code Inspector positions. Agency cites that it determined that Employee was not fit for any of the potential vacancies, as each of these positions had physical requirements as part of their essential functions, which fell outside of Employee's physical restrictions. Agency asserts that each of these vacancies have a 25-pound lifting requirement which is outside of Employee's lifting restriction of 20-pounds as confirmed by both Dr. Griffiths and Dr. Jagadeesan.

Agency argues that it has done more than what is required under the Americans with Disability Act ("ADA"), District regulations, case law, OEA precedent, and official guidance from the ODR Manual to attempt to reassign Employee. Agency explains that it considered all the information Employee provided during this interactive process but, neither reinstatement to the Code Compliance Specialist (Elevator) position, with or without accommodation, nor reassignment to another position with or without accommodation is possible. Agency maintains that Employee's disability renders him not fit for any vacancy he maybe otherwise be qualified for at Agency. It cites that to ignore Employee's fitness for duty or lack thereof, will create an incredibly dangerous situation for both Agency and Employee, as such, Agency requests that this Office finds that it has complied with the April 18, 2023, ID's order of reinstatement.

Further, Agency contends that Employee is not eligible for backpay or benefits because: (1) he was incapacitated due to his disability and not capable of performing the essential duties of his position; and (2) there is no evidence that Employee has been actively seeking employment to mitigate his damages. Citing to 6-B DCMR § 1149.11(a), Agency notes that based on Employee's long-term disability approval letter, Employee became disabled on July 11, 2019. Agency also notes that Dr. Griffiths informed Agency on July 22, 2020, that dialysis treatment would prevent Employee from returning to work and he specified that Employee's condition would last for a lifetime. Agency explained that Employee was terminated effective February 13, 2021. Agency notes that on October 30, 2023, Dr. Griffiths, cited that Employee was unable to perform all the duties of his position from December 14, 2021, to October 30, 2023. Agency states that given the nature of Employee's disability and the hearing testimony, Employee was unable to perform the essential functions of the Code Compliance Specialist (Elevator) position from February 13, 2021, (when he was terminated) to the December 14, 2021, date cited by Dr. Griffiths. Agency also highlights that Dr. Jagadeesan confirmed on May 15, 2025, that Employee is still unable to perform the essential functions of his position. Agency additionally asserts that given Employee's continued receipt of his long-term disability payments from the long-term disability company, Standard, and the lack of correspondence to or from Standard evincing Employee's recovery from that disability, Employee has remained unable to perform the essential functions of his position.

Agency explains that pursuant to 6-B DCMR § 1149.11(c), an agency will not include any period after one (1) year from the date of unwarranted or unjustified personnel action where it is determined that an Employee has not actively sought employment. Agency asserts that there is no evidence in the record that Employee has been actively seeking employment to mitigate his damages, therefore, Employee is not entitled to any backpay. Agency maintains that its inability to reinstate Employee and reimburse his backpay makes the benefit restoration issue moot. Agency

cites that the process for benefit restoration is included alongside the backpay regulation. It notes that the restriction found under 6-B DCMR § 1149.11(a) is applicable to both the restoration of benefits and the reimbursement of backpay. Agency asserts that the restriction is further emphasized by 6-B DCMR § 1149.14 which provides that an employee entitled to backpay under this section shall have included in the back pay computation any pay or benefit that the employee would have received. Agency maintains that because Employee is not entitled to backpay, he is also not entitled to benefit restoration. As such, Agency requests that this Office find that it has complied with the April 18, 2023, ID's Order for back pay reimbursement and benefits restoration.

Agency asserts in its Reply brief that Employee misunderstood the 'Third-Party Program.[13] Agency explains that Employee's claim that 'field work' is not an essential function of the Code Compliance Specialist (Elevator) position because those duties have been contracted out to the 'Third-Part Program' is false. Agency states that to perform the essential functions of the Code Compliance Specialist (Elevator) position, all Code Compliance Specialist (Elevator) must be able to drive, walk, and stand for long periods of time, move elevator parts, climb, reach, stoop, stretch, work in cramped and awkward positions and lift materials typically weighing 20-30 pounds. Agency reiterates that these physical demands are listed in the Code Compliance Specialist (Elevator) position description and that functions listed in a written job description are prima facie evidence of essential job functions.

Agency notes that while the 'Third-Party Program' provides an expedited route for obtaining a plan view and/or inspection by expanding the pool of professionals, beside those within Agency who could perform plan reviews and/or inspections, the default route is for Agency to conduct both the plan reviews and inspections through its Code Compliance Specialist, including its Code Compliance Specialist (Elevator) for plan reviews and inspections involving elevators. Agency cites that applicants have the option to choose between Agency's Code Compliance Specialists or 'Third-Party' agencies for plan reviews and/or inspections. Agency reiterates that contrary to Employee's assertion, the 'Third-Party Program' did not relieve Code Compliance Specialists of their essential functions related to 'field work' as Code Compliance Specialists still perform 'field work' when selected by applicants for" (1) initial/routine/emergency inspections, testing or maintenance[14]; (2) when the work performed by a third-party agency needs to be audited[15]; (3) investigating violation by third-party agencies of the 'Third-Party Program' which may lead to disciplinary actions[16]; and (4) Agency receives notice about an unsafe or unlawful condition causing an elevator to be removed from service.[17] Agency states that Employee's argument that Agency's Code Compliance Specialists are not required to perform this 'field work' under the applicable statutory and regulatory framework are meritless.

Agency asserts that contrary to Employee's belief that Agency's Code Compliance Specialists (Elevator) work from home and are on 'light-duty', Agency's Code Compliance

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[13] Agency notes that the Third-Party Program created an expedited route for obtaining a plan view and/or inspection by expanding the pool of professionals, beside those within Agency who could perform plan reviews and/or inspections. *See.* Agency's Reply Regarding Compliance, *supra*, at Attachment 20 for the Third-Party Program Manual.
[14] Citing to 12 DCMR § 3009.5.
[15] Referencing Agency's Reply Regarding Compliance, *supra*, at Attachment 20, pg. 34.
[16] *Id*. at Attachment 20, pgs. 39 – 47.
[17] Citing to 12 DCMR § 3009.10.1.

Specialists (Elevator) are not permitted to telework. Agency notes that Employee's assertion is further rebutted by the Agency's Code Compliance Specialists (Elevator 1) and Agency's Code Compliance Specialists (Elevator 2) timesheets and worklogs.[18] Agency avers that the 'Third-Party Program' did not eliminate or even substantially reduce the 'field work' essential function of the Code Compliance Specialist (Elevator) position and that it correctly determines that Employee would be required to perform 'field work' if he were reinstated to the Code Compliance Specialist (Elevator) position.

Additionally, Agency states that Employee misunderstood the parameters of the interactive process. Agency cites that Employee has not demonstrated that it acted in 'bad faith' during the interactive process. Agency explains that the parameters indicate that it engaged with Employee in good faith. Agency maintains that throughout the interactive process with Employee that lasted months, it repeatedly: (1) sought information from Employee's physician concerning Employee's ability to perform the essential functions of the Code Compliance Specialist (Elevator) position; (2) encouraged Employee to provide Agency with any and all information he deemed relevant for Agency's consideration; (3) responded to Employee's discovery requests; (4) engaged in numerous email and phone discussions with Employee; and (5) considered all the information provided by Employee. Agency avers that on May 7, 2025, the parties met in-person for approximately three (3) hours to discuss Employee's fitness-for-duty and the availability of reasonable accommodation, including reassignment. Agency cites that just because the parties could not identify a reasonable accommodation that would enable Employee to perform the essential functions of the Code Compliance Specialist (Elevator) position does not indicate that Agency failed to engage in the interactive process with Employee in good faith.

Agency contends that Employee misunderstood his entitlement to reasonable accommodation. Agency notes that 'field work' is an essential function of the Code Compliance Specialist (Elevator) position. Agency states that Employee's requested accommodations of (1) desk-based tasks and paperwork; (2) oversight and non-field duty and work from home practice; and (3) light duty assignment would not have enabled him to perform the essential functions of the Code Compliance Specialist (Elevator) position. Agency further cites that reassigning Employee to a light-duty position is not reasonable. Agency avers that it does not have a 'light-duty program' and it does not reserve certain jobs for 'light-duty.' Agency also notes that Employee has not shown the existence of any 'light-duty' position at Agency, as such, this Office should find that Agency was not required to reassign Employee to a 'light-duty' position.

Agency argues that it thoroughly considered the possibility of reassigning Employee to all other vacant positions at Agency. It avers that it was incumbent on Employee to express interest in reassignment as an accommodation and identify vacant positions to which he was qualified and could have been reassigned. Agency cites that Employee only expressed interest in reassignment during the May 2025, after he was asked if he would consider a reassignment. It states that Employee however did not identify any vacancies at Agency during that meeting, to which he wanted to be reassigned to. Agency highlights that Employee vaguely referenced wanting to work as a criminal investigator for Agency, but he did not specify any vacant position at Agency to which he could be reassigned to. Agency notes that it provided Employee with access to its online job postings on June

[18] Agency's Reply Regarding Compliance, *supra*, at Attachments 21-26.

12, 2024. Agency contends that even if Employee had identified a vacant position to which he wanted to be reassigned to, he would also need to show that he was qualified for that position. Agency states that it had no affirmative duty to search for vacant positions to which Employee could have been reassigned, but out of the abundance of caution, it thoroughly considered all its vacancies for purposes of potential reassignment.

Agency also cites the Mayor's Order 2025-053 on hiring, overtime, pay raise, promotion, bonuses and other payment freeze as impacting District agencies' ability to reassignment obligations. It highlights that the Mayor's Order reduced its "pool' of available vacancies for reassignment purposes. Agency asserts that OEA should consider the Mayor's Order in the overall assessment of Agency's attempt to reassign Employee to a vacant funded position.

Additionally, referring to Employee's resume, Agency contends that Employee's education is limited and his work experience is highly specialized. Agency states that upon receiving his high school diplomat, Employee attended Elevator and Automotive trade school. It avers that beside Employee's work as a Criminal Justice Act Criminal Investigator, Employee has worked exclusively in the 'elevator' field. Agency explains that between Employee's limited education, his highly specialized field and the Mayor's Order; Employee was not qualified for Agency's scarce vacancies, including Agency's sedentary vacancies, which mostly required additional education and certifications, which Employee admitted he did not possess. Agency also highlights that Employee's physical impairment is considerable, as these restrictions highlighted by Employee's doctors disqualify him from the Code Compliance Specialist (Elevator) position and nearly all other non-sedentary positions at Agency. Agency also provides that contrary to Employee's assertion that he qualified for the Elevator Inspector position and the Building Code Inspector position, it does not have any Elevator Inspector position, and that the only position at Agency that involves elevators is the Code Compliance Specialist (Elevator) position. Agency also notes that Employee has made no showing of how he qualified for these positions.

Agency argues that because Employee cannot be reasonably accommodated in the Code Compliance Specialist (Elevator) position, separation is appropriate. Therefore, it has complied with the April 18, 2023, ID to reinstate Employee to his last position of record or a comparable position. Agency maintains that this action is permissible under District laws and OEA precedent. Agency cites to 6-B DCMR § 2006.2 (c) and (d) and the ODR Manual which highlights that if an employee cannot be reasonably accommodated or reassigned to a new position, the personnel authority may separate the employee. Agency avers that Employee's situation is unique because he has already been separated and Agency cannot reinstate an employee who is not fit for duty. Agency explains that instead of separation, the only logical and reasonable alternative is for OEA to find that Agency has complied with the April 18, 2023, ID's Order of reinstatement.

Agency also asserts that OEA should disregard Employee's discovery claims. It also cites that this Office should disregard Employee's argument concerning Agency's supposed obligation to demonstrate undue hardship before denying a requested accommodation. Agency avers that Employee's argument is premised on his misunderstanding of the ADA law. Agency cites that while undue hardship can be raised by an agency as a basis to deny a request for accommodation, it is not the only basis to deny a request for accommodation. Agency states that the ODR Manual explicitly provides six (6) reasons an agency may deny an employee's request for accommodation which

include: (1) the employee does not have a qualified disability; (2) the employee is able to perform the essential functions of the position without the requested accommodation; (3) the requested accommodation will not enable the employee to perform the essential functions of the position (or will lower performance standards); (4) the employee's requested accommodation will impose an undue hardship on the operations of the agency; (5) the employee would pose a direct threat to health and safety of others that cannot otherwise be mitigated; and (6) the accommodation would cause a fundamental alteration of the agency's service, program, or activities. Agency highlights that it relied on # 3, as the requested accommodation would not enable adequate performance of the essential functions of the Code Compliance Specialists (Elevator) position. Agency avers that having made this determination, it was not required to additionally show undue hardship. Agency also notes that if Employee was excused from the 'field work' essential functions of the Code Compliance Specialists (Elevator) position, that would likely result in undue hardship to the extent that other Code Compliance Specialists (Elevator) would be required to do more 'field work' to cover Employee's disability.

Employee's Position

Employee filed a Motion for Compliance and Enforcement on March 13, 2024, asserting that Agency has not complied with the April 18, 2023, Order. Employee argued therein that he has not been reinstated, and that he has not received his backpay and benefits. Employee explained that he was entitled to backpay in the amount of three hundred and forty-one thousand and twenty-nine dollars and sixty-two cents ($341,029.62). Employee also states that he was entitled to five percent (5%) contribution to his retirement for a total retirement contribution of twelve thousand one hundred and one dollars and thirty-eight cents ($12,101.38). Additionally, Employee contends that "there is also the loss of growth investments of Petitioner's 401a fund during the backpay period, that is, twenty-four thousand eight hundred ninety-one dollars and sixty-one cents ($24,891.61)." Employee avers that the total backpay Agency owed him as of November 16, 2023, was three hundred ninety thousand six hundred seventy-nine dollars and fourteen cents. ($390,679.14).

Employee avers that Agency failed to engage in good faith in the discovery and the collaborative process. Employee asserts that Agency's claim that it has complied with the April 18, 2023, ID Order is meritless. He highlights that (1) Agency has permanently contracted out the physical aspects of Employee's position; (2) Agency failed to consider the impact of the Third-Party Contractor system; (3) Agency penalized Employee and his disability as a means to disqualify him for the Elevator Inspector position; and (4) that Agency failed to deal fairly with Employee in the interactive process.

Employee argues that Agency cited in the July 1, 2025, Final Fitness for Duty and Reasonable Accommodation Reassignment Determination, and its subsequent July 22, 2025, Addendum Fitness for Duty and Reasonable Accommodation Reassignment findings that it could not accommodate Employee's request for an accommodation because Employee allegedly could not meet the physical requirements of his position. Employee cites that Agency, however, did not determine what duties of the position Employee applied to, that he could perform. Employee contends that Agency focused on Employee's physical disability and not its accommodation of that disability. Employee notes that although Agency was obligated to provide Employee with reasonable accommodation such as (1) changes to the work environment; or (2) changes to the

manner or circumstances in which the position is normally performed; Agency failed to do so. Employee cites that Agency failed to comply with his doctors' requests to be placed on light-duty.

Employee states that Agency currently has two (2) Elevator Inspectors on light duty and that these Elevator inspectors do not go into the field. Employee avers that these employees work from home and they no longer perform the physical aspects of the position because of the creation of the Third-Party Contractor Program. Employee contends that the creation of the Third-Party Contractor Program in 2002 changed the performance of the physical duties performed by Code Compliance Specialists in Employee's unit. Employee explains that since the creation of the Third-Party Program, building owners can choose to use third party contractors or District employees. Employee states that because "the Third-Party Contractor Program affected the duties performed by those individuals working as Elevator Inspectors, it is well established that the physical requirements of the Code Compliance Specialist were contracted out as a matter of law."

Employee asserts that Agency failed to consider the impact of the Third-Party Contractor Program on the duties performed by its Code Compliance Specialists (Elevator). Employee highlights that the field work for building trade professionals is performed by the third-party contractors. Employee avers that he informed Agency during the May 7, 2025, meeting that while the physical requirements of the position are listed in the job description for the Code Compliance Specialists positions, that aspect of the job is completed by the third-party contractors and not Agency's employees. Employee also notes that although part of the job description for the Code Compliance Specialists position, he had never had to move elevator parts, work in cramped spaces, or lift materials 2-30 pounds. He also cites that he does not know how to lip sync or read lips. Employee contends that Agency used inaccurate position description in the Knowledge and Guideline areas, which required an understanding of the ICC rules when Elevator Inspectors were exempt from its coverage. Employee also cites that Agency used an inaccurate position description that required the knowledge of housing code regulations that had been repealed. Employee maintains that Agency failed to consider the changes in the duties of Elevator Inspectors with the advent of the Third-Party Contractor Program over twenty (20) years ago that took over the physical demands of the position.

Employee explains that Agency penalized him by using his disability to disqualify him for the Elevator Inspector position, in violation of 6-B DCMR 2006.2 and the District of Columbia Government Manual for Accommodating Employees with Disabilities. Employee cites that despite medical documentation from his doctors supporting his ability to perform desk work and oversight work with restrictions, Agency failed to develop a reasonable accommodation plan. Employee states that he provided Agency with the following options for accommodation: (1) desk-based tasks and paperwork; (2) oversight and non-field duties and work from home practices; and (3) light duty assignments, but Agency failed to consider any of these options. Employee avers that Agency used one element of the Elevator Inspector position – physical demand, to deny his request to be reinstated to his Elevator Inspector position. Employee reiterates that the physical demand of his position had been contracted out to the Third-Party Program. He asserts that the Third-Party Program Manual covered the Elevator Inspector and Building Code Inspector jobs that Employee qualified for, and Agency conducts oversight of the Third-Party Program. Employee highlights that the oversight involves periodic and random audits, to include quality assurance inspection of all Third-Party Agencies. Employee asserts that he could participate in the oversight procedures in the

capacity of either an Elevator Inspector or Building Inspector. Employee contends that Agency could have accommodated him by assigning him to the oversight process of the Third-Party Program which was ongoing when he requested light duty. However, Agency focused on what Employee could not do as a basis to render a determination that Employee was unfit for duty.

Employee argues that Agency failed to deal fairly with him during the interactive process. Specifically, Employee notes that Agency acted in bad faith during the discovery process by objecting to all his interrogatories. Additionally, Employee contends that Agency did not demonstrate that accommodating Employee would impose an undue hardship on Agency, in compliance with ADA Title 1 and EEOC requirements.

Employee further notes that Agency's claim that he is not entitled to back pay and benefits is without merit. Employee avers that whether or not he is entitled to backpay requires consideration as to whether he was fit for duty or whether Agency had standing to raise such a claim after engaging in a blatant act of bad faith during the interactive process. Employee reiterates that Agency remained fixated on his disability while ignoring to consider the impact of the Third-Party Program. Employee reiterates that he could perform the duties of the Elevator Inspector with light-duty accommodation as required by his doctors on October 29, 2023; November 30, 2023; and May 14, 2025. He avers that his condition has continued to progress with time. Employee cites that Agency is seeking to avoid its responsibility under the final Order of November 2023, as such, this Office should compel Agency to pay him back pay and reinstate him with reasonable accommodation in an oversight position where he would review requests from Third-Party Contractor Program as other employees in his unit.

Analysis

OEA Rule 640[19] addresses compliance and enforcement of Orders issued by this office. OEA Rule 640.1 provides that 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. In the instant matter, an ID was issued on April 18, 2023, reversing Agency's decision to terminate Employee and requiring Agency to reinstate and pay back pay and benefits to Employee. Agency filed an appeal of this decision with the OEA Board. Thereafter, On September 8, 2023, Agency filed a Pracipe Withdrawing Agency's Petition for Review, citing therein that "*Agency will move forward in complying with the ID's Order to reinstate Employee and reimburse him all back-pay and benefits lost as a result of his termination*." (Emphasis added). On November 16, 2023, the OEA Board issued an Opinion and Order on Petition for Review ("O&O") dismissing Agency's Petition for Review. Agency did not appeal the OEA Board's decision, accordingly, this decision became the final decision in this matter.

Reinstatement

Agency argues that because of Employee's inability to perform the essential functions of the Elevator Inspector position with or without accommodation, Agency is unable to reinstate Employee to his previous position of record or a comparable one as required by the April 18, 2023, ID and the

[19] 6-B DCMR Ch. 600 (December 27, 2021).

November 16, 2023, O&O. Agency cites that pursuant to 6-B DCMR § 2000.2, each District employee must be able to complete the essential function of their job with or without reasonable accommodation. Agency further cites that pursuant to 6-B DCMR § 2004.2, the personnel authority may require an individual to undergo medical evaluation whenever there is an objectively reasonable concern about the employee's ability to meet the established physical requirements of the job. Agency also notes that pursuant to 6-B DCMR § 2004.3, the personnel authority may disqualify or separate an employee if the employee cannot meet the established physical requirements of the job.

Pursuant to 6-B DCMR § 2004.2 (c), "The personnel authority may require an individual who has applied for or occupies a job with established physical or mental requirements, including requirements for selection or retention, or established occupational or environmental standards, to undergo a medical evaluation:

(a) After an offer of employment has been made to a job applicant and prior to appointment (including reemployment based on full or partial recovery from a medical condition);

(b) On a regularly recurring, periodic basis; or

(c) *Whenever there is an objectively reasonable concern about an employee's continued ability to meet the established physical or mental requirements of the job*. (Emphasis added).

While I agree with Agency's concerns regarding Employee's continued ability to meet the established physical or mental demands of his job, I find that because Employee was terminated effective February 13, 2021, Agency would have to first reinstate Employee before requiring him to undergo medical evaluation pursuant to 6-B DCMR § 2004.2 (c).[20] Agency acknowledged that it would "…. *reinstate Employee and reimburse him all back-pay and benefits lost as a result of his termination*" in its September 8, 2023, submission to the OEA Board, but it has still not reinstated Employee as of the date of this decision. (Emphasis added). Because Agency has not reinstated Employee as required in the April 18, 2023, ID, I find that 6-B DCMR § 2000.2, 6-B DCMR § 2004.2, and 6-B DCMR § 2004.3 is not applicable to the current matter. Additionally, since Employee does not currently occupy a job within Agency or the District government, I find that any requests for reasonable accommodation at this point is inconsequential.

Additionally, although decisions from the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart are not binding on OEA, this Office has historically relied on its decisions for guidance.[21] In *Gorny v. Department of the Interior*, 115 M.S.P.R. 520, the MSPB Board noted that when "a personnel action [is] unwarranted, the aim is to place the appellant, as nearly as possible, in the situation she would have been in had the wrongful personnel action not occurred."[22] While also citing to *Kerr v. National Endowment for the Arts*,[23] the MSPB Board

[20] Agency could have reinstated Employee and placed him on leave or reassigned him before requesting a fitness-for-duty evaluation and explore options for accommodation/reassignment.
[21] *See Sholanda Miller v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0325-10R15, Opinion and Order on Remand, at 8(June 6, 2017).
[22] *Citing Tubesing v. Department of Health and Human Services*, 112 M.S.P.R. 393, ¶ 5 (2009) (*citing House v. Department of the Army*, 98 M.S.P.R. 530, ¶ 9 (2005)).
[23] 726 F.2d 730 (Fed. Cir. 1984).

further noted that, this is called *status quo ante* relief.[24] The MSPB Board in *Gorny* explained that "the displacement of other individuals is sometimes necessary to afford an appellant, as nearly as possible, *status quo ante* relief." Accordingly, in the instant matter, Agency was required to reinstate Employee to his previous position of record – Elevator Inspector, even if it had to displace other individuals at Agency.

Moreover, the MSPB Board in *Gorny*, citing to *Miller v. Department of the Army*, 109 M.S.P.R. 41, (2008)), noted that "if the agency does not return the employee to her former position, *it must show first that it has a strong overriding interest or compelling reason requiring reassignment to a different position, and second that it has reassigned the employee to a position that is substantially similar to the former position* (emphasis added)." In the current matter, Agency contends that Employee cannot meet the essential functions, specifically the physical demands of his current position because of his disability. However, Agency has failed to offer Employee any other positions or reassign Employee to a position that is substantially similar to his former position. Accordingly, I find that Agency has not complied with the order to reinstate Employee.

Backpay, Benefits and Mitigation

An award of back pay is governed by 6-B DCMR 1149, which provides in pertinent part as follows:

> 1149.2 An employee who, on the basis of a timely appeal of an administrative determination is found, by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have undergone an unjustified or unwarranted personnel action resulting in the withdrawal or reduction of all or part of an employee's pay or benefits, shall be entitled, on correction of the personnel action, to back pay under this section.
>
> 1149.9 Subject to the provisions of §§ 1149.11 and 1149.12, the period for which recomputation is required under § 1149.10 shall be the period covered by the unjustified or unwarranted personnel action that is corrected.
>
> 1149.10 When an appropriate authority corrects or directs the correction of an unjustified or unwarranted personnel action, the agency shall determine the employee's back pay entitlement by recomputing for the period covered by the corrective action the pay and benefits of the employee as if the unjustified or unwarranted personnel action had not occurred, but in no case shall the employee be granted more pay or benefits than he or she would have been entitled by law, Mayor's Order, regulation, or agency policy.

Agency contends that Employee is not eligible for backpay or benefits because: (1) he was incapacitated due to his disability and not capable of performing the essential duties of his position; and (2) there is no evidence that Employee has been actively seeking employment to mitigate his damages. Regarding Agency's first argument that Employee was incapacitated due to his disability

[24] *See also*, *Kerr*, *supra*.

and not able to perform the essential duties of his position, I find that the record supports this assertion. Employee became disabled and unable to perform his duties prior to the effective date of his termination. Based on the record, Employee's last day of work due to his disability was July 10, 2019, and he was covered under disability insurance effective July 11, 2019. However, Employee testified during the November 15, 2022, Evidentiary Hearing that as of the date of the Evidentiary Hearing, he was ready to return to work. Additionally. Dr. Griffiths cited in the DCHR Private Physician's or Practitioner's Work Status Recommendation ("Fitness-for Duty") forms he completed on October 30, 2023, and November 29, 2023, that "for the period beginning *December 14, 2021* through present, the employee may continue to perform all duties required for the position."[25] (Emphasis added). Dr. Griffiths also noted in his January 16, 2024, Fitness-for-Duty form that "for the period beginning *October 23, 2023* through present, the employee may continue to perform all duties required for the position."[26] (Emphasis added).

Pursuant to 6-B DCMR 1149.11(a), "in computing the amount of back pay under this section, the agency shall not include any of the following:

> (a) *Any period during which the employee was not ready and able to perform his or her job because of an incapacitating illness*, except that the agency shall grant, upon the request of and documentation by the employee, any sick leave or annual leave to his or her credit to cover the period of incapacity by reason of illness." (Emphasis added).

Accordingly, based on 6-B DCMR 1149.11(a), I find that Employee is not entitled to back pay for the period he was unable to perform his job because of an incapacitating illness, which pursuant to the record, spans from July 10, 2019, to at least December 13, 2021. I further find that because Dr. Griffiths asserted that Employee could perform his job effective December 14, 2021, Employee is entitled to back pay and benefits from that date. Pursuant to 6-B DCMR 1149.2, *supra*, "[a]n employee who, on the basis of a timely appeal of an administrative determination is found, by appropriate authority under applicable law, rule, regulation, or collective bargaining agreement, to have undergone an unjustified or unwarranted personnel action resulting in the withdrawal or reduction of all or part of an employee's pay or benefits, shall be entitled, on correction of the personnel action, to back pay under this section."

Further, E-DPM Instruction No. 11B-80 (II)(a) (October 4, 2011), highlights that, upon authorization from the appropriate authority to correct the personnel action, an agency shall determine the employee's back pay entitlement by recomputing the period covered by the action. The affected employee's pay and benefits (as prescribed by law and regulation) shall be recomputed as if the unjustified or unwarranted personnel action had not occurred. E-DPM Instruction No. 11B-80 (II)(b)(2)(i) additionally provides that, when an employee is entitled to receive back pay, the agency shall offset and deduct from the gross back-pay award, "*authorized deductions that would have been made from the employee's pay … subject to any applicable law or regulation, including, but not limited to, the following types of deductions as applicable*: mandatory retirement contributions … (emphasis added)." In addition, the April 18, 2023, ID Ordered Agency to reimburse Employee *all back-pay and benefits* lost as a result of the separation (emphasis added).

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[25] Agency's Statement of Compliance at Attachment 6 (July 28, 2025).
[26] *Id*.

6-B DCMR § 1149 defines 'benefits' as "monetary and employment benefits to which an employee is entitled by law or regulation, including but not limited to health and life insurance, and excluding pay as defined in this section." Accordingly, I find that in its calculation of Employee's back pay, Agency can offset and deduct from Employee's gross back pay any deductions authorized by applicable law or regulation, including any payments Employee received from his long-term disability provider, Standard Insurance, *if this is authorized by applicable law and regulations*. (Emphasis added).

Agency also argues that there is no evidence that Employee has been actively seeking employment to mitigate his damages. Agency argues that pursuant to 6-B DCMR § 1149.11(c), an agency will not include any period after one (1) year from the date of unwarranted or unjustified personnel action where it is determined that an Employee has not actively sought employment. Agency asserts that there is no evidence in the record that Employee has been actively seeking employment to mitigate his damages, therefore, Employee is not entitled to any backpay. Employee testified during the Evidentiary Hearing that as of the date of the Evidentiary Hearing, he had not done any criminal justice work since approximately 2018.

6-B DCMR § 1149.11(c) provides that, "in computing the amount of back pay under this section, *the agency shall not include* any of the following:

…..

> (c) *Any period after one (1) year from the date of the unjustified or unwarranted personnel action where it is determined that an employee has not actively sought employment*. (Emphasis added).

Further, the D.C. Court of Appeals has held that an employee who has been improperly discharged must exercise "reasonable diligence in seeking alternative employment."[27] Additionally, the Court also held that "minimal efforts to seek employment . . . [are] not reasonably diligent."[28] In *EEOC v. Service News Co.,* 898 F.2d 958, 963 (4th Cir.1990), the Court held that "[l]ooking through want ads for an unskilled position, without more, is insufficient to show mitigation, and the back pay award should accordingly be reduced."

The U.S. Court of Appeals ("CA") held in *Ellis v. Ringgold School Dist.,*[29] that plaintiff was responsible for mitigating her damages by seeking other employment. That obligation compels a plaintiff to seek "amounts earnable with reasonable diligence."[30] The duty of mitigation may require that a plaintiff accept a lower paying position if one equivalent to that from which she was barred is unavailable.[31] Here, Dr. Griffiths cited that Employee could perform his job effective December 2021, yet, the record is void of any evidence to suggest that Employee actively sought

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[27] *Wisconsin Avenue Nursing Home v. D.C. Commission on Human Rights*, 527 A.2d 282 (D.C. 1987). *Wisconsin Avenue Nursing Home* involved a discriminatory discharge. Nonetheless, the principles regarding mitigation set forth in the case are applicable here.
[28] 527 A.2d at 292 (citing *Sangster v. United Air Lines, Inc.*, 633 F.2d 864, 866 & n.2 868 (9th Cir. 1980)).
[29] 832 F.2d at 29.
[30] *Craig v. Y & Y Snacks,* 721 F.2d at 82.
[31] *Ford Motor Company v. EEOC,* 458 U.S. 219, 231 n. 16, 102 S.Ct. 3057, 3065 n. 16, 73 L.Ed.2d 721 (1982).

employment after he was unjustly terminated on February 13, 2021 and when the November 16, 2023, O&O became final. Consequently, I find that because Employee was not able to perform his job for the period of February 13, 2021, to December 13, 2021 due to his disability, in compliance with 6-B DCMR §§ 1149.11 (a) and (c), Employee is only entitled to one (1) year of back pay from December 14, 2021, to December 13, 2022.

ORDER

Based on the aforementioned, it is hereby **ORDERED** that, in accordance with all applicable D.C. laws and regulations:

(1) Agency **SHALL REINSTATE** Employee to his last position of record, or a comparable position.

(2) Agency **SHALL pay Employee ONE (1) year of back pay and benefits lost for the period of December 14, 2021, to December 13, 2022**. Agency **SHALL offset and deduct from Employee's gross back pay any deductions authorized by applicable law or regulation, including any payments Employee received from his long-term disability provider, Standard Insurance, if authorized by applicable law and regulations.**

(3) Agency **SHALL** file with this Office, within 30 calendar days from the date on which this addendum decision becomes final, documents showing compliance with the terms of this Order.

FOR THE OFFICE:

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