

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____ )	
In the Matter of: )	
EMPLOYEE <sup>1</sup> )	OEA Matter No. 1601-0183-97C08R16
)	
v. )	
)	Date of Issuance: December 17, 2021
DISTRICT OF COLUMBIA )	
FIRE AND EMERGENCY MEDICAL )	
SERVICES DEPARTMENT, )	
Agency )	
_____ )	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee worked as an Emergency Medical Technician (“EMT”) with the D.C. Fire and Emergency Medical Services Department (“Agency”). According to Employee, he filed a previous appeal with the Office of Employee Appeals (“OEA”) in 1997. In 2004, the OEA Administrative Judge (“AJ”) ordered that Agency’s termination action be reversed; that Employee be reinstated to the position held prior to his removal; and that Agency reimburse Employee all pay and benefits lost as a result of the removal.<sup>2</sup> Employee provided that although he was reinstated to his position from the 1997 appeal, Agency still had not finalized the calculations of his back pay and benefits. Accordingly, Employee filed a Petition for Appeal with OEA on

<sup>1</sup> Employee’s name was removed from this decision for the purpose of publication on the Office of Employee Appeals’ website.

<sup>2</sup> *Initial Decision*, p. 6-7 (May 12, 2004).

November 5, 2013.<sup>3</sup>

In a subsequent appeal to the Superior Court of the District of Columbia, the Court ordered Agency to comply with the AJ's May 12, 2004 Initial Decision and awarded back pay from January 10, 1997 through June 16, 2004. After the Court considered worker's compensation payments and requests for interest and the restoration of annual leave, it ordered that Agency to pay Employee \$97,452.79.<sup>4</sup>

The matter was then appealed to the District of Columbia Court of Appeals which ultimately remanded the matter to OEA for further consideration.<sup>5</sup> After multiple filings from the parties regarding Employee's tax returns, the AJ issued an order referring the matter for mediation and issued a compliance briefing schedule.<sup>6</sup> In his brief, Employee asserted that he should be paid \$800,000 in back pay and benefits to account for step or promotional increases.<sup>7</sup> Agency countered that Employee's argument for an \$800,000 award was not based on applicable back pay regulations. It reasoned that Employee was entitled to no more than \$254,751 because he was not ready, willing, and able to return to his former position of an EMT from January 10, 1997 through August 5, 2012.<sup>8</sup>

The AJ issued an Order Regarding Compliance on October 23, 2020. He determined that Employee was not entitled to \$800,000 in back pay. He found that, after the requisite reductions, a final back pay award of \$254,751 was appropriate. Accordingly, the AJ ruled that Agency reimburse Employee \$254,751 in back pay.<sup>9</sup>

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<sup>3</sup> *Petition for Appeal*, p. 5-6 (November 5, 2013).

<sup>4</sup> *Employee v. District of Columbia, et al.*, 2013 CA 005267 B (D.C. Super. Ct. May 13, 2014).

<sup>5</sup> *Employee v. District of Columbia, et al.*, Nos. 14-CV-602 and 14-CV-657 (D.C. 2015).

<sup>6</sup> *Order Referring Matter for Mediation and Compliance Briefing Schedule* (December 16, 2019).

<sup>7</sup> *Employee's Brief Addressing the District's Compliance*, p. 3-7 (February 25, 2020).

<sup>8</sup> *Agency's Brief Regarding Compliance with May 12, 2004 Initial Decision*, p. 9-22 (June 8, 2020).

<sup>9</sup> *Order Regarding Compliance*, p. 5-9 (October 23, 2020).

Thereafter, Employee filed a Motion to Reconsider on November 5, 2020.<sup>10</sup> On November 23, 2020, Employee also filed a Petition for Review with the OEA Board.<sup>11</sup> Moreover, Agency filed a Petition for Review on November 23, 2020.<sup>12</sup> On December 11, 2020, the parties informed OEA's General Counsel that they were engaged in settlement negotiations.<sup>13</sup> Subsequently, the parties requested that their respective Petitions for Review be held in abeyance pending mediation. After a successful settlement negotiation, a Joint Stipulation of Dismissal was filed on November 8, 2021, requesting that their respective petitions be dismissed with prejudice.<sup>14</sup> Accordingly, both Petitions for Review are dismissed.

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<sup>10</sup> *Employee's Motion to Reconsider*, p. 2-5 (November 5, 2020).

<sup>11</sup> *Employee's Petition for Review*, p. 4-11 (November 23, 2020).

<sup>12</sup> *Agency's Petition for Review*, p. 9-13 (November 23, 2020).

<sup>13</sup> *Joint Request for Extension of Time to File Answers to Petitions for Review* (December 11, 2020).

<sup>14</sup> *Stipulation of Dismissal* (November 8, 2021).

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DISMISSED**. Similarly, it is hereby **ORDERED** that Agency's Petition for Review is **DISMISSED**.

**FOR THE BOARD:**

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Clarence Labor, Jr., Chair

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

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Dionna Maria Lewis

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.