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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No. 1601-0050-16C23
EMPLOYEE ¹ ,)	
Employee)	
)	
v.)	Date of Issuance: July 16, 2024
)	
D.C. OFFICE OF THE ATTORNEY)	
GENERAL)	MICHELLE R. HARRIS, ESQ.
Agency)	Senior Administrative Judge
_____)	
Employee, <i>Pro Se</i>)	
Bradford Seamon, Jr., Esq., Agency Representative)	

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On May 24, 2016, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Office of the Attorney General’s (“Agency” or “OAG”) decision to terminate her from service for failing a Performance Improvement Plan (“PIP”). Employee’s removal was effective April 25, 2016. On August 10, 2016, Agency filed its Answer to Employee’s Petition for Appeal. Following a two-day Evidentiary Hearing held February 27, 2018, and February 28, 2018, I issued an Initial Decision on October 22, 2018, reversing Agency’s action. Employee and Agency both filed Petitions for Reviews to the OEA Board (“Board”). On July 16, 2019, the Board issued its Opinion and Order (“O&O”) upholding the October 22, 2018, Initial Decision. On August 13, 2019, Agency filed a Petition for Review of Agency Decision to the Superior Court for the District of Columbia. On July 2, 2020, the Superior Court for the District of Columbia issued a decision denying Agency’s Petition for Review and affirming the Initial Decision and the OEA Board’s decision. On July 30, 2020, Agency appealed the action to the District of Columbia Court of Appeals. On May 23, 2023, the District Of Columbia Court of Appeals issued its decision affirming the Superior Court’s dismissal of Agency’s Petition for Review and sustaining the OEA decision.

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

On July 21, 2023², Employee filed a Motion to Enforce the District of Columbia's decision. Employee asserted therein that as of the date of the filing of the Motion, Agency had failed to comply with the orders to reinstate her and issue backpay. This matter was assigned to the undersigned Senior Administrative Judge on July 21, 2023. On August 1, 2023, an Order was issued convening a virtual Status Conference for August 24, 2023, at 11:00am. On August 8, 2023, Agency filed a Consent Motion for an Extension of Time, requesting that the Status Conference for August 24, 2023, be changed to 3:00pm instead of 11:00am due to a schedule conflict. On August 10, 2023, I issued an Order granting Agency's Motion, and the matter was rescheduled to August 24, 2023, at 3:00pm via Webex. Both parties appeared on August 24, 2023, as required. Based upon what was discussed during the Status Conference, the undersigned determined that supplemental information was needed, specifically Agency cited that it was seeking comparable positions for which to place Employee for reinstatement. On August 25, 2023³, I issued a Post Status Conference Order which required Agency to provide supplemental information regarding the status of Employee's reinstatement on or before September 30, 2023. Agency was required to provide additional information regarding Employee's position of record at the time of the wrongful termination, as well as the currently available positions. Employee's response was due on or before October 30, 2023. Further, this Order also scheduled a Status Conference for September 20, 2023. Both parties appeared for the Status Conference on September 20, 2023, as required. During that time, both parties expressed the need for more time for submissions. On September 20, 2023, I issued a Post Status Conference Order which required Agency's supplemental brief be submitted on or before October 13, 2023, and Employee's response was now due on or before November 13, 2023. Additionally, that Order also required Agency to provide Employee with the contact information at the D.C. Department of Human Resources ("DCHR") to assist Employee with the completion of the required backpay processing documentation, because as of the date of the Status Conference, Employee had not yet completed or submitted the required paperwork.

On October 10, 2023, Agency filed a Consent Motion for an Extension of Time to file its brief regarding the status of Employee's reinstatement. Agency cited therein that more time was needed to ascertain all the relevant information regarding vacancies and that Agency's representative had conflicts with scheduled leave. Agency requested that the time be extended to November 3, 2023. On October 10, 2023, I issued an Order granting Agency's Motion. Agency's brief was now due on or before November 3, 2023, and Employee's response was due by December 4, 2023. On November 1, 2023, Agency filed a Second Motion for an Extension of time to submit its brief regarding Employee's reinstatement. Agency cited therein that additional time was needed to review the vacant positions to determine the comparability of those positions to Employee's position of record at the time of termination. Agency requested that it be granted an extension of time to November 24, 2023. That same day I issued an Order granting Agency's request. Agency's brief was now due on or before November 24, 2023. Employee's response was now due by December 29, 2023.

On November 27, 2023, Agency filed a Supplemental Motion in Lieu of Brief. Agency's Motion noted that Employee's position of record at the time of her termination (Grade 11 Case Management Specialist) had become available and that it no longer needed to address comparable

² Employee also filed a Motion for Attorney Fees on June 28, 2023, in an associated matter - OEA No. 1601-0050-16AF23. On August 1, 2023, I issued an Order in both matters scheduling a Status Conference.

³ This Order also provided instructions regarding the Attorney Fee matter pending before this Office. In the interest of simplification of communications, many of the Orders issued in the above-captioned matter were issued in combination with the Attorney Fee matter. However, each matter is separate for the purposes of the issuance of the final decision in each.

positions. Further, Agency asserted in that Motion that it sent a reinstatement letter to Employee on November 22, 2023, which indicated a start date of January 16, 2024. A Status Conference was held on November 27, 2023, in both the instant matter and Employee's Attorney Fee Petition matter. A Post Status Conference Order was issued on November 28, 2023, which required Employee to submit her response regarding compliance on or before December 29, 2023. On December 26, 2023, Employee sent an email to the undersigned and Agency's representative citing that she had been ill and needed more time to submit her response. Employee requested an extension of 30-45 days. On January 2, 2024, I issued an Order granting Employee's request for an extension.⁴ Employee's response was now due on or before January 29, 2024. Employee filed her response regarding compliance as required. Upon review of the submissions, I determined that a Status Conference was warranted. On January 30, 2024, I issued an Order scheduling a Status Conference for February 13, 2024. On February 9, 2024, Agency filed a Consent Motion to reschedule the Status Conference to February 21, 2024, citing a conflict with a previously scheduled matter at that time. On February 13, 2023, I granted Agency's Motion and rescheduled the matter to February 21, 2024. Both parties appeared for the Status Conference on February 21, 2024, as required. Employee asserted that she had still not submitted the documents for the restoration of her backpay, citing that it was "illegal" to do so pursuant to the District Personnel Manual ("DPM"). The undersigned reiterated to Employee that the documentation required for the restoration of backpay was governed by DCHR DPM 11B-80⁵, and that it was required and a failure to complete that process would preclude her ability to receive the backpay owed to her.

Further, as of the date of the February 21, 2024, Status Conference, Employee had not accepted Agency's reinstatement, which had a start date of January 16, 2024. Employee asserted that she had not accepted the reinstatement because Agency's actions were improper because she was supposed to have been reinstated within 30 days of the Court of Appeals decision. The undersigned explained to Employee that the instant compliance matter was initiated following her Motion for Enforcement and that this process was working to address the compliance matter. Agency asserted during this Status Conference that the position offered to Employee aligned with the position of record at the time of the filing for the Petition for Appeal. Based upon Employee's assertions during the Status Conference, the undersigned issued an Order for Employee to file a response on or before March 8, 2024. Employee filed the response as required. The undersigned has determined that an Evidentiary Hearing in this matter is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this matter for compliance should be dismissed.

⁴ While Employee did not file a formal motion, the undersigned noted that an exception would be made, and the email correspondence would be added into the record and treated as the motion given the circumstances of Employee's illness and inability to file the request as required by OEA Rules.

⁵ 6B DCMR §1149

ANALYSIS AND CONCLUSION

OEA Rule 640⁶ 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. On May 24, 2016, Employee filed a Petition for Appeal with the Office of Employee Appeals contesting the D.C. Office of the Attorney General's decision to terminate her from service for failing a PIP. Employee's position of record at the time of termination was as a Support Enforcement Specialist in the Child Support Enforcement Division, Grade 11, Step 10.⁷ An Initial Decision was issued by the undersigned on October 22, 2018, reversing Agency's action. Thereafter, Employee and Agency both filed Petitions for Reviews to the OEA Board. On July 16, 2019, the Board issued its Opinion and Order upholding the October 22, 2018, Initial Decision. On August 13, 2019, Agency filed a Petition for Review of Agency Decision to the Superior Court of the District of Columbia. On July 2, 2020, the Superior Court for the District of Columbia issued a decision denying Agency's Petition for Review and affirming the Initial Decision and the OEA Board's decision. On July 30, 2020, Agency appealed the action to the District of Columbia Court of Appeals. On May 23, 2023, the District Of Columbia issued its decision affirming the Superior Court's dismissal of Agency's Petition for Review and sustaining the OEA decision. As a result of the final action by the Court of Appeals, the decision became final following the Court of Appeals decision issued on May 23, 2023.

This matter for compliance was initiated following Employee's Motion for Enforcement filed on July 21, 2023. Employee cited therein that Agency had failed to reinstate her as required. Employee's Motion also noted that she refused Agency's settlement offers and cited that the job positions sent to her on July 7, 2023, were not in alignment with her position of record. Employee averred that the "original position on record, classification, and compensation of the IVD employee cannot be negotiated for an alternative position." Employee also avers that she was "misclassified as an employee" from a date range of 2002 until the time of termination.⁸ Employee made arguments regarding what she believes to be Agency's wrongdoing covering the span of years for which are wholly irrelevant to this matter. The undersigned advised Employee at the Status Conferences in this matter, that the jurisdiction and relevant time frame related to this matter are those contemporaneous with Employee's filing of her Petition of Appeal on May 24, 2016. As a result, the undersigned will not address any of Employee's claims unrelated to the reinstatement outside of the timeframe of the adverse action reversing her termination and subsequent appeal to this Office.

Agency's initial response regarding Employee's Motion for Enforcement, was that Employee's position of record was unavailable, and as a result it needed to provide comparable alternatives to satisfy the reinstatement requirements. Following a series of extensions for which to submit this information, on November 27, 2023, Agency filed a Motion in Lieu of Supplemental Brief wherein, Agency asserted that Employee's position of record - Case Management Specialist in the Child Support Services Division CS-301-11/10, had become available. Agency provided the position description with its Motion. Further, Agency also asserted that it had provided Employee with a reinstatement letter on November 22, 2023, and included that with its Motion.⁹ Of note, that letter provided that at the time

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

⁷ See. Employee's Petition for Appeal (May 24, 2016). See also. Agency's Answer to Employee's Petition for Appeal at Tabs 2 and 3 (August 10, 2016).

⁸ Employee's Response at Page 12 (March 8, 2024).

⁹ Agency's Motion in Lieu of Brief at Attachment 1(November 27, 2023).

of the issuance of the reinstatement letter, Employee still had not submitted the required backpay paperwork to process the restoration of her backpay. That letter iterated that this was required in accordance with 6B DCMR §1149 which governs the backpay process for District employees. This letter also noted that Employee was scheduled to attend orientation to begin work on January 16, 2024, at 9:00am. This letter also noted that the reinstatement letter needed to be signed within five (5) business days or it would expire if not accepted. This letter also included the job description for the position.

Employee's position of record at the time of termination was a Support Enforcement Specialist in the Child Support Enforcement Division at OAG. Attachment two (2) of Agency's November 27, 2023, Motion, also included the detailed position description of the job position vacancy for which Employee was to assume upon reinstatement. Upon review of the job description for the Case Management Specialist-CS-301-11, the undersigned finds that the position is essentially identical to Employee's position of record as a Support Enforcement Specialist. The major job duties both describe the position as being a part of the *senior team and that the duties include a "caseloads of routine as well as non-routine highly complex cases involving three (3) or more absent parents and other difficult or sensitive kinds of cases."* Both job descriptions note requirements for interviews, data review and making determinations in processing cases in an efficient manner. Both positions noted assignments with oversight with the data from the court, Clearinghouse and other IV-D programs. Both positions required abilities and skills of the *"civil and administrative aspects of laws governing the IV-D Program"* and required the employee to be knowledgeable about the division itself. Upon review of the job descriptions, the grade and step classification, the undersigned finds that Agency provided Employee the position of record as required by the order of reinstatement in the Initial Decision. Employee's assertions regarding misclassification and other unrelated claims of wrongdoing notwithstanding, I find that Agency met full compliance with the position it provided to Employee in the letter of reinstatement dated November 22, 2023.

Employee refused to accept the position as provided in the November 22, 2023, letter of reinstatement and in response again made assertions of wrongdoing, fraud, notary forgery, illegal activity and other claims that are belied or otherwise unsupported by the relevant OEA record.¹⁰ Further, the undersigned would note that most of Employee's claims of Agency's alleged wrongdoing occurred many years prior (2002 and 2004) to the filing of the Petition for Appeal for her termination in 2016, and as a result, are wholly irrelevant and not for this tribunal's consideration. Because I find that Agency has provided Employee with the position of record and that the salary, grade/step and positions duties all align, I find that there is no need to consider whether the previously offered comparable positions offered were sufficient to fulfill compliance. The undersigned concludes that Agency has complied with the Initial Decision to reinstate Employee, as its November 22, 2023, letter provided Employee with reinstatement to her previous or comparable position, effective January 16, 2024. The undersigned also would note that Employee's refusal to accept the position offered on November 22, 2023, is her own choice and not because of Agency's failure to comply. The undersigned finds that while Agency was delayed in its reinstatement of Employee following the Court of Appeals decision, that as of November 22, 2023, the position offered was in compliance with the Order of reinstatement as noted in the Initial Decision. Accordingly, I find that Agency has complied as directed in the Initial Decision and because Employee did not accept the position for reinstatement, Employee's Motion should be dismissed. Agency operated appropriately under the circumstances, and Employee's

¹⁰ Employee's Response (March 8, 2024). Employee provides over 15 pages of claims, most of which are not in this tribunal's jurisdiction and/or are also well outside the bound of the time frame of the filing of the Petition for Appeal. Employee's claims regarding actions at OEA are also unfounded.

refusal to cooperate does not reflect non-compliance on the part of the Agency. Further, I find that it is not in this Office's jurisdiction to adjudicate or make determinations of the claims raised regarding alleged past misclassifications, CBA illegalities, and other claims for which this tribunal has no authority to determine.

Additionally, as of the date of this decision, there has been no information provided by Employee or Agency that suggests that Employee submitted the documentation for the processing of the backpay owed to her. All District Government employees are governed by the 6B DCMR §1149 regarding the restoration of backpay. Employee's claim that it would be "illegal" for her to complete this paperwork and submit the required documentation is wholly unfounded. To that same end, because Employee refuses to submit this paperwork and has not done so, the undersigned finds that this Office has no further measures for which it can take to ensure Employee will receive the backpay owed to her as determined by the process in DPM Chapter 11. Further, I also find that because Employee has refused to provide the appropriate documentation to support the backpay restoration process, that any delay in the restoration of backpay are due to Employee's own choices not to submit the required documentation and not a result of non-compliance by Agency. Accordingly, I find that because Agency has complied with the orders of the Initial Decision, Employee's Motion for Enforcement should be dismissed.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Motion for Enforcement is **DISMISSED**.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge