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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
SAUNDRA MCNAIR,)	
Employee)	OEA Matter No. 1601-0012-14C16
)	
v.)	Date of Issuance: August 11, 2017
)	
DISTRICT OF COLUMBIA)	
DEPARTMENT OF EMPLOYMENT)	
SERVICES,)	
Agency)	
_____)	Arien Cannon, Esq.
)	Administrative Judge
Charles Tucker, Jr., Esq. Employee Representative		
Rhesha D. Lewis-Plummer, Esq., Agency Representative		

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL BACKGROUND

An Initial Decision was issued on April 22, 2016 (“April 22 Order”), which reversed the District of Columbia Department of Employment Services’ (“Agency”) decision to remove Saundra McNair (“Employee”) from her position as an Administrative Law Judge. The Initial Decision ordered Agency to reinstate Employee and reimburse her all back-pay and benefits lost as a result of her removal. Agency was also ordered to file documents evidencing compliance with the terms of the Initial Decision within thirty (30) days from the date in which the Initial Decision became final. Because Agency elected not to file a Petition for Review with OEA’s Board or with the District of Columbia Superior Court of the April 22 Order, it became the final decision of this Office. Agency had until June 27, 2016, to comply with the Initial Decision pursuant to OEA Rule 635.1.

The procedural background regarding the compliance issues in this matter is as follows:

1. On May 27, 2016, Agency filed a Notice which outlined measures it was taking to comply with the April 22 Order. Agency requested an additional thirty (30) days to complete compliance with the order.

2. On June 24, 2016, Employee filed a Motion Requesting an Award of Front Pay as a result of Agency's request for additional time to file documents evidencing compliance with the April 22 Order.
3. Employee also filed a Motion to Compel and a Request for Sanctions for Noncompliance on July 13, 2016.
4. Agency filed a reply to Employee's Motion to Compel on August 3, 2016. On August 4, 2016, a status conference was convened to address the outstanding compliance issues.
5. To allow both parties time to engage in settlement discussions regarding Agency's compliance, as represented by the parties at the August 4, 2016 status conference, another status conference was scheduled for September 6, 2016.
6. On August 15, 2016, Employee filed another Motion Requesting Awarding of Front Pay and Penalties. This motion was denied on September 6, 2016. In this Order, Agency was also ordered to submit documents, within ten (10) days, evidencing compliance with back pay and benefits lost as a result of Employee's removal.
7. Agency submitted a letter on September 21, 2016, evidencing compliance with a portion of the April 22 Order—reinstating Employee to her position as an Administrative Law Judge. The letter set Employee's reinstatement date to September 6, 2016, the same day as a previously scheduled status conference before this Office.
8. Because back pay and benefits lost as a result of Employee's removal remained unresolved, a status conference was convened on October 31, 2016, to address these outstanding issues. At the October 31st status conference, the undersigned was informed by Agency that it had sent documents to Employee for her to sign in order for the appropriate deductions to be made from her back pay check.
9. It was previously ordered that an Agency management official be present for the October 31, 2016 status conference. Because a management official was not made available, another status conference was convened on November 3, 2016.
10. A telephonic status conference was convened on November 29, 2016, to further address outstanding compliance issues. During this status conference, Employee informed the undersigned and Agency that the calculations for her annual leave and sick leave were incorrect.
11. On December 15, 2016, Agency submitted a timeline of events and correspondence.
12. A status conference was convened on December 20, 2016, to further address outstanding compliance issues.
13. A status conference was convened on February 1, 2017. To help facilitate the

outstanding compliance issues, representatives from the District's Department of Human Resources¹ ("DCHR") were also present at this in-person status conference. At the February 1, 2017 conference, the undersigned was again informed by Agency that it needed Employee to provide tax documentation and sign necessary paperwork in order for her back pay check to be issued.

14. To further address outstanding compliance issues, status conferences were held on the following dates: March 10, 2017, April 12, 2017, and May 24, 2017.
15. Agency received all of the necessary documents in order to process Employee's back pay check around May or June of 2017.
16. A status conference convened on July 19, 2017, and as of the date of this status conference, Employee had yet to receive her back pay check
17. A telephonic status conference was convened on August 9, 2017, to inform the parties that the undersigned was certifying this matter to the OEA General Counsel's Office due to a lack of compliance from the April 22 Order.

ANALYSIS AND CONCLUSION

OEA Rule 635² addresses compliance and enforcement of Orders issued by this office. OEA Rule 635.1 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. Further, OEA Rule 635.9 states that if an Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Code § 1-606.02.

Here, an Initial Decision was issued on April 22, 2016, which reversed Agency's decision to remove Employee and ordered that Employee be reinstated. Agency was also ordered to reimburse Employee all back pay and benefits lost as a result of her removal. Agency elected not to file a Petition for Review with OEA's Board or with the District of Columbia Superior Court of the April 22 Order. Thus, the April 22, 2016 Initial Decision became the final decision of this Office. Agency had until June 27, 2016, to comply with the Initial Decision pursuant to OEA Rule 635.1.

It is noted that Agency could not come into full compliance with the April 22 Order until Employee provided tax documentation and signed all necessary paperwork for Agency to process her back pay check. Agency did come into partial compliance temporarily when it reinstated Employee, effective September 6, 2016. As explained below, shortly after Employee was reinstated she was placed in an AWOL, non-pay status, which prevents her from accessing

¹ The District of Columbia Department of Human Resources is the main human resources Agency for the entire District government workforce.

² 59 DCR 2129 (March 16, 2012).

her short and long term disability benefits. Employee has been in a non-pay status since late November 2016. Furthermore, the back pay and other benefits lost as a result of Employee's removal remain outstanding.³

The undersigned was informed on or around November 29, 2016, that Employee's health benefits were no longer being deducted from her pay check and that her health benefits were no longer active.⁴ During this lapse of health insurance, Employee was experiencing symptoms of her Systemic Lupus and was unable to see her treating physician. This chain of events created a peculiar circumstance: Employee could not get the medical treatment nor see her treating physician because her health benefits were not active. Employee was also unable to receive a doctor's note from her physician to provide to Agency as a medical excuse. As a result, Employee was unable to go to work which led Agency to place Employee back on an AWOL status. Thus, while Agency came into partial compliance with the April 22 Order temporarily, by failing to ensure that Employee's health benefits remained active, it created complicated issues regarding coming into full compliance.

It was confirmed that DCHR had all of the necessary paperwork from Employee as of June 5, 2017, to begin processing the back pay check. It was represented to the undersigned on numerous occasions that the processing of the back pay check would be expedited by both DCHR and the Chief Financial Officer's Office of Pay and Retirement Services ("OPRS"). Unfortunately, that did not occur. Not only was the back pay check not expedited, it was not processed within the time frame allowed under normal circumstances. To date, Employee has not received reimbursement of back pay, or other benefits lost as a result of her removal as ordered by the April 22 Order.

It should be noted that DCHR and OPRS, along with Agency, play a critical role in processing back pay checks and other benefits for employees reinstated by an order of this Office. It is apparent from the numerous status conferences over the past year that there has been minimal communication between Agency, DCHR, and OPRS in an attempt to have Agency come into full compliance with this Office's April 22 Order. While the onus is on Agency to ensure that a lawful order issued by this Office is complied with, the lengthy period of time for the processing of Employee's back pay check does not fall wholly on Agency. However, Agency's lack of communication with the other supporting agencies has, without question, prolonged the process.

There have been more than a dozen status conferences in this matter in an attempt to resolve the outstanding compliance issues.⁵ The undersigned has exhausted all avenues in an

³ Employee's health benefits were reinstated for a brief period of time after she was reinstated, but for reasons that remain unclear were temporarily deactivated. Employee is still entitled to leave hours (annual and sick leave) and health insurance payments by the District government.

⁴ While it is not disputed that Employee's health benefits were not being deducted from her pay check and that her health benefits were temporarily inactive, the time period in which the benefits were not active is disputed between the parties.

⁵ Twelve status conferences are accounted for in this Addendum Decision where an order was issued scheduling the status conferences. However, an official order was not issued for a number of conferences. Many of the status conferences were convened based an agreed upon date by the parties via e-mail. There were also instances when impromptu conferences were convened.

effort to have Agency come into full compliance with the April 22 Order. Consequently, this matter shall be certified with the OEA General Counsel's Office for appropriate action.

ORDER

Accordingly, it is hereby **ORDERED** that this matter be certified to the General Counsel of the Office of Employee Appeals for enforcement of the April 22, 2016 Order.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge