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THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	OEA Matter No. 1601-0032-14C23
EMPLOYEE <sup>1</sup>	)	Date of Issuance: May 23, 2024
Employee	)	
v	)	
DISTRICT OF COLUMBIA DEPARTMENT	)	LOIS HOCHHAUSER, Esq.
OF YOUTH REHABILITATION SERVICES	)	Administrative Judge
Agency	)	
Employee, <i>Pro Se</i> <sup>2</sup>	)	
Daniel Thaler, Esq., Agency Representative <sup>3</sup>	)	

**SECOND ADDENDUM DECISION ON COMPLIANCE**

INTRODUCTION

Employee filed an appeal with the Office of Employee Appeals (“OEA”) on December 17, 2013, challenging Agency’s decision to remove him for his position as a motor vehicle operator. The matter was heard by Administrative Judge (“AJ”) Arien Cannon, In the *Initial Decision* (“ID”) issued on September 18, 2015, AJ Cannon reversed the removal, ordering Agency to reinstate Employee, and pay him wages and benefits lost as a result of its action.

Agency filed a *Petition for Review* on October 23, 2015. In the *Opinion and Award on Petition for Review* issued on March 7, 2017, the Board remanded the matter to AJ Cannon for “further determinations” on whether Employee was sufficiently recovered from his disability to be reinstated. On October 25, 2017, AJ Cannon issued the *Initial Decision on Remand* (“ID on Remand”)<sup>4</sup> in which he concluded that Employee had sufficiently recovered to be reinstated. He again reversed the removal, and again ordered Agency to reinstate Employee pay him lost wages and benefits. On November 29, 2017, Agency appealed the *ID on Remand* to the Board. In its *Opinion and Order on Remand*, issued on April 24, 2018, the Board affirmed the *ID on Remand*, but remanded the matter for clarification on certain calculations.<sup>5</sup>

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<sup>1</sup> This Office does not identify employees by name in *Initial Decisions* published on its website.

<sup>2</sup> Employee has been *pro se* since about December 9, 2021 Prior to then, he was represented by Johnnie Johnson III, Esq..

<sup>3</sup> Agency was represented by Frank McDougald, Esq. until June 23, 2021, when Mr. Thaler entered his appearance.

<sup>4</sup> OEA Matter No. 1601-0032-14R17

<sup>5</sup> The item remanded is irrelevant to the current matter and will not be discussed further.

In the *Second Initial Decision on Remand* (“*Second ID on Remand*”)<sup>6</sup> issued on October 31, 2018, AJ Cannon again reversed the termination, and awarded backpay and the restoration of lost benefits. Agency filed a *Petition for Review* with the Board on December 5, 2018 challenging the decision. In its *Second Opinion and Order on Remand*<sup>7</sup> issued on October 23, 2019, the Board denied Agency’s appeal. On December 5, 2019, Agency appealed the Board’s decision to the Superior Court of the District of Columbia (“D.C. Superior Court”), which denied the appeal on September 21, 2020.

Employee filed *Petitioner Request to Re-Open the Case Due to the Government’s Failure to Pay Awarded Backpay and Other Benefits and Return of Sick Leave Benefits, Request for Mandamus and Show Cause, and in Response to Letter dated January 25, 2021 from the Law Offices of Johnnie Louis Johnson III, LLC*, (“*First Compliance Request*”) on February 21, 2021. AJ Cannon determined that the pleading raised separate matters, *i.e.*, compliance and attorney fees and they were docketed separately.<sup>8</sup>

In the year between the filing of the *First Compliance Request* on February 21, 2021 and the issuance of the *Addendum Decision on Compliance*<sup>9</sup> (“*Compliance Decision*”) on March 2, 2022, the parties presented multiple written and oral arguments, and appeared at six status conferences.<sup>10</sup> In the *Compliance Decision*, AJ Cannon denied all of Employee’s claims except the one seeking interest on back pay, which he awarded. Agency appealed that award in its *Petition for Review* in the D.C. Superior Court on April 5, 2022. On January 5, 2023, Judge Sharon Matini granted the *Petition*, and reversed the award of interest. *District of Columbia Department of Youth Rehabilitation Services v. District of Columbia Office of Employee Appeals* (“*Matini Order*”). [Case No. 2022 CA 1505 P (MPA)].

On January 9, 2023, Employee filed *Petitioner’s Second Request for Enforcement/Compliance Seeking a Directive, Through a Mandamus and/or Order to Show Cause, to the District of Columbia Government Requiring the District to Correct Petitioner’s Annual Pay, Benefits and Taxes (Federal) for Petitioner’s Backpay Award for Calendar years 2012, 2014, 2015, 2016, 2017, 2018 2019 and 2020*. (“*Second Compliance Request*”). Agency filed *Agency’s Opposition to Employee’s Second Request for Enforcement/Compliance* (“*Agency’s Opposition*”) on January 23, 2023. The matter was reassigned to this AJ on or about March 29, 2023, since AJ Cannon was no longer with this Office.

By Order dated April 14, 2023, Employee was directed to support his position regarding this Office’s jurisdiction to hear this matter. He filed a timely response.<sup>11</sup> The AJ then scheduled oral argument, but after learning that Employee had the *Matini Order*, and the matter was pending before the District of Columbia Court of Appeals [No. 23-CV-82, 2022-CA-0010505-P(MPA)].<sup>12</sup> In her

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<sup>6</sup> Matter No. 1601-0032-14R18.

<sup>7</sup> Matter No. 1601-0032 14R17R18.

<sup>8</sup> The attorney fee request was assigned matter no. 1601-0032-14AF21. AJ Cannon awarded attorney fees in the *Addendum Decision on Attorney Fees*, issued on September 15, 2021. Agency’s appeal of that decision was denied by the Board in its *Opinion and Order on Attorney Fees* issued on December 17, 2021. The issue of the attorney fees is not relevant to this matter and therefore not discussed further.

<sup>9</sup> 1601-0032-14C21.

<sup>10</sup> For the sake of brevity, the submissions and date of oral arguments and status conferences are not listed.

<sup>11</sup> Both parties consistently met filing deadlines, and are commended for doing so.

<sup>12</sup> The issue of the award of interest on backpay is currently before the D.C. Court of Appeals, and not addressed in this decision

Order of December 13, 2023, the AJ cancelled oral argument, and directed the parties to brief certain issues, file copies of all pleadings and issuances by the Court of Appeals, and submit monthly status reports. On January 11, 2024, the parties filed a *Joint Praecipe* with relevant pleadings attached; and separately filed briefs responsive to the Order. In its response, Agency renewed its motion to dismiss.<sup>13</sup> On February 14, 2024, the AJ directed Employee to respond to Agency's motion. Employee filed his response on March 22, 2022. The record in this matter is closed.

### JURISDICTION

The jurisdiction of this Office is at issue.

### ISSUE

Should this matter be dismissed?

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

In his *First Compliance Request*, Employee alleged that Agency failed to comply with directives pertaining to back pay, reinstatement, and both annual and sick leave in the *Second ID on Remand*. During the proceedings, Employee added claims regarding Social Security and Medicare calculations, which AJ Cannon included as part of the compliance request. On December 9, 2021, Employee filed *Employee's Submission of Social Security with Attachments* in support of his Social Security and Medicare claims, seeking the following relief:

[T]he District of Columbia should be directed to take appropriate steps to have my Social Security record corrected to reflect annual income for my taxed Social Security earnings and taxed Medicare earnings per each year (2013, 2014, 2015, 2016, 2017, 2018, 2019, and 2020) of my wrongful termination.<sup>14</sup>

Agency filed its *Agency's Reply to Employee's Submission of Social Security Statement* on December 13, 2021 arguing that Employee was not entitled to the relief he sought. In his January 5, 2022 *Response to Agency's Reply to Employee's Submission of Social Security Statement*, Employee maintained that he was entitled to the relief. He asked AJ Cannon to keep the record open because some calculations had not yet been finalized:

Until my Social Security and Medicare accounts accurately reflect payment over the eight years, the District is not in compliance. Therefore, this compliance matter should *remain open until payments are appropriate reflected in my Social Security and Medicare accounts.*<sup>15</sup> (emphasis added).

In the March 2, 2022 *Compliance Decision*, AJ Cannon denied all but one of Employee's claims and requests for relief, awarding interest on back pay. AJ Cannon declined the Employee's to keep

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<sup>13</sup> Agency filed status reports and pleadings on April 8, 2024; March 20, 2024; and on April 8, 2024.

<sup>14</sup> In pleadings before this AJ, Employee cites the filing date as December 3, 2021. However the pleading is date-stamped as received by this Office at 2:44 p.m. on December 9, 2021, and that date is considered the filing date, and therefore used in this decision.

<sup>15</sup> *Response to Agency's Reply to Employee's Submission of Social Security Statement.*

the record open and did not retain jurisdiction. In the *Compliance Decision*, AJ Cannon discussed the parties' positions on each claim, and the supporting documents they submitted, including those submitted by Employee related to his Social Security and Medicare claim. He explained his rationale for his conclusions that the back pay issue was "moot," that Agency complied with all directives pertaining to leave benefits and no further action was needed, and that there was no basis for him to disturb the voluntary and "legally binding agreement" the parties had entered into which resolved the claims pertaining to health and life insurance. He also dismissed Employee's Social Security and Medicare claims, stating:

Despite Employee's contention that Agency and the District government have not paid his Medicare and Social Security taxes for the years he was wrongfully terminated, the documents of records suggest otherwise. The printout...further provides a disclaimer that likely explains why these contributions are not reflected...While the Social Security Administration may have some lag time in having taxes paid on behalf of an employee reflected in its systems, *I find that Agency has properly paid and accounted for the Social Security benefits owed to Employee.* (emphasis added).

In the *Second Compliance Request*, now before this AJ, Employee asks that a "writ of *Mandamus* or Show Cause be issued to the District of Columbia Government (DCG) requiring [it] to correct [his] annual pay, benefits, and taxes (federal) for his back pay award for the calendar years 2013, 2014, 2015, 2016, 2017, 2018, 2019 and 2020." In support, he asserts that on December 20, 2022, "Social Security indicated that payments were not made into his account for each year of his termination," providing him with a printout which "only reflected \$142,800 for calendar year, the maximum earnings amount table for Social Security." He claims, in his January 11, 2024 submission, that "review of the social security compliance issue" is properly before the AJ, and should not be dismissed or held in abeyance maintaining that the issue is limited to "correcting a factual error regarding [his] Social Security and Medicare Benefits" in the *Compliance Decision*.

The issue in this matter is if Employee's *Second Compliance Request* raises an issue that this AJ has authority to decide. The authority to hear a disputed matter and render a legally enforceable decision is a question of jurisdiction. *Ruhrgas AG v. Marathon Oil Co. et al.*, 526 U.S. 574 (1999). Issues of jurisdiction is a threshold issue, since this Office cannot act on any matter that is beyond its jurisdiction. *Banks v. District of Columbia Public Schools*, OEA Matter 1602-0030-90 (September 30, 1992). This Office's jurisdiction was first established in the District of Columbia Comprehensive Merit Personnel Act of 1978 (D.C. Law 2-139); D. C. Official Code § 1-601.01 *et seq.* (2016 Repl. and 2019) and then amended by the Omnibus Personnel Reform Amendment Act of 1998, D.C. Law 12-124. These laws established that this Office has jurisdiction to hear appeals of DCG employees of final decisions affecting a performance rating resulting in removal, adverse actions resulting in removal, reductions in grade, suspensions of at least ten days, reductions-in-force; and placement on enforced leave of at least ten days.

The laws that established this Office's jurisdiction also established limitations and boundaries. This Office will have jurisdiction to hear a matter only if the individual filing the appeal meets certain criteria, *i.e.*, personal jurisdiction; and only if the action appealed is one that this Office is authorized to hear, *i.e.*, subject matter jurisdiction. Jurisdiction is a threshold issue; but can be raised by a party

or by the AJ.<sup>16</sup> Pursuant to OEA Rule, employees have the burden of proof on issues of jurisdiction, and must meet this burden by a preponderance of evidence. In this matter, jurisdiction was established at each of the multiple proceedings brought before AJ Cannon, the Board, the Superior Court and the Court of Appeals over the past 13 years. However, the question of jurisdiction remains an issue that must be addressed when raised by a party or by the AJ.

Compliance and enforcement matters are an extension of this Office's right to issue final decisions that require compliance and can be enforced, and are governed by OEA Rule 640 *et seq.*. Pursuant to OEA Rule 640.3, an employee can ask this Office to enforce a final decision if an agency fails to comply with that decision within 30 days from the date the decision becomes final. It further states that the matter will be decided by the AJ who issued the final decision.<sup>17</sup> It is not unusual for a compliance issue to remain outstanding after a decision is final. The AJ must determine if the parties have acted in good faith and/or if there is a reasonable excuse for the delay. If those questions are answered in the affirmative and there is a good reason why the matter is still unresolved, the AJ may retain jurisdiction or keep the record open for a period of time. During that time, the AJ may order the parties to take certain actions, brief certain issues, and may take evidence on certain matters.

In this matter, AJ Cannon retained jurisdiction of Employee's first compliance challenge for almost 13 months. During this time, he held multiple statute conferences to assess progress, and ordered the parties present written and oral arguments on various issues. The parties also presented documentary evidence which AJ Cannon reviewed and considered. In the *Compliance Decision*, AJ Cannon reviewed the arguments and documentation submitted by the parties and detailed his rationale for determining that Agency achieved compliance and that Employee's claims, excepted for interest of back pay, should be denied. Although requested to do so, he specifically declined to retain jurisdiction or to keep the record open.

After thorough consideration of the record and pleadings, as well as of the applicable law and precedent, the AJ concludes that Employee has not raised any issue that this AJ has the authority to hear. The decision in this matter became final on October 21, 2020, since there was no appeal of the D.C. Superior Court's denial of Agency's appeal of this Board's *Second Opinion and Order* affirming AJ Cannon's *Second ID on Remand* on September 21, 2020. *Matini Order*, p. 2. From the date Employee filed his first challenge of Agency's compliance and March 2, 2022 when the *Compliance Decision* was issued, the parties briefed and argued matters related to compliance multiple times. In an effort to ensure that all outstanding issues and concerns had been addressed, the AJ directed Employee to "explain the actions he seeks this office to take, for example in his 'Mandamus' request" in his final submission; and to provide "support for his position that this Office had authority to address his 'annual pay, benefits and taxes (federal) for [his] back pay between 2013 and 2020'" in view of the *Matini Order*.

In reaching this decision, the AJ reviewed the myriad of pleadings by the parties as well as Orders and decisions issued by AJ Cannon, the OEA Board, the D.C. Superior Court and the D.C.

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<sup>16</sup> An AJ has the inherent authority to determine jurisdiction and can dismiss a matter *sua sponte*. See, e.g., Fed. R. Civ. Proc. 12(b)(1) which establishes this authority in federal courts.

<sup>17</sup> OEA Rule 640.3 specifies that the compliance challenges should be resolved by the AJ who issued the final decision. This is reasonable requirement since that AJ is familiar not only with the parties and the issues, but also with the relief ordered. The record reflects that AJ Cannon who was involved in this matter for more than a decade. He was familiar with the parties and understood the many issues and extensive procedural history.

Court of Appeals spanning more than ten years multiple times, since she not only needed to fully understand the chronology, but also had to determine if Employee raised any matter that this Office was authorized to hear. She afforded “special consideration” to Employee for several reasons. Although his pleadings demonstrate the skill and experience a seasoned attorney, she assumed that he is not a licensed attorney and was therefore entitled to the flexibility and consideration given to *pro se* litigants, while ensuring that Agency was not disadvantaged as a result. *Macleod v. Georgetown Univ. Med. Center*, 736 A.2d 977, 980 (D.C. 1999). See also *Palou v. District of Columbia*, 998 A.2d 286 (D.C. 2010). In addition, she was also cognizant that when considering a motion to dismiss, the party whose action will be dismissed is afforded favorable presumptions and inferences that are not given to the party seeking dismissal *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). Therefore, Employee’s allegations and evidence was given favorable presumptions and inferences not given to Agency. *Leatherman v. Tarrant County Narcotics Intelligence & Coordination Unit*, 507 U.S. 163, 164 (1993).

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Employee submitted additional documents and argument related to his Social Security and Medicare claims to AJ Cannon on December 9, 2021 and January 5, 2022. He contends that these submissions established that “no payments” were made into his Social Security account and taxed Medicare earnings from 2013 through 2020, the period of his termination, referring to relief he requested in his December 9, 2021 submission to AJ Cannon:

[T]he District of Columbia should be directed to pay the amount it should have paid from [Employee’s] Backpay Settlement into [Employee’s] Social Security and Medicare accounts. The District of Columbia should be directed to pay the amounts into each year separately based on [Employee’s] annual salary for that year. To make [Employee] whole, the District of Columbia needs to correct [it’s] error and fully pay what is owed into [Employee’s] Social Security and Medicare accounts annually.

However, these documents and arguments were received and considered by AJ Cannon, who concluded in his *Compliance Decision* that Agency and the District of Columbia Government had satisfied all compliance-related issues, even if all documentation was not yet available:

Despite Employee’s contention that Agency and the District government have not paid his Medicare and Social Security taxes for the years he was wrongfully terminated, the documents of records suggest otherwise. The printout...further provides a disclaimer that likely explains why these contributions are not reflected...While the Social Security Administration may have some lag time in having taxes paid on behalf of an employee reflected in its systems, I find that Agency has properly paid and accounted for the Social Security benefits owed to Employee. (emphasis added).

Employee also asserts that he is not seeking monetary relief in this “compliance matter,” but only “requests that the government provide [him] with the appropriate W2 Forms” for the years 2013-2020, and a W-2 Form for his annual leave payout. This does not raise an issue of compliance or any issue over which this Office has jurisdiction.

The *Compliance Decision* issued by AJ Cannon was not an interim in nature. He did not retain jurisdiction or keep the record open on the matters under consideration. Employee argues that the “sole issue” raised in this *Second Compliance Request* is that “harmful error” resulted because AJ Cannon “prematurely and erroneously” concluded that Agency “properly paid and accounted” for both his Social Security and Medicare benefits:

[AJ Cannon’s] conclusion was not based on any material issue of fact but was based on an incorrect assumption of fact and incorrect conclusion of law based on that erroneous assumption.

In the *Compliance Decision*, AJ Cannon dismissed all of Employee’s claims and requests for relief, except the one seeking the payment of interest. He explained his rationale for the decision, referring to the arguments and evidence presented. Specifically he determined that the back pay claim was “moot,” that Agency was in compliance with matters relating to leave benefits and no further action was needed, and that there was no basis to disturb the voluntary and “legally binding agreement” of the parties resolving all claims pertaining to health and life insurance. Finally, he dismissed Employee’s Social Security and Medicare claims, concluding that Agency had “properly paid and accounted for Social Security benefits owed to Employee.”

This matter was reassigned to this AJ because AJ Cannon was no longer with OEA. She stands in his stead. She has no authority to review challenges of “harmful error” or “erroneous conclusions” unless directed to do so by a Court or the Board. Employee did not appeal from, otherwise challenge or seek clarification of any part of the *Compliance Decision*. His request to keep the record open was denied by AJ Cannon. Employee raises challenges in this *Second Compliance Request* on matters that were decided by AJ Cannon.

In sum, upon a careful review of the pleadings before her, as well as the extensive record; and based on the applicable law, rules and precedent; the AJ concludes that jurisdiction was not established and the matter must therefore be dismissed.<sup>18</sup>

#### ORDER

Employee’s *Second Request for Enforcement/Compliance* is dismissed.<sup>19</sup>



FOR THE OFFICE:

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<sup>18</sup>. In reaching her decision, the AJ reviewed and considered all of Employee’s evidence and arguments. She has not included an analysis of each argument and piece of evidence since to do so would significantly increase the length of this document but have no impact on the outcome. *Antelope Coal Company/Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014).

<sup>19</sup> Based on this decision, Agency’s motion is dismissed as moot.