

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:	)	
	)	
MARLON RAY,	)	OEA Matter No. J-0070-04
Employee	)	
	)	Date of Issuance: May 15, 2007
	)	
	)	
DISTRICT OF COLUMBIA PUBLIC	)	
SCHOOLS DIVISION OF	)	
TRANSPORTATION,	)	
Agency	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Marlon Ray (“Employee”) worked for the District of Columbia Public Schools, Division of Transportation (“Agency”). On January 26, 2004, Employee received a notice of termination. He filed a Petition for Appeal on May 19, 2004. He alleged that he was terminated without cause. Employee also made some claims of racial and gender discrimination, as well a disparate treatment argument.<sup>1</sup>

On August 30, 2004, the Administrative Assistant at the Office of Employee Appeals (“OEA”) sent a notice to Agency requesting that it submit its answer to Employee’s Petition for Appeal. The notice was addressed to David Gilmore, the

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<sup>1</sup> *Petition for Appeal*, p. 6-7 (May 19, 2004).

director of Agency. It provided that if such answer was not filed by September 29, 2004, then the Administrative Judge (“AJ”) could impose sanctions including issuing a decision in favor of Employee.<sup>2</sup>

Having not received Agency’s response, the AJ issued an Initial Decision on October 15, 2004. He provided that according to OEA Rule 622.3, 46 D.C. Reg. at 9313, if a party failed to defend an appeal, then the AJ could dismiss the action or rule for the appellant. Therefore, Agency’s decision to terminate Employee was reversed. Additionally, the AJ’s ruling requested that Agency restore Employee to his position or a comparable position with back pay and benefits.<sup>3</sup>

On November 19, 2004, Agency responded to OEA by filing a Petition for Review of the AJ’s Initial Decision. Agency provided that it lacked notice of the Petition for Appeal because it was addressed to the Director of Transportation for Agency and not the Human Resources Director and Acting Operations Supervisor. Therefore, Agency argued that it should not be faulted for failing to file an answer.<sup>4</sup> Employee filed a response to Agency’s Petition for Review requesting that the AJ’s decision be upheld.<sup>5</sup>

OEA Rule 608.2 provides that “the Office shall promptly send a copy of the petition for appeal to the agency, and the agency shall file an answer within thirty (30) calendar days of the service of the petition for appeal.” In accordance with this rule, the Administrative Assistant for OEA sent a letter with a copy of Employee’s Petition for Appeal. The letter requested that Agency file its answer to the petition by September 29,

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<sup>2</sup> *Letter from Administrative Assistant at OEA*, p. 1 (August 30, 2004).

<sup>3</sup> *Initial Decision*, p. 2-3 (October 15, 2004).

<sup>4</sup> *Petition for Review*, p. 2 (November 19, 2004).

<sup>5</sup> *Employee’s Response to Petition for Review of Initial Decision*, p. 2 (December 7, 2004).

2004. This was 30 days from the date of the letter.

The letter was addressed to the director of Agency, the highest ranking person within an agency. Agency does not argue that the director failed to receive the letter, it is Agency's position that it should have gone to another staff member within Agency. It is difficult for this Board to accept this argument as justification as to why Agency did not file its answer because the director could have easily delivered the letter to the appropriate member of his staff.

Furthermore, the Initial Decision was addressed to the director, but on this occasion the director of Agency made sure that it went to the proper party to file Agency's Petition for Review. This Board will not allow Agency to benefit from its own internal breakdowns. Agency was given the requisite thirty days to file its answer. It did not do so. Therefore, the AJ was proper in ruling in favor of Employee. Agency failed to defend Employee's appeal. According to OEA Rule 622.3, 46 D.C. Reg. at 9313, it is within the AJ's authority to rule in favor of Employee, and that authority was properly exercised in this case.<sup>6</sup> Accordingly, we hereby deny Agency's Petition for Review.

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<sup>6</sup> OEA Rule 622.3, 46 D.C. Reg. at 9313 provides that:

"if a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- a. Appear at a scheduled proceeding after receiving notice;
- b. Submit required documents after being provided with a deadline for such submission; or
- c. Inform this Office of a change of address which results in correspondence being returned."

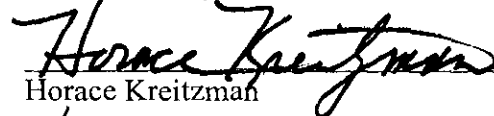
Agency did not adhere to section (b) and submit required documents by the deadline established by OEA.


**ORDER**

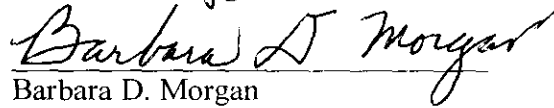
Accordingly, it is hereby **ORDERED** that Agency's Petition for Review  
is **DENIED**.

FOR THE BOARD:

  
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Brian Lederer, Chair

  
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Horace Kreitzman

  
\_\_\_\_\_  
Keith E. Washington

  
\_\_\_\_\_  
Barbara D. Morgan

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Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.