THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
QUEEN GLYMPH, Employee	OEA Matter No. 1601-0154-00
	Date of Issuance: September 17, 2012
DISTRICT OF COLUMBIA DEPARTMENT ON MENTAL HEALTH, Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Queen Gylmph ("Employee") worked as a Program Analyst with the Department on Mental Health, formerly known as the Commission on Mental Health ("Agency"). On May 17, 1995, Employee sustained an on-the-job injury that prohibited her from working. As a result, she began receiving Worker's Compensation. On April 15, 1997, Agency issued an advanced written notice of proposal to remove Employee from her position for medical incompetence.[1] Thereafter, Employee's physician submitted a "Return to Work Plan" to Agency, and on May 13, 1997, Employee returned to work with a schedule consistent with her physician's recommendations. [2]

[1] Agency reasoned that Employee could not " . . . satisfactorily perform one or more major duties of [her] position due to medical incapacitation . . ." *Petition for Appeal*, Enclosure 16 (August 28, 2000).
[2] The Return to Work Plan recommended that Employee work part-time for two hours per day with a 10:30 a.m.

On June 9, 1997, Agency informed Employee that it could no longer accommodate her light duty status of two-hour work days. It further provided that "until such time that [she was] able to work eight hours each day, [she could] apply for sick leave, annual leave, or leave without pay (LWOP)."[3] Employee's physician subsequently submitted two Return to Work Plans, but Agency did not accept them because they did not allow her to work a full eight hours per day.[4]

On September 24, 1999, Agency issued a second advanced written notice of proposal to remove Employee from her position. The proposal was based on the same cause as the previous proposal.[5] A Disinterested Designee approved the removal, and on July 18, 2000, Agency issued its final decision to terminate Employee.[6]

Employee filed Petition for Appeal with the Office of Employee Appeals ("OEA") on August 28, 2000. She argued that Agency should not have removed her from her position and should not have denied her right to return to work.[7] She asserted that Agency retaliated against her for previous work-related injuries. Therefore, she requested that OEA reverse Agency's removal action and reinstate her position.[8]

In Agency's Pre-hearing Statement, it provided that Employee was terminated pursuant to Chapter 16 § 1603.3 of the District Personnel Manual ("DPM").[9] Agency also believed that

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arrival time. *Id.*, Enclosure 3.
[3] *Id.*, Enclosure 17.
[4] Both plans recommended that Employee work four hours per day with a start time of 10:00 a.m. *Id.*, Enclosures 6 and 7.
[5] *Agency's Transmittal of OEA Appeal Files*, Tab 2 (December 5, 2002).
[6] *Id.*, Tab 4.
[7] She explained that when Agency refused to provide her a reasonable accommodation due to her medical disability, it violated Chapters 8 and 16 of the District Compensation Act, the Americans with Disabilities Act, and Title VII of the Civil Rights Act of 1964.
[8] She further requested that the reinstatement comply with her physician's work plan; that she be classified as a Grade 13; that she is protected from retaliation; that she be placed in a working environment where she will not be penalized or discriminated against for her for disability and work related injury; and that her benefits and lost wages be restored, in addition to legal fees, expenses, and pain and suffering. *Petition for Appeal* (August 28, 2000).
[9] Chapter 16 § 1603.3(f) of the DPM provides that:

under D.C. Official Code § 1-624.45 (1999 Repl.), it had a right to terminate Employee because she was disabled for more than two years. It opined that OEA lacked jurisdiction over Employee's Americans with Disabilities Act claim.[10] In response to Agency's contentions, Employee argued that it abandoned its agreement to allow her to return to work on a part time basis. She also believed that Agency's actions were in retaliation to her filing a discrimination case in federal court.[11]

After holding a Pre-hearing Conference, the OEA Administrative Judge ("AJ") issued a Memorandum to the Record. The Memorandum provided that the matter was being held in abeyance pending the outcome of the federal case. The AJ also requested that the parties keep him apprised of the Court's progress.[12] On September 19, 2007, the matter was assigned to another AJ, who subsequently held a Status Conference on October 2, 2007. The AJ issued an Order dated July 7, 2010, which provided that "[t]he Office [had] not been notified of any activity in [the] case, although it was indicated at the [October 2, 2007] Status Conference that certain ongoing communications were pending, with an eye towards a final resolution of all issues."[13]

On April 19, 2011, the AJ issued his Initial Decision. He noted that on June 27, 2005, the United States District Court for the District of Columbia issued a decision in *Queen Glymph v. District of Columbia,* C.A. No. 01-1333 (RMU), which ordered Agency to, *inter alia,* reinstate

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" . .. . cause for disciplinary action for all employees covered under this chapter is defined as follows:

> (f) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include . . . (5) Incompetence.

[10] *Agency's Pre-hearing Statement,* p. 3-4 (December 12, 2002).
[11] *Employee's Prehearing Statement* (January 3, 2003).
[12] *Memorandum to the Record* (February 5, 2003).
[13] *Order Scheduling a Status Conference* (July 7, 2010).

Employee and provide her back pay, back benefits, and attorney's fees.[14] Hence, the AJ ruled that "[the Office did] not see any benefit that [it] [could have] award[ed] to Employee, who [had] already obtained substantial relief from the federal court . . . ."[15] As a result of this finding, the AJ closed the matter.

On May 23, 2011, Employee filed a Petition for Review of the Initial Decision with the OEA Board. She objects to the closing of the record, arguing that the AJ did not review or consider all the evidence and laws.[16] Employee argues that although there was a federal court order in place, Agency had a long-standing history of ignoring its ruling to reinstate her to a comparable position with back pay and benefits. She contends that Agency erred when calculating her back pay because it failed to include her retirement and leave benefits, it failed to calculate wages based on yearly pay scale increases, and it failed to calculate interest. Thus, it is her belief that OEA can make her whole by ordering that Agency reinstate her to a Grade 13, Step 7 promotion effective June 1, 2002; retroactively restore her benefits and salary, including retirement and social security, effective June 1997; adjust her record so that there is no break in service; and compensate her for legal fees, employment search expenses, and $75,000 for expenses and pain and suffering.[17] If the Agency refused to restore her employment, Employee requests that Agency buy her out.[18]

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[14] The Court reasoned that Employee was a qualified individual with a disability under the Americans with Disabilities Act, and Agency failed to provide her a reasonable accommodation.
[15] *Initial Decision,* p. 3 (April 19, 2011).
[16] Employee argues that the AJ's application of Chapter 8, § 827.5 of the DPM is erroneous because she returned to work within a two-year period. DPM § 827.5 provides that "[a]t the end of the two-year period specified in § 827.3, an agency shall initiate appropriate action under chapter 16 of these regulations." She also asserted that the DPM does not support a forced separation. In addition, contrary to the AJ's findings, Employee found that the D.C. Official Code § 2-139 does not limit the time a person receives Worker's Compensation. Lastly, Employee asserted that the AJ based his decision on an assumption and should have considered DPM §§ 827.8, 827.9, 827.11, and 827.12 when making his determination that no comparable positions were available. *Petition for Review,* p. 3, 4, and 6 (May 23, 2011).
[17] *Id.,* p. 7.
[18] Employee states that December 31, 2023, is her expected date of retirement and requests that Agency pay her bi-weekly at a Grade 13, Step 7 salary, including pay increases awarded to Agency's employees, until this date. At the

Agency subsequently filed a Motion to Enlarge Time to file its response to Employee's Petition for Review. Despite its request for an additional thirty days, Agency did not respond to Employee's Petition. Accordingly, this Board will consider the documents currently in the record.

As the AJ provided in his Initial Decision, OEA cannot award the relief Employee seeks. Employee successfully obtained an order from the United States District Court for the District of Columbia. She was awarded $50,000 by a jury; Agency was required to pay $105,300 for back pay, plus prejudgment interest from the date of her termination until the date of the payment; Agency was ordered to pay $129,765 in attorney's fees and expenses; and Employee was to be reinstated to a comparable position within Agency. Further, the federal court judge provided that he would retain jurisdiction to adjudicate any disputes that emerged between the parties. Specifically, the Court retained jurisdiction over matters related to "whether the position(s) the District has available are comparable to the position that [Employee] had . . . ."[19]

Employee is requesting OEA to compel Agency to adhere to the federal court decision, which is outside the scope of our authority. Employee reasoned that OEA should address Agency's err in back pay, wage, and interest calculations. This is not the function of our agency. Employee's request for reinstatement, restoration of benefits, and legal fees were all adequately addressed in the federal court order. The court heard evidence and arrived at its final judgment. More importantly, the court maintained jurisdiction over the matter until such time that Employee is reinstated to a comparable position and receives the awards consistent with the order. Agency is in violation of the federal court order, however, OEA cannot and will not

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point of retirement, Employee requests that Agency allow her to continue to remain on their health plan or any other health plans for retirees.

[19] *Queen E. Glymph v. District of Columbia*, Civil Action No. 01-1333 (JMF) (U.S. District Court for the District of Columbia October 13, 2006).

circumvent federal judge's authority to compel Agency to follow its order. It is proper for Employee to make these requests in the federal court.[20] Accordingly, we must DENY Employee's Petition for Review.

[20] Employee made additional arguments in her Petition for Review. She claimed that the AJ erroneously applied DPR § 827.5. However, the AJ did not apply DPR § 827.5 in his analysis; he simply highlighted Agency's argument related to this regulation. Moreover, Employee believed that OEA has the authority to address Worker's Compensation issues. D.C. Official Code § 1-606.03 provides those issues which could be addressed at OEA. This section provides the following:

> An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIIII-A of this chapter), an adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more (pursuant to subchapter XXIV of this chapter), or a reduction-in-force (pursuant to subchapter XXIV of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office upon the record and pursuant to other rules and regulations which the Office may issue. Any appeal shall be filed within 30 days of the effective date of the appealed agency action.

Worker's Compensation is not mentioned in this statute. Thus, Worker's Compensation is not one of the issues over which OEA has jurisdiction.

ORDER

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

FOR THE BOARD:

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Clarence Labor, Chair

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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.