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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	OEA Matter No. 1601-0046-97R16R21
Employee)	
)	Date of Issuance: February 18, 2026
v.)	
)	JOSEPH E. LIM, ESQ.
OFFICE OF THE)	Senior Administrative Judge
CHIEF TECHNOLOGY OFFICER ¹)	
Agency)	
)	
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Omar Melehy, Esq., Employee Representative		
Conner Finch, Esq., Agency Representative		

THIRD INITIAL DECISION ON REMAND

PROCEDURAL HISTORY

This matter has a long and complex procedural history. On November 14, 1996, Employee, a Supervisory Computer Specialist, DS-14, Step 6, in the Career Service, filed a petition for appeal with the Office of Employee Appeals (“OEA”) for the Office of the Chief Technology Officer’s (“OCTO” or “Agency”) final decision to remove him from service, effective November 1, 1996. The cause for removal was: “Insubordination, to wit: Failure or refusal to comply with written instructions or direct orders by a superior.”² This matter was originally assigned to Administrative Judge Kenneth Hughes but was reassigned to Senior Administrative Judge Daryl J. Hollis after Judge Hughes left the Office’s employ. After a January 6, 1998, evidentiary hearing, Judge Hollis issued an Initial Decision (ID) on October 19, 1998, in which he held that Agency had failed to prove its charges against Employee. He reversed the removal action and ordered Agency to reinstate Employee to his position of record with all appropriate back pay and benefits.

¹ On March 26, 1999, the Department of Administrative Services (DAS) was subsumed by the Office of the Chief Technology Officer (OCTO).

² In addition to insubordination, Agency initially cited as cause for Employee’s removal the following: 1) Inexcusable neglect of duty; 2) Dishonesty; and 3) Misuse, mutilation, or destruction of District property, public records, or funds. See the June 20, 1996, a dvance notice of proposed adverse action. However, in the agency’s final decision, the deciding official dismissed these latter three charges and removed Employee for insubordination alone.

Agency filed a Petition for Review of the ID with this Office's Board. On April 30, 1999, the Board issued an Opinion and Order on Petition for Review (O&O) in which it affirmed the ID without comment. Agency timely appealed to the D.C. Superior Court. On October 30, 2000, Judge Richter issued an Order affirming this Office's ID.³ In his Order, he affirmed the OEA's order to reinstate [Employee] to a similar and equal position, denied Employee any award for pain and suffering, and remanded the case for a determination of whether and to what extent [Employee] made efforts to mitigate his damages after his termination. On November 27 and 28, 2000, Agency and Employee respectively filed with the Superior Court a Motion for Reconsideration of Judge Richter's October 30, 2000 Order. On January 2, 2001, Judge Richter issued a second Order in which he affirmed his October 30, 2000, Order and denied both reconsideration motions.⁴

After the parties failed to settle despite months of mediation and an offer of reinstatement to Employee to a Data Center Services Manager, DS-301-14, Grade 14, Step 6 position, Judge Hollis held an evidentiary hearing on January 30, 2003, and October 20, 2003. On December 16, 2004, Judge Hollis issued an Addendum Decision ("AD") whereby he ordered the Agency to place Employee in the position of Data Center Services Manager, DS-301-14, Grade 14, Step 9 within OCTO. He also ordered Agency to reimburse Employee all backpay and benefits lost as a result of its improper removal action, but only from November 1, 1996, to March 26, 1999, because he found that Employee failed to mitigate damages beyond those dates.

Both parties appealed the AD and on April 14, 2008, this Office's Board issued an Opinion and Order on Petition for Review (O&O) in which it affirmed the AD. Again, both parties appealed the decision to the Superior Court. Employee argued that it was the Telecommunications Manager position, not the Data Center Services Manager position, that was comparable to his previous position. He also argued that the Federal Back Pay Act governed his entitlement to back pay. Agency argued that Employee was entitled only to back pay through June 11, 1997, and that the Data Center Services position was the right one.

On April 20, 2009, Associate Judge Neal Kravitz of the D.C. Superior Court affirmed the AD in part and vacated and remanded in part. He held that neither the Data Center Services Manager position nor the Telecommunications Manager positions were comparable to Employee's previous position and ordered this Office to identify a truly comparable position to which Employee can be reinstated. Judge Kravitz also vacated Judge Hollis' decision on back pay and ordered this Office to consider whether the Federal Back Pay Act governs whether Employee had a duty to mitigate his damages and, if so, whether he satisfied that duty.

This matter was assigned to me on July 13, 2009. Following a status conference on July 20, 2009, the parties engaged in mediation but failed to reach an agreement. By mutual consent of the parties, Employee was reinstated as a Telecommunications Specialist, CS 14/6, on November 16,

³ Employee Exhibit 38. *D.C. Department of Administrative Services v. Employee and Office of Employee Appeals*, Civil Action No. 99-MPA-10 (D.C. Superior Ct. October 30, 2000) Order at 8.

⁴ Judge Roberts also declined to consider Employee's request for "litigation expenses . . . incurred [while] acting as *pro se* counsel while litigating a 'frivolous and wasteful' lawsuit." January 2, 2001, Order at 6.

2009. Thus, the only outstanding issue was back pay. After another status conference on May 14, 2010, the parties briefed the applicability of the Federal Back Pay Act to this matter. Based on the parties' request, an Evidentiary Hearing was held on July 27 and 29, 2011. On November 7, 2011, I issued an Addendum Decision on Remand ("ADR") that found that Employee had the duty to mitigate his damages and that he has failed to meet his burden of proof that he tried to mitigate his damages and thus, did not merit back pay.

On March 20, 2012, Employee appealed the November 7, 2011, Addendum Decision on Remand to the D.C. Superior Court. On July 2, 2012, the Superior Court issued a Memorandum Opinion and Order Affirming In-Part and Reversing In-Part Agency Decision.⁵ The Superior Court affirmed that Employee was subject to the District Personnel Manual ("DPM") and that under both the DPM and the Federal Back Pay Act, Employee had a duty to mitigate his damages by "seek[ing] alternative employment with reasonable diligence."⁶ However, the Court also found that Employee was entitled to full restoration of his service credit or leave. Employee appealed that decision to the D.C. Court of Appeals on or about July 18, 2013.

On November 25, 2015, the District of Columbia Court of Appeals ordered this Office to re-adjudicate Employee's back pay claim and ordered Agency to restore Employee's annual leave accrued during his 13-year separation period pursuant to the rules in the Federal Back Pay Act.⁷ The Court held that on the issue of Employee's back pay claim, it was the Agency, not Employee, who had the burden of proof on whether Employee tried to mitigate his damages. The Court also held that instead of a sweeping finding on the mitigation question, the undersigned was required to make a period-by-period determination. On February 29, 2016, the D.C. Superior Court remanded the matter back to OEA pursuant to the D. C. Court of Appeals decision. On December 31, 2016, Employee retired from Agency.

On October 16, 2019, Employee filed a Petition for Writ of Mandamus asking the District of Columbia Court of Appeals to order OEA to implement the Court's remand order. OEA had no record of its being served with either of the D.C. Court of Appeals or D.C. Superior Court remand orders; thus, OEA was not aware of any remands until sometime around October 2019. Between November 25, 2015, and October 2019, neither party notified OEA about the Court's outstanding remand order.

On November 8, 2019, I issued an Order for a status conference to be held on November 25, 2019. At the November 25, 2019, status conference, I set a January 6, 2020, deadline for the parties to ascertain the status of Employee's annual leave. Upon Agency's request, Employee consented to an extension of the deadline to January 31, 2020.

On December 11, 2019, the D.C. Court of Appeals denied Employee's Petition for Writ of Mandamus after being notified that OEA was never served with the remand order and that the matter

⁵ *Employee v. Office of the Chief Information Technology Officer, et al.*, Case No. 2011 CA 00494 P (MPA) (D.C. Super. Ct. July 2, 2012).

⁶ *Id.* at p. 17.

⁷ *Employee v. Office of the Chief Technology Officer*, 127 A.3d 524 (D.C. 2015).

was proceeding forward at the OEA. On February 8, 2020, I held another status conference and issued an order setting April 10, 2020, as the deadline for the parties to submit stipulations of fact, witness lists, exhibit lists, and to identify proposed hearing dates. After requests for postponements by the parties, I held a virtual Evidentiary Hearing on June 20 and 21, 2020, due to the Covid-19 operational status. On November 6, 2020, the parties agreed on \$139,603.49 as the amount to be paid out for Employee's annual leave hours to which Employee is entitled.

On February 25, 2021, I issued a Second Initial Decision on Remand wherein I ordered Agency to reimburse Employee all back pay and benefits lost as a result of its improper removal action starting from the date of his removal to December 31, 2002, less any amounts already paid and any of his actual interim earnings; and to reimburse Employee all back pay and benefits lost as a result of its improper removal action starting from January 1, 2003, to November 2, 2009, less an annual amount of \$50,000 prorated to the months Employee was unemployed; and Agency pay Employee \$139,603.49 for Employee's annual leave hours as the parties have agreed.⁸

On appeal, the OEA Board issued its Third Opinion and Order on Petition for Remand on June 17, 2021, and remanded the matter to the undersigned for the limited purpose of making "a reasoned finding as to the proper amount by which Employee's earnings should be offset beginning in 2003" and to "determine whether 6B DCMR 1149(c) applies to this matter."⁹ On July 14, 2021, Employee appealed the Board's decision to the D.C. Superior Court. On January 3, 2022, the D.C. Superior Court dismissed Employee's appeal.¹⁰ On January 10, 2022, Employee filed a Motion for Reconsideration with the D.C. Superior Court. On February 1, 2022, the D.C. Superior Court vacated its January 3, 2022, ruling and reopened the matter. On May 23, 2022, the D.C. Superior Court granted in part and denied in part Employee's Motion.¹¹

On appeal, the D.C. Court of Appeals affirmed the D.C. Superior Court's Order on November 22, 2023.¹² On December 29, 2023, I held a status conference and ordered the parties to submit briefs on the issues identified by the courts. On March 8, 2024, I granted Employee's Unopposed Motion to Extend the Remaining Deadlines. Thereafter, I periodically granted the parties' Consent Motions to Stay Proceedings as the parties engaged in settlement discussions. On February 2, 2026, Employee submitted a Notice of Dismissal with Prejudice, indicating that the parties have settled the matter.

JURISDICTION

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

⁸ *Employee v. Agency*, OEA Matter No. 1601-0046-97R16 (February 25, 2021).

⁹ *Employee v. Agency*, OEA Matter No., *Opinion and Order on Petition for Review* (Jan. 1, 1999).

¹⁰ *Employee v. Agency, et al.* Case No. 2021 CA 2406 P(MPA) (D.C. Super. Ct. January 3, 2022).

¹¹ *Employee v. Agency, et al.* Case No. 2021 CA 2406 P(MPA) (D.C. Super. Ct. May 23, 2022).

¹² *Employee v. Agency, et al.* Case No. 22-CV-0383 (D.C. Ct. of Appeals November 22, 2023).

ISSUE

Whether Employee's Petition for Appeal should be dismissed.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

OEA Rule 622.2(h)¹³ provides that "Administrative Judges shall... Dismiss cases based on a settlement agreement reached by the parties." Both parties have confirmed in writing and verbally, that they have settled their differences. Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

ORDER

It is hereby ORDERED that the petition in this matter is dismissed with prejudice.

FOR THE OFFICE:

s/ Joseph Lim
JOSEPH E. LIM, ESQ.
Senior Administrative Judge

¹³ 6B DCMR Ch. 600 (December 27, 2021).