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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0133-12C15
GEOFFREY DAVIS,)	
Employee)	
v.)	Date of Issuance: July 13, 2015
)	
D.C FIRE & EMERGENCY MEDICAL)	
SERVICES DEPARTMENT,)	
Agency)	
)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge
Geoffrey Davis, <i>Pro se</i>		
Andrea Comentale, Esq., Agency Representative		

ADDENDUM DECISION ON COMPLIANCE

PROCEDURAL BACKGROUND

Geoffrey Davis (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“Office”) on July 3, 2012, challenging the D.C. Fire & Emergency Medical Services Department’s (“Agency”) decision to suspend him for 204 duty hours based on four (4) separate charges. This case was argued on the briefs and the undersigned issued an Initial Decision on December 12, 2014, reversing Agency’s Charges 3 and 4. As such, Agency was ordered to immediately reimburse Employee back-pay and benefits lost for forty-eight (48) duty hours.

Both parties had thirty-five (35) days from the issuance of the Initial Decision to file a Petition for Review with this Office’s Board.¹ Alternatively, either party could have elected to appeal the Initial Decision to the District of Columbia Superior Court within thirty-five (35) days of issuance.² Neither party filed a Petition for Review with this Office’s Board nor elected to appeal the decision to the D.C. Superior Court. Therefore, the December 12, 2014 Initial

¹ OEA Rule 633.1, 59 DCR 2129 (2012).

² OEA Rule 633.12, 59 DCR 2129 (2012).

Decision became the final decision of this Office. Agency had thirty (30) days from the date the Initial Decision became final on January 16, 2015, to comply with the decision of this Office.³

Employee filed a Motion to Compel on March 13, 2015, seeking to have Agency comply with the December 12, 2014 Order (Initial Decision). A Status Conference was convened to address Agency's compliance on April 7, 2015. Both parties were present. Agency's representative, Andrea Comentale, indicated that Employee had not been reimbursed in compliance with the December 12, 2014 Order as a result of an oversight on Agency's behalf. Attorney Comentale further assured the undersigned and Employee that Agency would comply with the Initial Decision within thirty (30) days.⁴

On June 10, 2015, Employee filed a Renewed Motion for Compliance and Enforcement after Agency again failed to comply with the undersigned's December 12, 2014 Order. A Show Cause Order was issued on June 19, 2015 to Agency. The Show Cause Order noted that, to date, Agency had not filed an Answer to Employee's March 13, 2015 Motion to Compel. Agency was ordered to file a statement of good cause, along with proof of compliance, for failing to comply with this Office's December 12, 2014 Order by June 29, 2015. To date, Agency has failed to respond to Employee's March 13, 2015 Motion to Compel or to the June 19, 2015 Show Cause Order.

Jurisdiction

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

Issue

Whether this matter should be certified to the General Counsel's Office for enforcement.

ANALYSIS AND CONCLUSION

OEA Rule 635.9, provides that:

If the 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. Official Code § 1-606.02 (2006 Repl.)

Here, Agency was ordered to reimburse Employee all back pay and benefits lost for forty-eight (48) duty hours pursuant to the December 12, 2014 Initial Decision. Agency does not deny that it has yet to comply with this order. At the April 7, 2015 Status Conference, Agency's representative attributed its lack of compliance to an oversight on its behalf. More than thirty

³ OEA Rule 635.1, 59 DCR 2129 (2012).

⁴ It should be noted that Ms. Comentale was not initially Agency's Representative on this matter. Agency's original representative, Mr. Kevin Turner, was out on extended leave at the time Employee filed his Motion to Compel. Thus, Ms. Comentale's initial appearance as Agency's Representative was at the Status Conference regarding Employee's Motion to Compel.

(30) days after the undersigned and Employee were assured that Agency would comply with this Office's December 12, 2014 order, it has yet to comply. Accordingly, pursuant to OEA Rule 635.9, this matter shall be certified to the General Counsel for enforcement of this Office's December 12, 2014 order.

ORDER

Based on the aforementioned, it is hereby **ORDERED** that because Agency failed to comply with my December 12, 2014 Order requiring that it shall reimburse Employee all back-pay and benefits lost from his forty-eight (48) hour suspension as a result of the "guilty" findings on Charges 3 and 4, this matter be certified to the Office of Employee Appeals' General Counsel for enforcement of this Addendum Decision on Compliance.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge