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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LASHELLE JONES,)	
Employee)	OEA Matter No. 1601-0103-13C17
)	
v.)	Date of Issuance: April 2, 2018
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	Monica Dohnji, Esq.
Agency)	Senior Administrative Judge
_____)	

Nicole Jones, Employee Representative
Hillary Hoffman-Peak, Esq., Agency's Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL BACKGROUND

On June 18, 2013, LaShelle Jones ("Employee") filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Office of the State Superintendent of Education's ("OSSE" or "Agency") decision to terminate her from her position as a Bus Attendant effective May 13, 2013. I issued an Initial Decision ("ID") on August 7, 2015, reversing Agency's decision to terminate Employee.

On December 15, 2016, Employee's representative filed Employee's Motion for Compliance. Agency filed a response to the Motion for Compliance on January 11, 2017. Thereafter, a Status Conference was convened on August 16, 2017, wherein, Agency informed the undersigned that it had partially complied by reinstating Employee, but could not process the back pay payment because Employee refused to provide the requested documents. The undersigned ordered Employee to provide the requested documents no later than August 31, 2017. On September 20, 2017, Agency informed this Office in a Status Report that Employee had complied with the request to provide the requested documents. Agency further informed this Office that it had "begun the process of calculating back pay and will submit all the required documents to the Office of Payroll and Retirement Services as soon as possible for processing of

the back pay payment to Ms. Jones.”¹ Thereafter, the undersigned received periodic emails from the parties with regards to the status of the back pay payments.

In an email dated December 4, 2017, Agency informed the undersigned that Employee’s documents had been forwarded to Office of Payroll and Retirement Services (“OPRS”) for processing. Employee was copied on the email from Agency. Agency also included the documents that were forwarded to OPRS for processing as attachments to the email. In an email dated March 7, 2018, to the undersigned, as well as Employee and her representative, Agency noted that “Ms. Jones, Your check is ready and is at our new location: 1050 First Street NE on the 3rd floor. Can you let me know when you would be able to come in and pick it up?” Subsequently, Agency filed a Motion to Dismiss based on Compliance dated March 14, 2018. In a letter dated March 28, 2018, Employee informed this Office that she had not received her back pay and as such, this matter should not be dismissed.²

Additionally, on March 29, Employee’s representative emailed the undersigned requesting an investigation into some fraudulent transactions. She also stated that pursuant to D.C. Code Section 15-109 (2001), Employee was entitled to compound interest. She asserted that OEA Rule 635 required the undersigned to provide a written decision to her December 15, 2016 Motion.³ Upon review of the documents of record, I find that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether Employee’s Motions should be dismissed.

ANALYSIS AND CONCLUSIONS OF LAW

Pursuant to OEA Rule 635.2, if an Agency fails to comply with the final decision of the Office, the Employee may file a motion to enforce the final decision and the motion shall be directed to the Administrative Judge (“AJ”) who decided the appeal. Here, Employee filed a Motion for Compliance on December 15, 2016, stating that Agency had not complied with the 2015 Initial Decision. Agency submitted an Answer to the Motion in January 2017. Thereafter, the undersigned held a Status Conference in August of 2017, wherein, she was informed by

¹ Agency’s Status Report (September 20, 2017).

² Employee also emailed the undersigned on March 27, 2018, stating that she had not received her back pay. She also requested for compound interest. The undersigned forwarded the email to Agency. On March 28, 2018, Agency’s representative sent a reply to Employee’s email informing Employee again that her check was available for pick up. The undersigned also emailed the parties asking Employee to provide case law with regards to her request for compound interest, as well as provide this Office with a date when she will pick up her back pay check from Agency.

³ Employee’s representative also emailed the undersigned on March 28, 2018, stating that the undersigned reopen her case file in compliance with OEA Rule 635.

Agency that it had reinstated Employee effective April 18, 2016, but as of the date of the Status Conference, Employee had not returned to work.⁴ Agency also noted that it was unable to process the back pay check because Employee has refused to submit the documents required to process the check. The undersigned AJ ordered Employee to submit the required documents by August 31, 2017. Employee complied. The back pay payment was processed by Agency and forwarded to OPRS on December 4, 2017. Agency emailed a copy of the completed package which was forwarded to OPRS to Employee. On March 7, 2018, Agency informed Employee via email that her back pay check was available for pick up at its location.⁵ Since the only remedies provided by the 2015 ID were reinstatement and back pay, I find that by reinstating Employee and issuing a check for her back pay, Agency has complied with the 2015 ID.

Employee argues that the back pay compensation was inaccurate and needs to be recalculated. Agency provided Employee with its back pay calculations on December 4, 2017. Employee had the opportunity to review the documents/calculations for accuracy, and inform this Office and Agency of any inaccuracies prior to the issuance of the check, but she failed to do so. She waited three (3) months after she received the documents to allege that the compensation is inaccurate.

Reopening Case/Rule on Motion

Employee's representative called OEA on March 28, 2018, requesting the status of her appeal. She was informed that the Petition for Appeal was closed in 2015; however, the compliance issue is still pending before the undersigned AJ. Employee requested that the undersigned reopen the appeal. She also noted that the undersigned was required to rule on her Motion for Compliance, to which, the undersigned explained to her that the compliance issue was still pending with OEA. Hence, the reason a Status Conference was held in August 2017, to determine whether Agency had complied with the 2015 ID. Employee's representative insisted that the undersigned had to open her Petition for Appeal, as well as rule on her Motion for Compliance. She followed up with an email wherein, she cited OEA Rules 630 and 635.

OEA Rule 630 provides that the AJ may reopen the record to receive further evidence or argument at any time *prior* to the issuance of the Initial Decision (emphasis added). The initial decision for Employee's Petition for Appeal was issued in 2015. Therefore, Employee can no longer request that the record be reopened since the ID has already been issued. Furthermore, OEA Rule 635.37 provides that the AJ shall take all necessary actions to determine whether the final decision is being complied with and shall issue a written opinion on the matter. This AJ is determining whether Agency had complied, scheduled a Status Conference and requested several status updates from Agency to ascertain its compliance. Since the undersigned AJ has now determined that Agency has complied with the 2015 ID, Employee's Motion for Compliance is **DISMISSED**.

⁴ See Agency's Response to Employee's Motion for Compliance, *supra*, at Attachment 1.

⁵ Employee erroneously alleges that the back pay payment should span from when she was terminated up until March 29, 2018. Employee was reinstated effective April 18, 2016, therefore, the back pay check runs from Employee's termination effective date to April 18, 2016.

Compound Interest

Employee asserts that she is entitled to compound interest. She cited to D.C. Code Section 15-109 (2001) in her request for compound interest. D.C. Code Section 15-109 provides in part as follows:

In an action to recover damages for breach of contract the judgment shall allow interest on the amount for which it is rendered from the date of the judgement only (emphasis added).

Here, I find that Employee's representative erroneously relied on D.C. Code Section 15-109 in her request for compound interest. D.C. Code Section 15-109 only applies to damages recovered for *breach of contract*. I find that, the back pay payment in question herein does not arise from a breach of contract claim. Accordingly, I conclude that Employee is not entitled to back pay payment that includes a compound interest.

Fraudulent Transactions

Employee requests an investigation into what she termed "fraudulent transactions" in processing her back pay. Specifically, she stated that:

1. LaShelle Jones' original "Back Pay Package" was only 16 pages long, now unbeknownst to me, the same package has increased to 24 pages,
2. Someone has, without LaShelle Jones' authorization, changed LaShelle Jones' "tax allowances",
3. Someone has forged LaShelle Jones' signature,
4. On LaShelle Jones' copy of the "Back Pay Package", it shows LaShelle Jones had my documents notarized in Washington, DC, but in the "Back Pay Package", attached to Ms. Hoffman-Peak's email, the documents were notarized in Prince George's County, MD and the Notary did not sign, after notarizing the documents.
5. At the bottom of LaShelle Jones' "Back Pay Package", LaShelle Jones put the page numbers, at the bottom of each page consecutively, and circled each one, but in the "Back Pay Package", attached to Ms. Hoffman-Peak's email, there are no page numbers at bottom of each page.

I find that these claims fall outside of OEA's jurisdiction. Complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. This is not to say that Employee cannot file her appeal in another forum, but rather that OEA lacks the jurisdiction to review claims of this nature.⁶ Moreover, Agency forwarded these documents to Employee on December 4, 2017 and Employee never raised any issues with the authenticity of the documents until March 29, 2018, more than three (3) months later.

⁶ Employee may contact Metropolitan Police Department to investigate her complaints of fraudulent transactions as OEA does not engage in criminal investigations.

ORDER

It is hereby ORDERED that Employee's Motion for Compliance is DISMISSED

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge