

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
NURSAT I. AYGEN) OEA Matter No. 1601-0004-04C08
Employee)
)
v.) Date of Issuance: August 11, 2009
)
D.C. PUBLIC SCHOOLS) Muriel A. Aikens-Arnold
Agency) Administrative Judge
)

Nursat I. Aygen, *Pro se*
Sara White, Esq., Agency Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION, PROCEDURAL HISTORY, AND FINDING OF FACT

On May 23, 2008, an *Opinion and Order On Petition For Review* was issued affirming this Judge’s Initial Decision (ID), to reinstate Employee.¹ On December 8, 2008, Employee filed a Motion For Enforcement of Final Agency Decision which stated, *inter alia*, that Employee had not been reinstated nor received back pay and benefits.² On January 15, 2009, an Order Granting Employee’s Motion was issued based on Agency’s failure to comply with the terms of the ID, including the submission of documents showing compliance within thirty (30) days of the date said decision was final. Agency was then directed to promptly take action to comply with the ID and to respond within fifteen (15) business days. On February 13, 2009, after an extension was granted, Agency responded stating that: 1) Employee was reinstated on February 6, 2003, but did not receive back pay from March 14, 2003 through February 3, 2006; and 2) that the Order and a memorandum would be submitted by February 17, 2009 and that Employee should receive any monies owed to her, within sixty (60) days.

¹ Employee, a teacher with the Visiting Instruction Service (VIS) program , had appealed her termination effective 03/14/03 due to declining student enrollment/equalization. The ID was issued on 4/18/05 reversing Agency’s action and reinstating Employee with lost wages and benefits.

² Employee further stated that, during the summer of 2008, she spoke with Agency’s representative, who advised that she had ordered Human Resources to make her whole, but this had not happened. On 10/31/08, Agency’s representative referred Employee to the Chancellor’s Office, where she met with several individuals on the same day and again on 11/10/08, to no avail.

On February 17, 2009, Agency was again directed to comply and to submit documents verifying its compliance with the final decision of this Office by February 27, 2009. On February 27, 2009, Employee filed a Motion for Contempt Citation and for Immediate Direct Enforcement; and a Motion to Compel Employer to Serve all Past and Future Filings in this Case.³ Agency filed a response on March 2, 2009 with documentation including, *inter alia*, E-mail correspondence from Human Resources to Employee requesting tax documents and an affidavit of outside earnings.⁴

In a Memorandum to the Record, issued on March 6, 2009, Agency was directed to advise this Judge whether Employee had provided the information necessary to process her back pay, whether the back pay calculation had been completed and whether lost benefits had been restored. In a March 13, 2009 response, Agency advised that Employee had not complied with its request for documents, which are necessary for completion of the back pay calculation and lost benefits determination. Agency's response also included a March 13, 2009 letter, addressed to Employee, from the Office of Human Resources, advising that the Office of the Chief Financial Officer (OCFO) cannot process any payments until the necessary documents are received.⁵

On April 1, 2009, an Order to Respond was issued directing that: 1) Employee cooperate and respond to Agency's requests no later than April 9, 2009; and 2) Agency file previously requested documents, specifically, the personnel action reflecting Employee's reinstatement and documents reflecting restoration of her benefits.⁶ On April 29, 2009, an Order Convening a Status Conference was issued scheduling said meeting on May 14, 2009 to discuss the resolution of outstanding compliance issues. During that meeting, there was some confusion regarding the reinstatement personnel action and back pay regulations, relating to outside earnings and restoration of benefits (eg, reimbursement of health insurance premiums). At that time, Agency presented a Pay History printout reflecting Employee's salary (including pay and step increases) from January 1, 2000 through September 14, 2008; and advised that the back pay calculation could not be processed without the return of pertinent forms that had been sent to Employee for completion. This Judge encouraged Employee to cooperate with Agency in its efforts to process her back pay. Further, the Judge went over the back pay forms to ensure that Employee understood them. Employee acknowledged that she understood, that she had previously provided

³ On 2/27/09, a teleconference was held with the parties to clarify issues to which Agency must respond.

⁴ Also attached were: 1) a Benefits Restoration Agreement, a blank form to report outside earnings; and 2) Job Assignment Data reflecting Employee's reemployment effective January 11, 2006, while her OEA Board appeal was pending.

⁵ That letter was signed by the Director, Labor Management & Employee Relations, who advised "If you have any questions regarding this matter, please do not hesitate to contact my office." The telephone number and E-mail address appeared on the stationery and the relevant documents were attached.

⁶ On 4/9/09, this Office received a letter from Employee advising, *inter alia*, that she was advised *not to sign papers*, for various reasons, including the fact that she had no reinstatement date and was not yet reimbursed for health insurance payments. On April 20, 2009, Employee filed a Motion for Contempt Citation and for Immediate Direct Enforcement in this Office.

income tax documents, but protested that certain job information was not deductible from the backpay due. When asked who advised her not to sign certain paperwork, Employee replied “an attorney.”

On May 14, 2009, an Order was issued for Agency to file more documents to clarify and complete the record. On June 5, 2009, Agency forwarded a package of documents (68 pages), via facsimile transmission, to this Office. On June 9, 2009, a teleconference was held with the parties to discuss and clarify various issues, including back pay regulations that Agency is required, by law, to follow. On June 15, 2009, Employee filed a third motion for sanctions; and, pursuant to Agency’s subsequent request, a teleconference was held on July 1, 2009 to discuss the status of this matter.⁷ While the Judge acknowledged Agency’s lateness in its responses, Employee was again urged to cooperate by returning required paperwork, which otherwise delays the process. Employee was also advised that a “pay adjustment” was the likely personnel action to be processed rather than a “reinstatement” due to her reemployment with Agency in 2006 and her subsequent termination in 2008 in a separate action, while her appeal was pending.

In a Memorandum to the Record, issued on July 6, 2009, the parties were advised, *inter alia*, that the documented record was completed, as necessary, to proceed with adjudication in this matter. In response to Employee’s subsequent verbal request to review her appeal file, this Judge arranged a meeting on July 9, 2009 to do so.⁸ The record in this matter is closed.

JURISDICTION

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

ISSUE

Whether this compliance matter may now be dismissed.

ANALYSIS AND CONCLUSIONS

OEA Rule 636.1, 46 D.C. Reg. 9321 (1999) reads: “ Unless the Office’s final decision is appealed to the District of Columbia Superior Court, the District agency shall comply with the Office’s final decision within thirty (30) calendar days from the date the decision becomes final.”

⁷ At that time, Employee advised that she had not received Agency’s mailing, although Agency represented that the same package was mailed to her home address of record.

⁸ At that meeting, this Judge handed Employee a copy of the 68-page Agency package which she again claimed was not received via regular mail delivery. Although Employee was repeatedly advised that questions regarding her 2006 reemployment and/or back pay must be addressed by the Human Resources personnel, she filed a Motion for Extension of Time to Submit Supplemental Wage Information and to Obtain Legal Counsel and Further Argument on Issue of Reinstatement. Employee was previously advised that this Office does not involve itself with the intricacies of the backpay process.

OEA Rule 636.7, *id.*, states that in a compliance matter, the Administrative Judge “shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.” If the Administrative Judge determines that the agency has not complied with the final decision, the matter shall be certified to the General Counsel for further action to ensure compliance.⁹

Compliance with the final decision for an unjustified personnel action includes the payment of wages lost and restoration of employment benefits to which the employee is entitled. The evidence of record reflects that Agency has made every effort to comply with the ID. This Judge, as well, has taken all necessary action to ensure that Agency is moving as expeditiously as possible. Agency has, for approximately five (5) months, repeatedly requested return of the necessary paperwork in order to calculate and process Employee’s backpay. Unfortunately, the process has become stagnant due to Employee’s failure to cooperate. Therefore, this Judge finds that, but for Employee’s resistance, Agency is in compliance, and concludes that this compliance matter should be dismissed.

ORDER

It is hereby ORDERED that this compliance matter is DISMISSED.

FOR THE OFFICE:

MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge

⁹ See OEA Rule 636.8, *id.*