

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
ROGER ASTERILLA)	
Employee)	
)	OEA Matter No.: J-0108-05
v.)	
)	Date of Issuance: May 15, 2007
DISTRICT OF COLUMBIA PUBLIC)	
SCHOOLS, DIVISION OF)	
TRANSPORTATION)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Roger Asterilla ("Employee") was hired by the District of Columbia Public Schools, Division of Transportation ("Agency") in 2003. On October 15, 2004 Employee was promoted to the position of Terminal Manager for the L Street bus terminal. On May 31, 2005 Agency notified Employee in writing that he was being reassigned effective June 6, 2005. Agency's Administrator, David Gilmore, stated in the letter that the reassignment was a "means of forestalling disciplinary action" and was due to the fact that Employee had "consistently failed to meet [Gilmore's] expectations."

On July 1, 2005 Employee filed a Petition for Appeal with the Office of Employee Appeals ("Office"). Employee claimed that as part of the reassignment, Agency placed him on administrative leave with pay. He sought to have that designation removed from his personnel file.

In an Initial Decision issued July 5, 2005 the Administrative Judge determined that this Office lacked jurisdiction to consider Employee's appeal. The Administrative Judge reasoned that this Office's jurisdiction was limited to certain types of disciplinary actions that result in a loss of pay. Believing that Employee's claim did not amount to a disciplinary action, the Administrative Judge dismissed his appeal for lack of jurisdiction.

On July 21, 2005, Employee filed a Petition for Review. Thereafter he amended his petition to include an additional ground for appeal. Employee claims that on several occasions he met with various agency representatives in an effort to ascertain why he was not receiving retroactive pay.¹ It was in one of these meetings that Employee finally learned that Agency had terminated him as of May 28, 2005. According to Employee, Agency never issued to him a proposed notice of termination nor did it issue a final agency decision notifying him that he had in fact been terminated. Instead on February 14, 2006 Employee received a document entitled "Personnel Action Data." That document reflects that Employee was terminated on May 28, 2005.

OEA Rule 634.3 lists the grounds upon which the Board may grant a petition for review. Subsection (a) allows the Board to grant a petition when "[n]ew and material evidence is available that, despite due diligence, was not available when the record

¹ According to Employee, he was entitled to retroactive pay for having been designated a displaced employee.

closed[.]”² It appears that Agency failed to disclose to Employee the fact that he was terminated on May 28, 2005. We believe that the information Employee discovered on February 14, 2006 qualifies as new and material evidence that, for whatever reason, was not available to him despite his efforts at trying to attain such information. Furthermore because it appears that Employee was terminated, we believe the jurisdiction of this Office has been invoked. For these reasons we must vacate the Initial Decision, grant Employee’s Petition for Review, and remand this appeal for further consideration consistent with this opinion.

² 46 DCR 9319 (Nov. 1999).

ORDER

Accordingly, it is hereby **ORDERED** that the Initial Decision is **VACATED**, Employee's Petition for Review is **GRANTED**, and this appeal is **REMANDED** for further consideration consistent with this opinion.

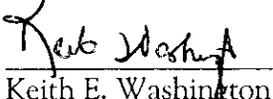
FOR THE BOARD:



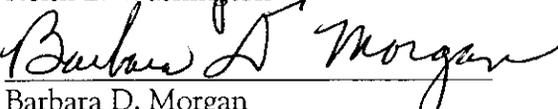
Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington



Barbara D. Morgan

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.