

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
WILLIAM H. DUPREE)
Employee)
)
v.)
)
DEPARTMENT OF)
CORRECTIONS)
Agency)
_____)

OEA Matter No. 1602-0222-96

Date of Issuance: February 10, 2004

GENERAL COUNSEL'S
ORDER
ON COMPLIANCE

On July 25, 1996, Employee, a Sergeant, DS-9 in the Career Service, timely filed with the Office of Employee Appeals (OEA) a Petition for Appeal from Agency's final decision denying his formal grievance of June 5, 1996. Employee had grieved his failure to be selected for one of three vacancies for the position of Criminal Investigator in 1996. Specifically, Employee alleged that two of the candidates selected for the positions had been awarded District residency preference despite the fact that neither were *bona fide* residents of the District. Employee also maintained that he had not been afforded the residency preference to which he was entitled.

On March 15, 1999, the Administrative Judge assigned to this appeal issued an Initial Decision in favor of Employee, finding that he should have been given residency preference and one of the three selected individuals should not have been given such a preference. Had those violations not occurred, the Administrative Judge determined that Employee's name would have been submitted to the selecting official for consideration and one of the selected individuals would not have been considered for any of the positions. Thus, the Judge ordered Agency to (1) vacate its prior action that resulted in the candidate improperly given residency preference being selected for one of the criminal investigator positions and (2) give Employee proper consideration for one of those positions.

Agency had 35 days from the issuance of the Initial Decision to file a petition for review with this Office's Board. *See* OEA Rule 634.1, 46 D.C. Reg. 9297, 9319 (1999). Agency did not file such a petition for review, and thus, the Initial Decision became a final decision of this Office on April 19, 1999. *See* OEA Rule 633.1, 46 D.C. Reg. at 9319. Thereafter, Agency had 30 days to file a petition for review of the Office's final decision in the Superior Court of the District of Columbia. *See* Agency Review Rule 1. Agency did not file such a petition for review within that time period. Therefore, Agency had 30 days from the date the decision became final on April 19, 1999 to comply with the decision of this Office. *See* OEA Rule 636.1, 46 D.C. Reg. at 9321.

On June 1, 1999, Employee filed with the Administrative Judge a Petition to Enforce the Initial Decision in which he claimed that Agency had failed to comply with the Office's final

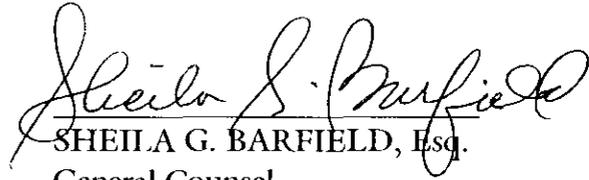
decision. On June 15, 1999, Agency filed a Motion to Vacate the Initial Decision on the grounds that OEA lacked subject matter jurisdiction to make a residency preference determination and/or to hold residency preference hearings. On January 14, 2000, the Administrative Judge denied Agency's Motion to Vacate, concluding that while this Office does not have jurisdiction over residency determinations, it does have jurisdiction over grievance appeals and it was in that context that he considered Employee's evidence relating to the issue of residency. The Administrative Judge also issued an Addendum Decision on Compliance in which he found that Agency had not complied with the Initial Decision. This matter was therein certified to the General Counsel for enforcement.

On February 14, 2000, Agency appealed the Administrative Judge's denial of its Motion to Vacate the Initial Decision to the Superior Court of the District of Columbia. That appeal was dismissed as untimely on April 24, 2001. Agency did not appeal the Superior Court's decision to the District of Columbia Court of Appeals.

Therefore, Agency is hereby ordered to submit the following to the Office of the General Counsel by close of business on **April 9, 2004**:

Documents verifying that Agency has complied with the final decision of this Office. Such documentation must demonstrate that it (1) vacated its action that resulted in the candidate who improperly received residency preference being selected for one of the positions advertised in Vacancy Announcement FL(22)95-

92 and (2) gave Employee proper consideration for one of the criminal investigator positions covered by that announcement.


SHEILA G. BARFIELD, Esq.
General Counsel