

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Victor Hines)	
Employee)	OEA Matter No. 1601-0116-05C09
)	
v.)	Date of Issuance: May 3, 2010
)	
D.C. Fire & Emergency Medical Services Dept.)	Joseph E. Lim, Esq.
Agency)	Senior Administrative Judge
)	

Andrea Comentale, Esq., Agency Representative
Jonathan Gould, Esq., Employee Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On August 5, 2005, Employee filed a petition for appeal in which he stated that he had been wrongfully removed from his position as an Engineering Technician based on inexcusable absence without leave (AWOL). After an evidentiary hearing held on February 7, 2006, Senior Administrative Judge Daryl J. Hollis found Employee to be medically incapacitated from working during the period he was charged AWOL and thus Agency had no cause to remove Employee. On August 22, 2006, Senior Administrative Judge Daryl J. Hollis issued an Initial Decision (ID) in Matter No. 1601-0116-05, in which he ordered Agency's action removing Employee be reversed; and ordered Agency to reinstate Employee, with all back pay and benefits due him.

Agency appealed the decision, and on February 25, 2009, the Office of Employee Appeals (OEA) board issued an Opinion and Order on Petition for Review (O&O) which upheld the ID. This decision became final thirty-five days later.

On April 20, 2009, Employee filed a motion for compliance; complaining that Agency had not reinstated him nor given him his backpay and benefits. After an October 28, 2009, and February 17, 2010, conference, I ordered the parties to submit status reports on their progress towards compliance. The record is closed.

JURISDICTION

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

ISSUE

Whether the motion for compliance should be dismissed.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

After an October 28, 2009, and February 17, 2010, conference, I ordered the parties to submit status reports on their progress towards compliance. During the conferences, Agency established that the reason it had failed to reinstate Employee to his former position as an Engineering Technician was because Employee had not submitted any medical report from his treating physician that establishes that Employee is now fit, willing and able to resume his work duties. Agency stated that unless it is satisfied that Employee is medically cleared to return to work, it cannot assume the legal liability that would ensue if Employee is returned to work while he is still medically unfit to do so. Employee admitted that his doctor had not cleared him to return to work and that it had been several months since he has seen a doctor. Agency also represented that unless it had the medical clearance to set Employee's return to work date, it would not be able to accurately calculate Employee's back pay.

Based on the results of the October 28, 2009, conference with the parties, I ordered Employee to supply medical documentation as to his fitness to return to work by the agreed upon deadline of January 15, 2010. During a February 17, 2010, conference, Employee admitted that he had again failed to obtain medical clearance from a doctor and asked for an additional 60 days to do see a doctor. I thereupon set April 19, 2010, as Employee's new deadline, which is more than the 60 days requested by Employee. In my Order, I also stressed in capital letters that "NO FURTHER EXTENSIONS WILL BE GRANTED." I also reiterated during the conference that his lack of diligence in obtaining an updated doctor's report would result in the dismissal of his motion for compliance. On April 19, 2010, Employee admitted that he still had not obtained the required medical clearance. Despite this, Employee still insisted that he should be returned to the Agency's pay roll and have his attorney's fees paid.

OEA Rule § 622.3, 46 D.C. Reg. 9313 (1999), provides as follows:

"If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge in the exercise of sound discretion, may dismiss the action or rule for the appellant." Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:

- a) Appear at a scheduled proceeding after receiving notice;
- b) Submit required documents after being provided with a deadline for such submission; or
- c) Inform this Office of a change of address which results in correspondence being returned.

Under the rules of this Office, a failure to submit required documents after being provided with a deadline for such submission, could result in sanctions, including dismissal. I find that Employee has disobeyed my Order and has therefore failed to diligently prosecute his appeal, which is a sound cause for this matter to be dismissed.

ORDER

It is hereby ORDERED that the petition in this matter is DISMISSED for failure to prosecute.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge