

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:)	
)	
FRANCINE H. JAMES)	
Employee)	OEA Matter No. 2401-0069-04
)	
v.)	Date of issuance: July 31, 2007
)	
OFFICE OF BOARDS AND)	
COMMISSIONS (Board of Appeals and)	
Review))	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Francine H. James (“Employee”) was an Executive Officer, DS-14, with the Board of Appeals and Review (“Agency”). On May 14, 2004, Employee received a letter from Agency separating her from her government service pursuant to a modified reduction-in-force (“RIF”) effective June 14, 2004.

On May 18, 2004, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). She challenged Agency’s decision by stating that the

decision taken by Agency was arbitrary and capricious. She also stated that the Office of Personnel led her to believe that a comparable position would be found for her.¹

On August 24, 2004, OEA notified Agency of Employee's Petition for Appeal in this matter. The letter was from OEA to Agency's Director. It highlighted that Agency was required to file an answer within 30 calendar days of service of the Petition for Appeal. The letter further provided the procedure for requesting an extension of time to file the answer. Most importantly, the letter stated that if Agency failed to file an answer by the stated deadline, sanctions may be imposed, including issuing a decision in favor of the Employee. Agency, however, failed to file an answer, and OEA has no record of Agency requesting an extension of time to file its answer.²

On October 8, 2004, the Administrative Judge ("AJ") issued an Initial Decision. It stated that Agency did not submit its Answer to Employee's Petition for Appeal despite being cautioned that failure to do so could result in a decision in Employee's favor, and despite being provided with information on how to request for an extension of time in which to submit its answer. Because Agency failed to defend this appeal, the AJ ruled in favor of Employee, reversing Agency's action separating Employee from service pursuant to the RIF.³

On November 5, 2004, Agency filed a Petition for Review with the OEA Board requesting that the Board reverse the AJ's decision. Agency's petition stated that the AJ should not have ruled in favor of Employee for the following reasons:

1. Agency alleged that its Director spoke with the Executive Director of the OEA, Warren Cruise, and he granted Agency an additional 30 days to file its Answer.

¹ Petition for Appeal, p. 5 (May 18, 2004).

² Letter from OEA to Agency Notifying Agency of Employee's Petition for Appeal, p. 1 (August 24, 2004).

³ Initial Decision, p. 3 (October 8, 2004).

2. The letter Agency received from the OEA dated August 24, 2004 indicated a matter involving a “James Francine v. the Board of Appeals and Review,” and neither a “James Francine” nor a “Francine James” has ever been an employee of the Office of Boards and Commissions.
3. Agency also stated that its action to conduct a modified RIF which resulted in Employee being separated was not arbitrary and capricious as every possible effort was made to assist Employee in obtaining a long-term employment. Therefore, because no positions could be located and funding was depleted based on the legislative mandate of the Council of the District of Columbia to abolish the Board of Appeal and Review, a modified RIF was necessary.⁴

As the AJ provided in his Initial Decision, the case file contained an August 24, 2004 letter to Agency’s Director from this Office’s Executive Director that read in pertinent parts as follows:

The Employee named above has appealed to the Office of Employee Appeals a [RIF] from [Agency]. Enclosed, Please find a copy of the Employee’s Petition for Appeal.

Pursuant to OEA Rule 608.2, 46 D.C. Reg. 9297, 9302 (1999), the Agency is required to file an Answer within 30 calendar days of service of this Petition for Appeal. Accordingly, Agency’s Answer must be filed by September 23, 2004. Failure to file an Answer by the stated deadline shall result in this matter being referred to an Administrative Judge who may impose sanctions, including a decision in favor of the Employee.

The time to answer may be extended upon a showing good cause. Any motion for the extension of time to file an Answer must be directed to the Executive Director by mail at the [Office’s] above address or by facsimile transmission at (202) 727-5631.⁵

⁴ Agency’s Petition for Review, p. 4 (November 5, 2004).

⁵ Letter from OEA to Agency Notifying Agency of Employee’s Petition for Appeal (August 24, 2004).

Agency alleged that it requested an extension of time in which to file its Answer in a phone conversation with the Executive Director of the OEA, and he gave an oral approval. However, the August 24, 2004, letter to Agency's director specifically stated that the request for an extension of time to file an Answer **must** be directed to the Executive Director in **writing**. Also, it is the Executive Director's policy that if he grants an extension, the party has to submit something in writing, and it does not appear anywhere in the record that Agency did that. Moreover, the Executive Director does not normally grant a full 30-day extension; extensions were normally granted for 10-15 days. Thus, Agency's "informal request" for extension is contrary to the standard procedure and policy for requesting an extension. As a result of OEA's failure to receive an extension request in writing from Agency, there is no formal request on record to substantiate Agency's claim.

Additionally, Agency claimed that neither a "James Francine" nor a "Francine James" was employed by the Office of Boards and Commissions. However, Agency's Director had Employee to sign the RIF notice; the Director's signature also appears on the notice.⁶ Moreover, Employee's Petition for Appeal was attached to the August 24, 2004, notice sent from OEA to Agency. Therefore, Agency's argument that the aforementioned letter reversed the order of Employee's name is without merit and the matter could have been rectified if Agency had looked at the Petition for Appeal attached to the letter.

OEA Rule 622.3 provides in pertinent parts that:

"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

⁶ RIF Notice (May 14, 2004).

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;
- c. Inform this Office of a change of address which results in correspondence being returned.”

Agency’s failure to submit its Answer constitutes a failure to submit required documents after being provided with a deadline for such submission. Therefore, the OEA Board upholds the AJ’s decision to rule in favor of Employee because of Agency’s failure to defend. Based on the aforementioned, the AJ was proper in granting Employee’s Petition for Appeal. Accordingly, Agency’s Petition for Review is **DENIED**.

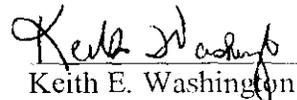
ORDER

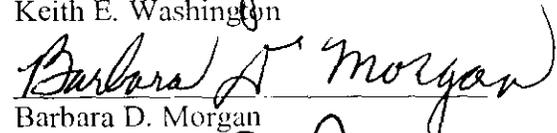
Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

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.