

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:	)	
DELORES JUNIOUS	)	OEA Matter No. 1601-0057-01C07
Employee	)	
	)	Date of Issuance: January 25, 2010
D.C. CHILD AND FAMILY SERVICES	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Delores Junious (“Employee”) worked as a social worker with the D.C. Child and Family Services (“Agency”). On March 8, 2001, Agency served Employee with a “Notice of Proposed Action” to remove Employee based on the charges of continuous discourteous treatment of Agency management staff, failure to follow Agency protocol in filing complaints, and misuse of Agency’s email system. Employee’s termination was effective April 20, 2001.

The events from which the charges stemmed began on January 6, 2000 when Agency alleged that Employee sent out an email message to all Agency staff members stating that her supervisor, Jean Norfleet, lacked professionalism and was problematic and chaotic. Agency also alleged that Employee’s email insinuated that Norfleet’s behavior was endorsed by management.

As a result, Agency stated that Employee's use of Agency's email system to transmit disparaging remarks constituted discourteous and disrespectful behavior.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on June 22, 2001. In an Initial Decision issued October 7, 2003, the Administrative Judge dismissed Employee's appeal for lack of jurisdiction. Specifically, the AJ held that Employee had failed to prosecute her appeal by failing to comply with an Order to submit a response regarding a timeliness issue.<sup>1</sup>

Employee then filed a Petition for Review contesting the dismissal of her appeal. This Office's Board issued an Opinion and Order on Petition for Review on September 27, 2004 granting Employee's petition. The Board reversed the Initial Decision and remanded the appeal to the Administrative Judge.<sup>2</sup> A hearing was held at OEA on March 8, 2005.

On November 10, 2005, the AJ issued a second Initial Decision in response to the Opinion and Order on Petition for Review. The AJ reversed Agency's action and ordered Agency to reinstate Employee because the charges were not supported by a preponderance of the evidence.<sup>3</sup> The AJ also ordered Agency to reimburse Employee for all lost pay and benefits incurred as a result of the removal. The Initial Decision required that Agency file with OEA within thirty (30) days from the date the Initial Decision became final documentation showing that it had complied with the terms of the Initial Decision.<sup>4</sup> Agency failed to submit such documentation within the proscribed period and did not file a Petition for Review to this Board or with Superior Court.

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<sup>1</sup> *Initial Decision* at p. 2 (Oct. 7, 2003); *See Order to Address Timeliness of Appeal*. Employee did not file her Petition for Appeal within thirty (30) days of the effective date of the appealed agency action.

<sup>2</sup> *Opinion and Order on Petition for Review* at p. 2 (September 27, 2004).

<sup>3</sup> *Initial Decision* at p. 14 (November 10, 2005).

<sup>4</sup> *Id.*

Employee filed a Petition for Enforcement on August 3, 2006, claiming that Agency had neither reinstated Employee nor reimbursed her for back pay and benefits. In an Addendum Decision on Compliance issued on August 25, 2006, the AJ held that Agency was in compliance with the Initial Decision.<sup>5</sup> The AJ concluded that Employee returned to work on July 24, 2006 and that Agency was in the process of processing Employee's back pay.

Employee then filed a Second Petition for Enforcement on November 13, 2006. Employee alleged that Agency had not fully complied with the Initial Decision because she had not been issued back pay or benefits from April 2001 through July 2006, the month Employee was reinstated.<sup>6</sup>

Agency filed its response to the Second Petition for Enforcement on December 22, 2006. Agency asserted that 1) Employee was required to undergo certain training prior to fully resuming her duties since she was inactive for more than five years; 2) Agency takes approximately four weeks for the payroll cycle to complete its course after an employee has been reinstated; 3) Employee was not entitled to overtime pay, reimbursement for training, a bonus, promotion or interest on back pay; 4) Employee had already received a check in the amount of \$178,813.12 on November 24, 2006 and 5) it was speculative that Employee would have received a promotion during the five years she was unemployed since promotions are not automatic.

The AJ issued a Second Addendum Decision on Compliance on November 15, 2007, dismissing Employee's Second Petition for Enforcement. On October 17, 2007, Employee filed a Petition for Review of the Second Addendum Decision on Compliance. Employee asks us to reverse the November 15, 2007 decision because 1) the findings were not supported by

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<sup>5</sup> *Addendum Decision on Compliance* at p. 3 (August 25, 2006).

<sup>6</sup> Employee's Second Petition for Enforcement at p. 2 (November 13, 2006).

substantial evidence; 2) the decision did not address all the material issues of law and fact raised in the Second Petition for Enforcement; and 3) the decision was based on an erroneous interpretation of statute, regulation and policy.

OEA Rule 634.1 states that a party to a proceeding may file a petition for review of an *initial decision* with the Board within thirty five (35) calendar days of issuance of the initial decision (emphasis added). OEA's rules do not contain a specific provision for filing a petition for review in response to an addendum decision on compliance. If a party wishes to contest the findings of a decision regarding compliance, the matter must first be certified to this Office's General Counsel for enforcement. The AJ never certified this matter to the General Counsel. Instead, he found that Agency was in compliance with this Office's order. This matter is therefore improperly before this Board and for this reason the Employee's Petition for Review must be denied.

**ORDER**

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

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

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Hilary Cairns

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Clarence Labor, Jr.

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 the formal notice of the decision or order sought to be reviewed.