

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant 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:)
)
EFFORD MOTON)
Employee)
)
)
v.)
)
D.C. PUBLIC SCHOOLS)
Agency)
_____)

OEA Matter No. 2401-0049-03P04

Date of Issuance: July 6, 2004

OPINION AND ORDER
ON
PETITION FOR REVIEW

On March 19, 2003, Employee appealed to this Office from Agency's action that supposedly abolished his position as a General Maintenance Repairman and separated him from service pursuant to a modified reduction-in-force(RIF). Upon review of the case file, the Administrative Judge determined that Employee had not submitted, with his appeal, the final agency decision memorializing Agency's RIF action. Therefore, by an Order issued July 21, 2003, the Administrative Judge ordered Employee to submit the final agency decision by

August 28, 2003 and to appear for a Prehearing Conference scheduled for September 4, 2003.

Employee failed to submit the required documentation by the deadline and further failed to give it to his attorney to present at the Prehearing Conference. Thus in an Order issued January 8, 2004, the Administrative Judge again ordered Employee to submit the final agency decision. Employee was given until March 1, 2004, to make the submission and was warned that failure to submit the document could result in the dismissal of his appeal. Employee again failed to submit the final agency decision by the deadline. Consequently, the Administrative Judge issued an Initial Decision on March 15, 2004, dismissing Employee's appeal for failure to prosecute the appeal.

Employee has now filed a Petition for Review. In the petition Employee's attorney claims that despite due diligence, neither he nor Employee was able to obtain from Agency a copy of the final agency decision prior to the dismissal of the appeal. In fact, according to the attorney, Employee did not receive the final agency decision until only a few hours before the attorney received a copy of the Initial Decision. Employee has attached a copy of the final agency decision to his Petition for Review.

We see no compelling reason for not accepting the representations made by Employee, through his attorney, in the Petition for Review. Therefore, we will grant Employee's Petition for Review and remand this appeal to the Administrative Judge for proceedings consistent with this order.

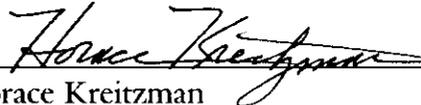
ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this matter is **REMANDED** for proceedings consistent with this decision.

FOR THE BOARD:



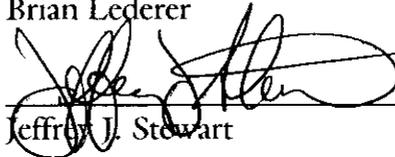
Erias A. Hyman, Chair



Horace Kreitzman



Brian Lederer



Jeffrey J. Stewart

Keith E. Washington

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.

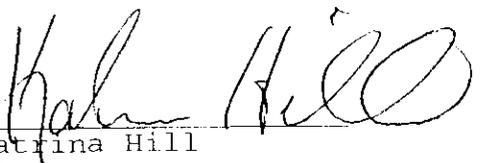
CERTIFICATE OF SERVICE

I certify that the attached OPINION AND ORDER was sent by regular mail this day to:

Efford Moton
1315 Holbrook St., NE #1
Washington, DC 20002

E. LINDSEY MAXWELL II, ESQ.
Beins, Axelrod, Kraft, Gleason & Gib
1717 Massachusetts Ave., NW
Suite 704
WASHINGTON, DC 20036

Harrie Segar, Esq.
D.C. Public Schools
825 North Capitol St., NE
Washington, D.C. 20002



Katrina Hill
Clerk

July 6, 2004
Date