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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
VELERIE JONES-COE,)	
Employee)	OEA Matter No. 1601-0088-99-C09-R11
)	
v.)	Date of Issuance: January 22, 2013
)	
D.C. DEPARTMENT OF HUMAN)	
SERVICES (CMHS),)	
Agency)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
)	
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John Pressley, Jr., Esq., Employee Representative		
Andrea Comentale, Esq., Agency Representative		

THIRD ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL BACKGROUND

On April 13, 1999, Velerie Jones-Coe (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the Department of Human Services (“Agency”) decision to remove her from service. Prior to her removal from service, Employee’s last position of record was Staff Assistant, DS-9 in the Career Service. This matter was originally assigned to the late Senior Administrative Judge Daryl J. Hollis. On June 17, 2002, Judge Hollis issued an Initial Decision, which, *inter alia*, reversed Agency’s action of removing Employee from service.

On October 10, 2002, Judge Hollis issued an Addendum Decision on Compliance (“ADC”) in this ongoing matter. In said ADC, Judge Hollis ruled against Employee’s motion on compliance primarily predicated on the following premises:

1. From the time that Employee was initially removed from service through the time that the ADC was issued, Employee was receiving disability payments. Given this finding, Employee was not due any back pay as D.C. Official Code § 1-623.16(a) [2001], generally precludes District

government employees who are receiving disability compensation from also receiving their salary (or back-pay) except for a handful of instances which were deemed inapplicable to employee. *See*, ADC at 4 – 5.

2. Employee was physically unable to return to her duties. Furthermore, Employee had not, at the time of the ADC, submitted any medical documentation to Judge Hollis that would clear her to return to her duties. *See* ADC at 5 -6.

Accordingly, Judge Hollis dismissed without prejudice Employee's motion for compliance on the grounds that it was premature. In so ordering, Judge Hollis provided that:

Because Agency cannot yet reinstate Employee and is at this time not responsible for back pay, I conclude that Employee's motion for compliance is premature and must be dismissed. The dismissal is without prejudice, because if and when Employee is cleared to return to work and submits the necessary documentation, then Agency is bound by my Order set forth in the June 17, 2002 ID. If it subsequently becomes necessary for Employee to file a new motion for compliance, she may do so at the appropriate time.
ADC at 6.

On November 1, 2002, the D.C. Government Disability Compensation Program ("DCP") (another agency operating under the auspices of the District government) issued to Employee a Notice of Intent to Controvert Disability Compensation Payments ("Notice of Intent"). In short, the DCP decided that Employee no longer qualified for disability compensation. Further, according to this notice, Employee's last disability compensation check was to be issued on December 12, 2002.

Employee appealed the Notice of Intent to DCP. On January 6, 2003, Employee received from DCP its D.C. Disability Compensation Program Reconsideration Final Order ("Reconsideration Final Order"). In said order, the DCP reviewed Employee's request that the denial of her disability benefits, as indicated in the Notice of Intent, be reconsidered. In a nutshell, DCP denied Employee's request for reconsideration. In doing so, DCP reaffirmed that Employee was "capable of returning to work in an administrative capacity from an orthopedic standpoint." Reconsideration Final Order.

According to a letter dated January 21, 2003, and signed by Linda Foxx, an official with the Agency, Employee reported for duty at the Agency on January 21, 2003. When she reported for duty, Employee submitted to Agency another letter containing copies of the Notice of Intent and the Reconsideration Final Order. Agency denied Employee's attempt to return to duty. In the interim, Employee continued to press her disability compensation claims through various judicial and quasi-judicial forums.

On August 25, 2004, Administrative Law Judge Robert Middleton with the Office of Employment Services Hearings and Adjudication Section rendered his decision in *Velerie Jones-*

Coe v. D.C. Department of Mental Health, 2004 DC Wrk. Comp. Lexis 199. In making the proceeding findings, ALJ Middleton primarily relied on the medical opinions of the independent medical examiners that were provided the opportunity to observe and diagnose Employee's alleged maladies in relation to her being able to return to duty. In his decision, ALJ Middleton sided with Agency and found "no persuasive medical evidence of a continuing disability arising out of the employment related injury." *Id.* at 11 – 12. He also found that Employee was "capable of returning to her regular employment duties for employer herein." *Id.* at 13. In doing so, ALJ Middleton upheld the Reconsideration Final Order.

On March 23, 2005 the District of Columbia Department of Employment Services Compensation Review Board reviewed the ALJ Middleton's aforementioned decision¹ and found that there existed substantial evidence supporting his ruling and therefore would leave same undisturbed. On November 8, 2007, in an unpublished opinion the District of Columbia Court of Appeals affirmed the previous aforementioned rulings denying Employee's disability compensation claims.²

On September 3, 2008, Employee filed a second motion for compliance. In said, motion, Employee wanted to recoup all back pay and benefits due her pursuant to the June 17, 2002, Initial Decision issued by Judge Hollis. Furthermore, she asserted that she stopped receiving disability compensation on January 6, 2003. Employee further asserted that Agency eventually allowed her to return to work in or around April 2008. Employee subsequently retired from service in or around October 2008.

Due to Judge Hollis' retirement, this matter was then reassigned to the undersigned and on March 10, 2009, I issued a Second Addendum Decision on Compliance ("SADC"). In the SADC, I held as follows:

I find that when Employee reported for duty on January 21, 2003, she was ready, willing, and medically cleared to proceed with her duties. I further find that this date is when Agency's obligation to reimburse Employee's back-pay and benefits, as mandated by Judge Hollis's ID, began. I further find that Agency's obligation to compensate Employee for back-pay and benefits ceased on October 14, 2007, when Employee was returned to her last position of record. To be clear, I conclude that given the instant circumstances as provided for in this second AD, **Agency shall reimburse Employee for all back-pay and benefits lost as result of her removal from January 6, 2003 through October 14, 2007. Emphasis Added.**³

The SADC also certified this matter to the OEA General Counsel "for appropriate action consistent with the findings in [the SADC]."⁴ The Agency, for some unknown reason, appealed the SADC to the OEA General Counsel. As will be explained below, the OEA General Counsel overstepped her authority when she attempted to modify the payment amount due Employee

¹ *Velerie Jones-Coe v. D.C. Department of Mental Health*, 2005 DC Wrk. Comp. Lexis 61 (March 23, 2005).

² *Jones-Coe v. DC DOES*, 936 A.2d 837 (November 8, 2007).

³ SADC at 6 – 7.

⁴ *Id.* at 7.

pursuant to the SADC. The parties appealed this matter to the District of Columbia Superior Court. In reviewing the instant matter, the Honorable Judge Eugene Hamilton, sitting as Judge in Chambers, ordered that Employee be paid back pay consistent with the SADC this matter. This Order stated in pertinent part the following:

The D.C. Code has no provision which allows an appeal or objection to be filed with the General Counsel... Why the Agency filed Objections with the General Counsel remains unclear as the D.C. Code does not allow any appeal to be filed with the General Counsel but rather with the full Office...

Furthermore, the General Counsel's modification of the dates of the Petitioner's back pay once Administrative Law Judge Robinson certified the case for enforcement was outside the Counsel's statutory authority...

The statute that the General Counsel relies on, D.C. Code § 1-606.02(a)(6), does not authorize the General Counsel's office to modify or change an Administrative Law Judge's Order once the Order is certified for enforcement. The statute allows [the] General Counsel to enforce compliance, but offers no authority for the General Counsel to change, alter, or modify the Order or Decision. Emphasis Added.⁵

This matter was then appealed to the District of Columbia Court of Appeals. The Court of Appeals remanded this matter back to the OEA for a declaration of the amount owed by the Agency. Afterwards, Agency made a payment to Employee in the amount of \$124,463.04 for the period of May 25, 2005 through October 13, 2007. Given the instant circumstances, the Agency contends that it has fully complied with the SADC and that Employee is not due any further payment. Employee contends that the Agency only made a partial payment and contends that according to the SADC she is still due payment from January 6, 2003 through May 24, 2005. Consequently, both parties have submitted legal briefs in justification of their opposing viewpoints.

Analysis and Conclusion

In Agency's Reply Brief to Employee's Brief Regarding Compliance and Objection to the Issuance of a Third Addendum Decision on Compliance dated May 22, 2012, the Agency made a number of contentions in support of its view that it has fully complied with the final decision in this matter. As will be explained below, I disagree with this motion in its entirety.

Agency argued that the undersigned must determine whether the Agency has complied with the July 23, 2009, General Counsel's Order on Compliance. As the Superior Court held in

⁵ *Velerie Jones-Coe v. District of Columbia Department of Mental Health*, Case No. 2009 CA 004990 at 6- 7 (October 27, 2009).

this matter “the General Counsel’s modification of the dates of the Petitioner’s back-pay once Administrative Law Judge Robinson certified the case for enforcement was outside the Counsel’s statutory authority.”⁶ I could not have stated it better myself. Therefore, I adopt Superior Court Judge Hamilton’s reasoning as my own. Pursuant to this, under the instant circumstances, I find that the OEA General Counsel lacked legal authority to issue the aforementioned Order on Compliance. Accordingly, I find that the July 23, 2009, General Counsel’s Order on Compliance is void.

Agency also contended that Employee was not entitled to back pay and benefits for the period of January 21, 2003 through May 25, 2006. In support of this contention, Agency argues that Employee did not submit any medical documentation to Agency evidencing a release to return to work prior to May 26, 2005. Agency also argued that Employee cannot now logically and credibly argue before OEA that she was ready, willing and medically cleared to return to work on January 21, 2003, and that she was not entitled to reinstatement to her prior employment upon the termination of her disability compensation benefits. I disagree. These arguments fail to properly take into account the SADC and the findings contained therein. In spite of my decision to the contrary, Agency failed to acknowledge that these points have already been decided by the undersigned. Moreover, despite Agency’s arguments to the contrary, the SADC held in pertinent part as follows:

Since the ADC was issued, Employee disability compensation payments were subsequently terminated on January 6, 2003. On January 21, 2003, Employee reported for duty with the Agency. **When she presented herself to the Agency, Employee provided Agency with copies of the Notice of Intent and the Reconsideration Final Order. As was stated *supra*, the Notice of Intent and the Reconsideration Final Order both determined that Employee was fit to return to work. This determination was made in consultation with medical professionals that were assigned to review Employee’s alleged ailments under the auspices of the District government.** Furthermore, this determination was made in spite of Employee doctor’s evaluation to the contrary, which the DCP considered and ultimately overruled. Agency argues that Employee should be precluded from claiming back pay at this juncture because her doctor had not cleared her to return to work. I disagree. The substantive requirements of Judge Hollis’s AD were met; Employee was medically cleared, by the Independent Medical Examiners to return to work; Employee had provided written documentation to support that she was medically cleared to return to work; Employee presented herself to the Agency ready and willing to resume her duties; and, Employee was no longer receiving disability compensation.⁷ **Emphasis Added.**

The undersigned also made the following findings in the SADC:

⁶ *Id.*

⁷ SADC at 6.

I find that when Employee reported for duty on January 21, 2003, she was ready, willing, and medically cleared to proceed with her duties. I further find that this date is when Agency's obligation to reimburse Employee's back-pay and benefits, as mandated by Judge Hollis's ID, began. I further find that Agency's obligation to compensate Employee for back-pay and benefits ceased on October 14, 2007, when Employee was returned to her last position of record.⁸

I find the Agency's arguments are wholly unpersuasive and do not state any claims that would convince the undersigned that I should change the sum or substance of the SADC. On January 27, 2010, the Agency appealed to the Court of Appeals which issued an Order on February 23, 2011, remanding the case to the Office of Employee Appeals and directing that the Office declare the amount owed to Employee. Pursuant to this remand, I find that the Agency has only made a partial payment in the amount of \$124,463.04 for the period of May 25, 2005, through October 13, 2007. I further find that this period of time does not fully comply with SADC which mandated that payment be made for the period of January 6, 2003, through October 14, 2007. Based on the foregoing, I CONCLUDE that the Agency has not fully complied with the Final Decision, the ADC or the SADC and that the Agency must make an additional compliance payment to Employee for the period of January 6, 2003, through May 24, 2005.

Enforcement

OEA Rule § 635.1, 59 DCR 2129 (March 16, 2012), reads as follows:

Unless the Office's final decision is appealed to the Superior Court of the District of Columbia, the District agency shall comply with the Office's final decision within thirty (30) calendar days from the date the decision becomes final.

OEA Rule § 635.7, *id.*, states:

The Administrative Judge shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.

OEA Rule 635.9, *id.*, provides in pertinent part as follows:

If the Administrative Judge determines that the agency has not complied with the final decision, the Administrative Judge shall certify the matter to the General Counsel. The General Counsel shall order the agency to comply with the Office's final decision in accordance with D.C. Official Code § 1-606.02 (2006 Repl.).

⁸ *Id.* at 6 – 7.

In a compliance matter, the Administrative Judge's role is to determine whether or not the Agency has complied with the OEA's Final Decision. According to the Employee's second Motion for Compliance and what has been held *supra*, the Agency has not fully complied with the Final Decision of Judge Hollis, the ADC or the SADC. Consequently, pursuant to OEA Rule 636.8, *supra*, this matter is hereby certified to the Office of Employee Appeals General Counsel for appropriate action *consistent* with the findings in this Third Addendum Decision on Compliance.

ORDER

It is hereby ORDERED that this matter be certified to the General Counsel.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge