

Minutes

D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING

Tuesday, September 16, 2014

Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Gray (OEA Paralegal), William (Bill) Persina (OEA Board Chair), Sheree Price (OEA Board Vice Chair), Vera Abbott (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), A. Gilbert Douglass (OEA Board Member), Ella Carey (Member of the Public), and Pierpont Mobley (Employee Representative for Ella Carey).

- I. Call to Order** – Bill Persina called the meeting to order at 9:10 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Bill Persina motioned to adopt the Agenda. Gilbert Douglass seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The July 22, 2014 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. New Business**
 - A. Public Comments** – Pierpont Mobley commented on the Ella Carey v. Office of the State Superintendent of Education matter and believed that Employee was terminated without due process.
 - B. Summary of Cases** – Bill Persina read the following summaries of each case to be decided by the Board:
 - 1. Jacqueline Hurst v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0302-10** – Employee worked as a Youth Development Representative with Agency. On April 23, 2010, Agency issued a Notice of Final Decision to Employee informing her that she was placed on enforced leave. The OEA Administrative Judge issued her Initial Decision on March 27, 2013. She concluded that Agency had cause to place Employee on enforced leave. However, the AJ held that Agency was required to render a final decision on enforced leave by November 30, 2009. The AJ opined that Agency failed to comply with the statutory requirement when it did not issue a final decision while Employee was on administrative leave. Accordingly, the AJ reversed Agency's action; ordered it to reimburse Employee all back-pay and benefits lost as a result of the enforced leave; and pay Employee's costs and attorney's fees. Agency filed a Petition for Review on May 1, 2013. It argues that the AJ erroneously concluded that the provisions of statute and regulation are mandatory. Moreover, Agency argues that its error was harmless. Therefore, it requests that the Board grant the Petition for Review and remand the matter for further proceedings. In response to the Petition for Review, Employee asserts that the general rule is that a statutory time period is not mandatory unless it requires an agency to act within a specified time period and provides specific consequences for its failure to comply with the statute. However, Employee provides that when a statute does not set forth the consequence for noncompliance with the time limit, the phraseology of the statute must be examined to determine whether the designation of time must be considered a limitation of the power of the officer.

Employee also contends that the AJ erred in concluding that there was no disparate treatment. Therefore, she requests that the Board uphold the AJ's decision.

2. **Ella Carey v. Office of the State Superintendent of Education, OEA Matter No. 1601-0063-11** – Employee worked as an Operations Assistant with Agency. On February 3, 2011, Agency issued a notice to Employee informing her that she was terminated from her position. Agency explained that on December 13, 2010, while substituting for a Bus Attendant, Employee failed to deliver a child to a responsible adult. Agency stated that Employee's negligence placed the child in a potentially dangerous situation by her failure to follow its procedure for drop offs. Following an evidentiary hearing and the submission of closing arguments, the AJ issued her Initial Decision on April 10, 2013. She ruled that Agency did not meet its burden of proof; that it did not have cause to remove Employee; that it abused its managerial discretion; and that its removal was an error of judgment. Therefore, Agency's action was reversed, and it was ordered to reinstate Employee to her prior position of record or a comparable position with all back-pay and benefits lost as a result of the removal. Agency filed a Petition for Review with the OEA Board on May 15, 2013. It argues that the AJ's decision was based on an erroneous finding that its policy did not apply to Employee. Further, it provides that Employee was aware of its requirement that a child must be delivered to a responsible adult. Lastly, Agency provides that the AJ did not consider that Employee received progressive discipline during her tenure and that her previous demotion letter warned that another disciplinary action would result in removal. Thus, it argues that the termination action was warranted. Accordingly, Agency requests that the AJ's decision be overturned. Employee filed her Response to the Petition for Review on June 17, 2013. She argues that Agency's claims were not supported, and Agency failed to provide a preponderance of evidence for its allegations.
3. **Richard Hairston v. Department of Corrections, OEA Matter No. 1601-0307-10** –Employee was a Correctional Officer with Agency. On December 8, 2009, Agency issued a notice to Employee informing him of its proposal to remove him from his position due to misfeasance. The AJ issued his Initial Decision on April 30, 2013, concluding that Employee was guilty of committing misfeasance. However, he found that Employee's misfeasance was considered a first offense, and the penalty should have been a suspension of fifteen days. Thus, the AJ reversed Agency's action and modified its removal to a fifteen day suspension. Agency filed a Petition for Review with the OEA Board on June 4, 2013. It argues that the Table of Appropriate Penalties used by the AJ is advisory, not mandatory. Thus, it believes that its penalty should not have been modified by the AJ. In his Opposition to the Petition for Review, Employee asserts that Agency did not meet its burden of proving that its penalty was appropriate. Additionally, he provides that removal was not within the range of penalties prescribed. Therefore, he believes that the AJ's decision was proper and requests that the Board uphold the decision.
4. **Gwendolyn Gilmore v. D.C. Public Schools, OEA Matter No. 1601-0377-10** – Employee worked as a Teacher with Agency. On July 23, 2010, Agency issued a notice to Employee informing her that due to her "Ineffective" performance rating under IMPACT, its performance assessment system, her position was terminated. The Initial Decision was issued on May 6, 2013. The AJ found that Employee did not prove that Agency failed to adhere to the IMPACT

process. As a result, he concluded that Agency acted in accordance with the IMPACT procedures and had cause to terminate Employee following her “Ineffective” rating. Accordingly, Employee’s termination was upheld. On May 29, 2013, Employee filed a letter addressed to the AJ that is considered her Petition for Review. She provides a host of grievances arguing that her termination was unfair. Therefore, Employee requests that she be reinstated to her position.

C. Board Comments – Gilbert Douglass notified the Board that he is acquainted with Pierpont Mobley. As a result, he recused himself from the Ella Carey v. Office of the State Superintendent of Education matter.

D. Deliberations - After the summaries were provided, Gilbert Douglass moved that the meeting be closed for deliberations. Vera Abbott seconded the motion. All Board members voted in favor of closing the meeting. Bill Persina stated that in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

E. Open Portion of Meeting Resumed

F. Final Votes –Bill Persina provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Jacqueline Hurst v. Department of Youth Rehabilitation Services

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina	X	X		
Sheree Price	X	X		
Vera Abbott	X	X		
A. Gilbert Douglass	X	X		
Patricia Hobson Wilson	X	X		

All Board Members voted in favor of Granting Agency’s Petition for Review in Part and Denying its Petition for Review in Part. Agency’s action was upheld, but it was ordered to reimburse Employee for back pay and benefits from November 30, 2009 until April 23, 2010 for its failure to provide her with a timely, final decision on enforced leave. Evidence documenting Agency’s compliance shall be provided to the General Counsel’s Office.

2. Ella Carey v. Office of the State Superintendent of Education

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass				
Patricia Hobson Wilson		X		

Four Board Members voted in favor of Denying Agency’s Petition for Review. Gilbert Douglass recused himself of this matter. Accordingly, Agency was ordered to reinstate Employee to her position with back pay and benefits within thirty calendar days from the date the decision becomes final. Evidence

documenting Agency's compliance shall be provided to the General Counsel's Office.

3. Richard Hairston v. Department of Corrections

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of Denying Agency's Petition for Review. Agency was ordered to reinstate Employee to his last position of record or a comparable position, and substitute for the removal a fifteen-day suspension. Agency was further ordered to reimburse Employee all back-pay and benefits lost as a result of the adverse action, less fifteen days which constitutes a fifteen-day suspension. Lastly, Agency was ordered to file with Board within thirty (30) days from the date upon which the decision is final documents evidencing compliance with the terms of the Order.

4. Gwendolyn Gilmore v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Bill Persina		X		
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

All Board Members voted in favor of Denying Employee's Petition for Review.

G. Public Comments – Ella Carey thanked the Board for their review of her matter and for rendering a decision.

VI. Adjournment – Sheree Price moved that the meeting be adjourned; Patricia Hobson Wilson seconded the motion. All members voted affirmatively to adjourn the meeting. Bill Persina adjourned the meeting at 10:31 a.m.

Respectfully Submitted,

India Gray
OEA Paralegal