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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
DEEPAK BUTANI)	OEA Matter No. 1601-0093-98C05
Employee)	
)	
v)	Date of Issuance: November 28, 2005
)	
D.C. WATER & SEWER)	Muriel A. Aikens-Arnold
AUTHORITY)	Administrative Judge
Agency)	
_____)	

Mary E. Pivec, Esq., Agency Representative
John Wesley Davis, Esq., Employee Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On April 3, 1998, Employee, a Supervisory Environmental Engineer, DS-819-13, filed a Petition for Appeal from Agency's decision removing him from his position for: Discourteous treatment of the public, a supervisor, or other employee; to wit, fighting, threatening or inflicting bodily harm on another; use of abusive or offensive language or discourteous or disrespectful conduct toward the public or other employees; and use of insulting or threatening language to an official superior.

By Initial Decision (ID) issued on March 30, 2002, this Judge held that Agency failed to meet its burden of proof that Employee had committed the alleged misconduct, and therefore reversed its action separating him from service and ordered Employee's reinstatement to his position and reimbursement of lost wages and benefits as a result of the adverse action.¹

On May 4, 2001, Agency filed a Petition for Review with the Board arguing that the Administrative Judge: 1) applied "an erroneous legal standard in evaluating whether the Employee's conduct was threatening"; 2) ignored certain evidence that, according to the Agency, would have been probative in showing that Employee threatened his supervisor; and 3) failed to resolve issues of credibility. On January 14, 2004, the Board issued an *Opinion and Order on Petition for Review* affirming the Initial Decision and denying Agency's Petition for Review.²

On February 12, 2004, Agency filed a Petition for Review before the Superior Court of the District of Columbia seeking reversal of the final decision of this Office based on Agency's prior contentions.³ The Court issued a ruling on July 29, 2005 denying Agency's Petition for Review stating, in part " . . . this Court cannot find that the OEA Board was clearly erroneous to deny review of the Administrative Judge's decision."

On September 21, 2005, Employee's Counsel filed a Motion to Enforce the OEA Order and a Request for Attorney Fees based on the Court's decision and his representations that Agency had not filed an appeal of the Court's decision, nor has Employee been reinstated.⁴ On October 7, 2005, an Order for Agency to Respond to Employee's Motion for Compliance was issued. Agency filed its response on October 24, 2005.⁵

¹ An evidentiary hearing was held on January 9, 2001 after which briefs were filed by the parties, the record was closed and a decision rendered. See Court's File 3 of 3 at Tab 22.

² See Court's File 3 of 3, at Tabs 23 and 25.

³ See Court's File 3 of 3 at Tab 27.

⁴ Employee's Counsel is John W. Davis, Esq.

⁵ OEA Rule 636.3 requires Agency to respond in 15 days; thus a 10/28/05 deadline was given. Agency responded to the Request for Attorney Fees as well.

In its response, Agency contends that this Office has no jurisdiction over Agency's personnel decisions as its "enabling statute exempted it from most of the CMPA provisions . . ."; and, therefore, requests that this Office deny Employee's request for reinstatement with back pay and " . . . the simultaneously-filed request for attorneys fees."⁶ The record is closed.

ISSUE

Whether this matter should be certified to the General Counsel.

ANALYSIS AND CONCLUSIONS

OEA Rule 636.1, 46 D.C. Reg. 9321 (1999), reads as follows:

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

OEA Rule 636.8, 46 D.C. Reg. at 9322, reads 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. Code §1-606.2.

OEA Rule 636.9, *id.*, reads as follows:

If the agency fails to comply with the order, the General Counsel may take such actions as are necessary to secure compliance with the order, including forwarding the matter to the Office of the Mayor or other responsible official for direct enforcement.

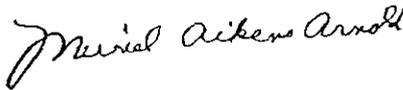
⁶ See Agency's Opposition to Motion at pp. 2-4 which gives its rationale.

In this instance, on July 29, 2005, the Superior Court of the District of Columbia ruled in Employee's favor when it upheld the Board's decision denying Agency's Petition for Review. Therefore, the Order of this Office became final on August 29, 2005.⁷ However, *for the first time*, and upon finality of this Office's decision, Agency raises a jurisdiction issue to prevent its compliance with the final order of this Office and the payment of attorney fees to an otherwise prevailing party. The procedural issue now raised is two-fold: whether or not this Office has the authority (i.e., jurisdiction) to enforce the final order in this matter and whether the jurisdiction issue affects the payment of attorney fees herein. Nevertheless, the fact remains that Agency is *not* in compliance with this Office's decision. Therefore, pursuant to OEA Rule 636.8, *supra*, this matter should be certified to the General Counsel for appropriate action.

ORDER

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

FOR THE OFFICE:



MURIEL A. AIKENS-ARNOLD, ESQ.
Administrative Judge

⁷ See OEA Rule 636.1, *id.* Further, there is no evidence that Agency appealed the Court decision to a higher authority. Nor has Agency represented in its opposition to enforce compliance with this Office's final decision and request for attorney fees that any such higher level of appeal has been filed.