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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
MICHAEL DUNN,	)	
Employee	)	OEA Matter No. 1601-0047-10C15AF15
	)	
v.	)	Date of Issuance: August 12, 2015
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF YOUTH	)	MONICA DOHNJI, Esq.
REHABILITATION SERVICES,	)	Administrative Judge
Agency	)	
_____	)	
James McCollum, Esq., Employee Representative		
Frank McDougald, Esq., Agency Representative		

**SECOND ADDENDUM DECISION ON COMPLIANCE**

INTRODUCTION AND PROCEDURAL BACKGROUND

On October 20, 2009, Michael Dunn (“Employee”) timely filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the D.C. Department of Youth Rehabilitation Services’ (“DYRS” or “Agency”) decision to terminate him from his position as a Lead Youth Development Specialist effective September 23, 2009. Following an Administrative review, Employee was charged with the following specifications:

- 1) Any on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Neglect of Duty and Incompetence (violation of the following Agency policies: Reporting Unusual Incidents, Use of Physical Restraints, and Use of Force); and
- 2) Any knowing or negligent material misrepresentation on other document given to a government agency (falsified and backdated a Restraint Form and Incident Report).

On November 23, 2009, Agency submitted its Answer to Employee’s Petition for Appeal. On June 14, 2010, Administrative Judge (“AJ”) Wanda Jackson granted the parties’ Motion for a Protective Order. Thereafter, on March 3, and March 11, 2012, Agency submitted a Motion for an Extension of Time to respond to Employee’s Discovery Requests. Subsequently

on May 6, 2011, Employee submitted a Motion to Compel and a Motion for Scheduling Order. On August 30, 2011, Employee submitted a Supplemental Motion to Compel. This matter was initially assigned to AJ Lois Hochhauser. On December 19, 2011, AJ Hochhauser scheduled a Prehearing Conference for January 10, 2012. During the Prehearing Conference, Employee's representative requested that AJ Hochhauser recuse herself from the case, which she agreed. Employee also requested that this matter be submitted to mediation. However, Agency did not respond to this request. On January 31, 2012, Employee submitted a Motion for Assignment and Scheduling Order.

This matter was reassigned to the undersigned AJ on February 13, 2012. On October 5, 2012, following an Evidentiary Hearing, I issued an Initial Decision in which I reversed the Agency's decision to terminate Employee from his last position of record. As relief, I directed that Agency reinstate Employee, and I awarded him back pay and any benefits lost as a result of the removal. On October 25, 2012, Employee filed a Motion for Attorney's Fees and Costs. On November 9, 2012, Agency filed a Petition for Review in this matter, seeking a reversal of the Initial Decision, contending that the Initial Decision is based on erroneous interpretation of statute, regulation or policy. On December 10, 2012, I issued an Addendum Decision on Attorney's Fees noting that Employee's October 25, 2012 Motion for Attorney's fees and costs was premature because the Board had not yet issued an Opinion and Order in this matter. The OEA Board, on April 15, 2014, issued an Order and Opinion in this matter denying Agency's Petition for Review. Subsequently, on April 23, 2014, Employee filed an amended Motion for Attorney's fees and costs. On May 19, 2014, Agency filed a Motion for enlargement of time to respond to Employee's request for attorney's fees and costs. Thereafter, Agency notified the undersigned via email that it appealed the OEA Board's decision to the D.C. Superior Court on May 22, 2014. While this appeal was still pending with the D.C. Superior Court, on August 4, 2014, I issued a second Addendum Decision on Attorney's Fees noting that Employee's April 23, 2014, amended Motion for Attorney's fees and costs was premature because the D.C. Superior Court had not yet issued a ruling in this matter.

On February 26, 2015, Employee filed a Motion to Enforce Final Decision noting that Agency voluntarily dismissed the Petition for Review with the D.C. Superior Court on October 24, 2014. Additionally, on March 2, 2015, Employee filed his Second Amended Motion for Attorney's Fees and Costs. Subsequently, on March 3, 2015, I issued an Order requiring the parties to attend a Status Conference on March 31, 2015. Thereafter, on March 20, 2015 and March 20, 2015, Agency submitted a request for an extension of time to respond to Employee's March 2, 2015, and February 26, 2015, Motions respectively. On March 27, 2016, the parties notified the undersigned in separate briefs that they had executed a settlement agreement and thus the matter is moot and the scheduled Status Conference should be vacated. On April 1, 2015, I issued an Addendum Decision on Compliance and Second Addendum Decision on Attorneys' Fees and costs. Subsequently, on June 19, 2015, Employee filed a Second Motion to Enforce, noting that Agency violated Section 2(b) of the executed March 25, 2015, Agreement within sixty (60) days of the execution of the Agreement. On August 10, 2015, Agency filed a response to Employee's Second Motion to Enforce, stating that it has complied with the parties' settlement agreement. The record is now closed.

## JURISDICTION

The jurisdiction of this Office has not been established.

## ISSUE

Whether this appeal should be dismissed.

## ANALYSIS AND CONCLUSION

This Office's jurisdiction is conferred upon it by law, and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1<sup>1</sup>, this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

- (a) A performance rating resulting in removal;
- (b) An adverse action for cause that results in removal, reduction in grade, or suspension for 10 days or more; or
- (c) A reduction-in-force; or
- (d) A placement on enforced leave for ten (10) days or more.

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012), states that "[t]he employee shall have the burden of proof as to issues of jurisdiction..." Pursuant to this rule, the burden of proof is by a preponderance of the evidence which is defined as "[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue." This Office has no authority to review issues beyond its jurisdiction.<sup>2</sup> Therefore, issues regarding jurisdiction may be raised at any time during the course of the proceeding.<sup>3</sup>

In the instant matter, the parties executed a settlement agreement on March 25, 2015. D.C. Official Code §1-606.06(b) (2001) states in pertinent part that:

If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties,

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<sup>1</sup> See also, Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.

<sup>2</sup> See *Banks v. District of Columbia Public Schools*, OEA Matter No. 1602-0030-90, *Opinion and Order on Petition for Review* (September 30, 1992).

<sup>3</sup> See *Brown v. District of Columbia Public Schools*, OEA Matter No. 1601-0027-87, *Opinion and Order on Petition for Review* (July 29, 1993); *Jordan v. Department of Human Services*, OEA Matter No. 1601-0110-90, *Opinion and Order on Petition for Review* (January 22, 1993); *Maradi v. District of Columbia Gen. Hosp.*, OEA Matter No. J-0371-94, *Opinion and Order on Petition for Review* (July 7, 1995).

shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice.

Thus, I find that pursuant to D.C. Official Code §1-606.06(b) (2001), the March 25, 2015, Agreement which was signed by the parties constituted the final and binding resolution of the appeal. Further, the Agreement states in Section 6 as follows: "...if either party fails to abide by any provisions of this Agreement, the non-breaching party may seek enforcement of said Agreement through the filing of an enforcement petition with the *District of Columbia Superior Court* or through any other appropriate legal means of enforcement..."<sup>4</sup> (Emphasis added). Based on the foregoing, I conclude that this Office does not have jurisdiction over Employee's current appeal since the matter had already been resolved. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear his claims. And for this reason, I am unable to address the factual merits, if any, of this matter.

### ORDER

It is hereby **ORDERED** that Employee's Second Motion to Enforce is **DISMISSED**.

FOR THE OFFICE:

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MONICA DOHNJI, Esq.  
Administrative Judge

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<sup>4</sup> Employee's Second Motion to Enforce (June 19, 2015).