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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
ALFRED GURLEY)	OEA Matter No. 1601-0008-05C05
Employee)	
)	Date of Issuance: June 9, 2005
v.)	
)	Joseph E. Lim, Esq.
)	Senior Administrative Judge
D.C. PUBLIC SCHOOLS)	
Agency)	

Harriet Segar, Esq., Agency Representative
Barbara Hutchinson, Esq., Employee Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND STATEMENT OF FACTS

On November 24, 2004, Employee, an Investigator with the District of Columbia Public Schools, filed a petition for appeal from Agency's final decision separating him from Government service due to inexcusable neglect of duty, insubordination, and absence without leave. A January 14, 2005 letter was sent to Agency's Superintendent and the Agency Representative from this Office's Executive Director. The letter required Agency's Answer to Employee's appeal by February 15, 2005 or face sanctions, including issuing a decision in favor of the Employee. Agency did not submit its Answer by the February 15, 2005 deadline, nor did Agency request an extension of time in which to file its Answer.

On March 21, 2005, I issued an Initial Decision ("ID") in Matter No. 1601-0008-05, in which I reversed Agency's action against Employee for its failure to defend. On April 25, 2005, Agency faxed a petition for review of the ID with the OEA Board where it is now pending. On May 27, 2005, Employee submitted a motion for compliance, complaining that Agency had not put him back to work. As will be discussed below, that motion is premature. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether the motion for compliance should be dismissed.

ANALYSIS AND CONCLUSION

OEA Rule 636.7, 46 D.C. Reg. at 9322, states that in a compliance matter the Administrative Judge "shall take all necessary steps to determine whether the final decision is being complied with and shall issue a written opinion on the matter."

OEA Rule 636.2 allows an employee to file a motion to enforce a final decision if the agency has failed to comply with the final decision within 30 days from the date the decision became final. Petitions for Review are permitted to be filed when a party wishes to appeal an Initial Decision to the Board. According to OEA Rule 634.1 such appeal must be taken "within thirty-five (35) calendar days of issuance of the initial decision." If a Petition for Review is not filed with the Board, D.C. Code § 1-606.03(c) provides that the Initial Decision shall become final 35 calendar days after issuance. *See also OEA Rule 633.1.*

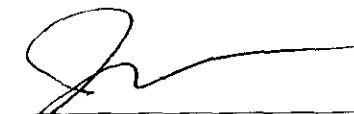
However, OEA Rule 633.2, 46 D.C. Reg. at 9322, states that "*The initial decision shall not become final if any party files a petition for review or if the Board reopens the case on its own motion within thirty-five (35) calendar days after issuance of the initial decision. Italics supplied.*"

Because Agency has filed an appeal, the ID is not yet final. Any claim that the appeal is untimely is for the Board to decide. Therefore, I conclude that Employee's motion for compliance is premature and must be dismissed. The dismissal is without prejudice, because if and when the ID is upheld and no further appeals are taken, then Agency is bound by my Order set forth in the March 21, 2005 ID. If it subsequently becomes necessary for Employee to file a new motion for compliance, he may do so at the appropriate time.

ORDER

It is hereby ORDERED that Employee's Motion for Compliance is DISMISSED without prejudice.

FOR THE OFFICE:



JOSEPH E. LIM, ESQ.
Senior Administrative Judge

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Harriet Segar, Esq., Agency Representative
Barbara Hutchinson, Esq., Employee Representative

ADDENDUM DECISION ON ATTORNEY FEES

INTRODUCTION AND STATEMENT OF FACTS

On November 24, 2004, Employee, an Investigator with the District of Columbia Public Schools, filed a petition for appeal from Agency's final decision separating him from Government service due to inexcusable neglect of duty, insubordination, and absence without leave.

A January 14, 2005 letter was sent to Agency's Superintendent and the Agency Representative from this Office's Executive Director. The letter required Agency's Answer to Employee's appeal by February 15, 2005 or face sanctions, including issuing a decision in favor of the Employee. Agency did not submit its Answer by the February 15, 2005 deadline, nor did Agency request an extension of time in which to file its Answer.

On March 21, 2005, I issued an Initial Decision ("ID") in Matter No. 1601-0008-05, in which I reversed Agency's action against Employee for its failure to defend.

On April 25, 2005, Agency faxed a petition for review of the ID with the OEA Board where it is now pending. On May 27, 2005, Employee submitted a motion for attorney fees in the amount of \$8,707.35. As will be discussed below, that motion is premature. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.08 (2001).

ISSUE

Whether Employee's motion for attorney fees should be dismissed as being premature.

ANALYSIS AND CONCLUSIONS

D.C. Code Ann. § 1-606.8 (1999 repl.) provides that: "[An Administrative Judge of this Office] may require payment by the agency of reasonable attorney fees if the appellant is the prevailing party and payment is warranted in the interest of justice." *See also* OEA Rule 635.1, 46 D.C. Reg. at 9320.

In his motion for attorney fees, Employee states that since Agency was untimely in appealing the decision to the OEA Board, he is now the prevailing party and should be awarded attorney fees.

Here, the relief which Employee sought was the reversal of his removal and restoration to duty. In the ID, I reversed the removal and ordered Agency to reinstate Employee to duty. Agency has submitted a petition for review with the Board. That petition is currently pending. The question of whether said petition was timely or not has yet to be decided by the Board. Thus, at this point the question of whether Employee is a prevailing party has not been finally determined. Consequently, the motion for attorney fees is premature and must now be dismissed. However, the dismissal will be without prejudice, since Employee may yet become a prevailing party. If this occurs, he may then resubmit his motion for attorney fees.

ORDER

It is hereby ORDERED that Employee's motion for attorney fees is DISMISSED without prejudice.

FOR THE OFFICE:



JOSEPH E. LIM, ESQ.
Senior Administrative Judge