

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

_____	)	
In the Matter of:	)	
	)	
THOMAS IRVIN	)	
Employee	)	
	)	
	)	OEA Matter No. 2401-0087-04P05
	)	
v.	)	
	)	
	)	Date of Issuance: April 25, 2005
	)	
D.C. PUBLIC SCHOOLS	)	
Agency	)	
	)	
_____	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Employee was an English teacher at the time that Agency abolished his position pursuant to a modified reduction in force ("RIF"). The RIF took effect June 30, 2004. Employee timely filed a Petition for Appeal and this matter was assigned to an administrative judge. On August 18, 2004, this Office's Executive Director sent a letter to Agency stating that Agency was required to file an answer to the Petition for Appeal.

Agency was informed that its response was due by September 17, 2004. Further, the letter warned Agency that failure to file the answer could result in the imposition of sanctions including having a decision rendered in favor of Employee.

Shortly thereafter, Agency requested to have until October 8, 2004 to file its answer. The Administrative Judge granted that request. Agency failed, however, to file its answer by the extended deadline. Thus, in an Initial Decision issued October 18, 2004, the Administrative Judge found that Agency had failed to defend the appeal. As a result, the RIF action was reversed and Agency was ordered to reinstate Employee.

On October 18, 2004, the same day the Initial Decision was issued, Agency filed its answer and on November 24, 2004, Agency filed a Petition for Review. In its Petition for Review, Agency argues that it was not able to meet the October 8, 2004 filing deadline due to the fact that its lead attorney had to leave town to attend to an ailing family member and no other attorney in its office was sufficiently familiar or experienced with the appeal to formulate an answer or to request another extension. Further, Agency argues that Employee was not prejudiced by the delay. For these reasons Agency has asked us to vacate the Initial Decision and remand the appeal to the Administrative Judge.

OEA Rule 608.2 provides that an agency must file an answer within thirty (30) calendar days from when the employee files a petition for appeal. If an agency fails to file an answer, OEA Rule 610.3 states that such failure "shall constitute a default, and the Administrative Judge may, without further notice, render an appropriate decision." In this appeal Agency's answer was due October 8, 2004. When Agency failed to file its answer or to request more time within which to do so, the Administrative Judge issued

the Initial Decision. Agency now claims that it could not make a timely filing due to the fact that when its lead attorney left town, there was no other attorney who could have taken over the appeal or who could have asked for another extension of time. While it may be true that there was no one else with enough experience to handle the appeal, we believe there most assuredly was an attorney who could have simply filed a motion requesting additional time to file the answer. The Administrative Judge acted appropriately under these circumstances. As such, we deny Agency's Petition for Review and uphold the Initial Decision.


ORDER

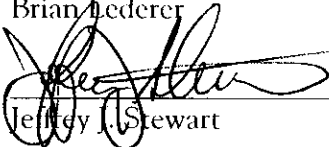
Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

\_\_\_\_\_  
Erias A. Hyman, Chair

  
Horace Kreitzman

  
Brian Lederer

  
Jeffrey J. Stewart

\_\_\_\_\_  
Keith E. Washington

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.