

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: |) | |
| |) | |
| LEONARDO S. JOHN |) | |
| Employee |) | |
| |) | OEA Matter Nos. 1601-0213-91C00 |
| |) | 1601-0213-91C03 |
| v. |) | Date of Issuance: July 10, 2003 |
| |) | |
| DEPARTMENT OF HUMAN |) | |
| SERVICES |) | |
| Agency |) | |
| _____ |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee was removed from his position as a Pharmacist on September 6, 1991 based on the charge of "Inefficiency- failure to satisfactorily perform one or more major duties of your position." He filed a timely appeal with this Office and an Initial Decision was issued on March 11, 1994. The Administrative Judge held in that decision that Agency had failed to

commence the adverse action procedures against Employee within 45 days of when Agency knew or should have known of the actions giving rise to the charge. Thus the Administrative Judge ordered that Employee be returned to his position and that Agency restore to Employee all back pay and benefits that Employee lost as a result of Agency's actions. Thereafter, Agency filed a Petition for Review and we upheld the Initial Decision.

On October 25, 1999, and again on December 26, 2002, Employee filed a motion for compliance claiming that although he "was reinstated and received sick pay, annual leave pay and benefits [he had not] receiv[ed] salary as ordered. . . ." An Addendum Decision on Compliance was issued in response to those motions. In that decision the Administrative Judge determined that the sole issue to be decided was whether Employee had received all of the back pay to which he was entitled. The Administrative Judge found that according to Chapter 11B, Part II, Subpart 8 ("Back Pay"), an employee who had undergone an unjustified or unwarranted personnel action was entitled, upon correction of the action, to the pay the employee would have earned during that period less any amounts the employee earned through other employment during that period. Further Employee, who had been reinstated to government service on November 8, 1998, did not dispute the fact that during the period of his removal, he worked as a pharmacist for a local grocery store. Upon review of the worksheet that showed the calculations of the amount of back pay Employee was owed and the amount of outside income Employee earned during the period of his removal, the Administrative Judge found that Employee had earned \$49,723.48 more than the back pay

due him. Thus, the Administrative Judge held that Employee was not entitled to any award of back pay and dismissed the appeal.


Employee has now filed a Petition for Review. In his Petition for Review Employee again admits that he was reinstated and received sick pay, annual leave pay and contributions to his retirement.¹ Nevertheless, according to Employee, he “did not receive **any salary**. . . .” (emphasis in original). We believe the law is clear on this issue. As the Administrative Judge found in the Addendum Decision on Compliance, the applicable regulations require that an employee be paid the amount of back pay the employee is entitled to during the period of a removal less any amounts earned through other employment during that same period. Employee was entitled to back pay from the period of September 6, 1991 through November 8, 1998. Employee does not dispute the fact that during the period of removal he worked as a pharmacist for a local grocery store and earned over \$49,000 more than what he would have earned had he not been removed for that period of time. Therefore, Employee is not entitled to any award of back pay and his Petition for Review is denied.

¹ Employee states that he was reinstated in 1999; however, according to documentation supplied by the Office of Payroll & Retirement, Employee returned to active duty on November 11, 1998. Employee has not come forward with any evidence to the contrary.

ORDER

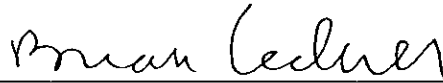
Accordingly, it is hereby **ORDERED** that the Employee's
Petition for Review is **DENIED**.

FOR THE BOARD:

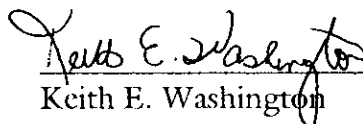


Erias A. Hyman, Chair

Horace Kreitzman



Brian Lederer



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 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.