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:	
TRACI P. LINDSAY, Employee	OEA Matter No. 1602-0090-95
v.	Date of Issuance: June 30, 2003
D.C. OFFICE OF PERSONNEL, Agency	

OPINION AND ORDER ON PETITION FOR REVIEW

Thinking that a reduction-in-force was imminent and that such would adversely affect her, Employee, a Social Service Representative with the Department of Human Services ("DHS"), requested that Agency downgrade her from a Grade 7, Step 1 to a Grade 5.[1]

[1] Certain personnel actions such as downgrades are processed by the Office of Personnel. Therefore, even though Employee worked for the Department of Human Services, the Office of Personnel is the proper Agency in this appeal.

Employee initiated this process by writing a letter to a DHS administrator asking that her position be changed to a lower grade. This request was made in April 1993. On June 10, 1993 Employee again wrote a letter to the same DHS administrator and stated that she would like "to go ahead with [her] original request for a voluntary change in grade to a 5 at its closest equivalency to [her] present grade of 7/step 1." *Agency Exhibit* 1. Employee continued this letter by stating that she was "the <u>sole</u> support of [her] household. . .[and that] [i]n the event of lay-offs,. . . [she didn't] know how long [she] could survive on unemployment compensation benefits. . . .So, please take the necessary action for this change in grade. . . ." *Id.* (Emphasis in original) Employee made a third request for a downgrade on December 19, 1993 in a letter addressed to Agency. In this letter she stated that she would "like to know when [Agency] plan[ned] to process this change to a lower grade[.]. . . *Agency Exhibit* 2.

On April 4, 1994, Agency processed the appropriate personnel action form thus downgrading Employee from a grade 7, step 2 to a grade 5, step 7.[2] After the downgrade took effect, Employee wrote a letter on May 3, 1994 to the DHS administrator she had previously written to and stated that she had mistakenly thought she needed to sign some papers in order to effectuate the downgrade and asked that the action be rescinded. In a July 22, 1994 letter to another DHS administrator, Employee again asked that the downgrade be rescinded. Then on September 14, 1994 Employee wrote a letter to Agency asking when her request to rescind

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[2] Apparently Employee was promoted from a grade 7, step 1 to a grade 7, step 2 during the time the request for a voluntary demotion was pending.

the downgrade would be processed.

Agency responded to Employee's letter on November 30, 1994. In that response Agency informed Employee that in order for her to be "re-promoted to the DS-7 level, [DHS would have to] submit a Request for Personnel Action (SF-52) through [the] proper channels to this office." *Agency Exhibit* 9. Agency followed this response with a letter to Employee's attorney. In that letter, dated December 8, 1994, Agency told Employee's attorney that it had no authority to cancel the downgrade at the request of Employee. Instead, Agency wrote, DHS would have to submit the proper form to process a promotion on Employee's behalf. *Agency Exhibit* 10.

Thereafter, Employee filed a Petition for Appeal with this Office. In an Initial Decision issued on July 14, 1999, the Administrative Judge dismissed Employee's appeal. The Administrative Judge found that Agency's action of downgrading Employee was not unlawful because such action was taken in accordance with Employee's request. Furthermore, the Administrative Judge held that Employee's claim that Agency had misinformed her with respect to what rights she had in this process, thereby negating the voluntary nature of her request, was without merit. Again the Administrative Judge held that Employee's request was made voluntarily and that she neither received nor relied upon misinformation.

Also the Administrative Judge held that this Office was to defer to Agency's interpretation of the District Personnel Manual ("DPM") regulation dealing with how voluntary requests for a downgrade were to be memorialized. The applicable DPM regulation

states that an employee's request in this regard "should" be memorialized on the "REQUEST FOR CHANGE TO LOWER GRADE" form. Agency argued, however, that the DPM requires only that a voluntary downgrade be supported by a signed statement from an employee. Thus Agency concluded that completion of this form was not mandatory. The Administrative Judge accepted this argument and held that because this interpretation was not plainly wrong or inconsistent with the legislative process, it must be given deference.

Notwithstanding the foregoing, the Administrative Judge held that this Office lacked jurisdiction over Employee's appeal. Having found that Employee's request for a downgrade was voluntary, the Administrative Judge looked to DPM § 1632. This section provides that an employee may not grieve a voluntary action initiated by, or at the request of, the employee. Thus the Administrative Judge dismissed Employee's appeal for lack of jurisdiction.

Employee has since filed a Petition for Review. In her Petition for Review she again argues that the downgrade was involuntary, that Agency acted improperly when it failed to memorialize the request on the proper form, and that the Administrative Judge acted improperly when she failed to conduct an evidentiary hearing. Employee's first claim–that the downgrade was involuntary–is without merit. As has been stated, Employee requested, in writing, in April 1993, on June 10, 1993 and again on December 19, 1993 that she be downgraded from a grade 7, step 1 to a grade 5. These three letters clearly demonstrate the voluntary nature of Employee's request.

With respect to Employee's second claim of error, there is substantial evidence in the

record to uphold the Administrative Judge's finding that completion of the "REQUEST FOR CHANGE TO LOWER GRADE" form is not mandatory in order to effectuate a voluntary request for a downgrade. This Office has consistently held that it is appropriate to defer to an agency's interpretation of a statute which an agency administers unless the interpretation is plainly wrong or inconsistent with the legislative purpose. *See Dankman v. District of Columbia Bd. of Elections and Ethics,* 443 A.2d 507, 513 (D.C. 1981)(en banc); *Hutchinson v. Office of Employee Appeals*, No. 96-CV-87 (D.C. April 30, 1998) at 12; *Jones v. District of Columbia Lottery Bd.*, OEA Matter No. J-0231-89, *Opinion and Order on Petition for Review* (Aug. 19, 1991), __D.C. Reg.__ ( ). Employee has failed to bring forth any evidence demonstrating why Agency's interpretation of the applicable DPM regulation should not be accepted. Further, even though Employee did not complete this form, her three letters in which she requested the downgrade indicate that she essentially supplied the information requested in the form.

Lastly, OEA Rule 620 governs the authority of Administrative Judges with respect to, *inter alia*, the manner in which proceedings are conducted. Specifically, rule 620.2(e) provides that the Administrative Judge has the power to "[r]egulate the course of the proceeding, [and] require an evidentiary hearing, *if appropriate* . . . ." (Emphasis added). This section, particularly the highlighted portion, makes it clear that it is within the Administrative Judge's discretion as to whether or not an evidentiary hearing will be held. In the Initial Decision the Administrative Judge states that this appeal was decided based on the documents contained in the record. Employee has not shown how the Administrative Judge abused her discretion by

not conducting an evidentiary hearing. Therefore, we reject this claim.

For the foregoing reasons, we find there is substantial evidence in the record to uphold the Initial Decision. Thus, Employee's Petition for Review is denied.

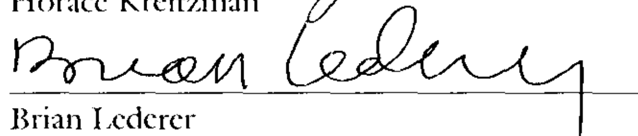
ORDER

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

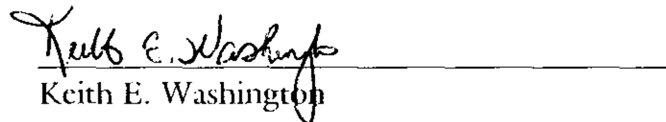
FOR THE BOARD:

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.