

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:)	
)	
SYLVIA Y. MACKEL)	
Employee)	
)	OEA Matter No. 2401-0248-97
)	
v.)	Date of Issuance: October 15, 2003
)	
D.C. PUBLIC SCHOOLS)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency notified Employee on August 30, 1996 that her position as an English teacher would be abolished pursuant to a modified reduction-in-force (RIF) for that upcoming school year. The RIF took effect on September 30, 1996. Thereafter, Employee filed an appeal with the Office of Employee Appeals (OEA) to contest the RIF.

On December 11, 2001, the Administrative Judge assigned to this appeal issued an Initial Decision in which he reversed Agency's RIF action and ordered that Agency return Employee to her

position of record with all back pay and benefits due her.¹ Agency was given thirty (30) days from the date of issuance of the Initial Decision to comply with the judge's order. Therefore, Agency should have complied with the order by February 15, 2002. No Petition for Review was filed thereby causing the Initial Decision to become final on January 15, 2002.

On March 18, 2002 Employee filed a Motion to Enforce the Final Decision (Compliance Motion) in which she stated that Agency had not yet complied with the terms of the Initial Decision. Shortly thereafter, on May 2, 2002, Agency submitted to the Administrative Judge a copy of a May 1, 2002 letter addressed to Employee. The letter informed Employee that she was being reinstated to duty effective May 2, 2002. The letter went on to state that in order for Agency to compute the back pay and benefits due Employee, she must submit certain documentation to Agency. Based on this letter, the Administrative Judge issued an Addendum Decision on Compliance in which he concluded that Agency was in compliance with the final decision in the underlying matter. Thus this matter was dismissed.

Employee has subsequently filed a Petition for Review. In her Petition for Review Employee argues that the Addendum Decision on Compliance should be reversed because Agency has not fully complied with the terms of the underlying Initial Decision. According to Employee, Agency has returned her to work but has failed to pay the back pay and benefits due her even though Employee has submitted the documentation that Agency requested.

Based on Employee's contention that Agency has not fully complied with the final decision

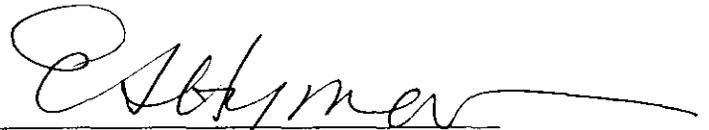
¹ Because Agency had erroneously compiled the competitive level to which Employee should have been assigned, the Administrative Judge held that Agency had not given Employee the required round of lateral competition due her. Thus, the Administrative Judge held that the RIF action separating Employee from service must be reversed.

of this Office, we believe this appeal must be remanded to the Administrative Judge. An Administrative Judge has the authority in the first instance to determine whether an agency has complied with an order. To carry out this authority OEA Rule 636.7, 46 D.C. Reg. 9322 provides that “[t]he Administrative Judge shall take all necessary action to determine whether the final decision is being complied with. . . .” Therefore, we grant Employee’s Petition for Review and remand this matter to the Administrative Judge for further proceedings consistent with this order.

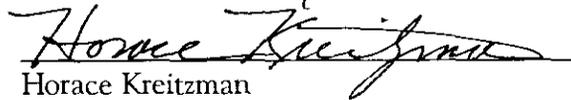
ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, the Addendum Decision on Compliance is **VACATED**, and this matter is **REMANDED** for further proceedings consistent with this order.

FOR THE BOARD:



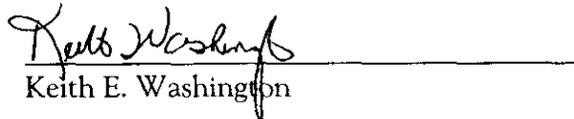
Erias A. Hyman, Chair



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.