

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:)
)
ANICE J. MCCARTHY)
Employee)
)
v.)
)
DEPARTMENT OF HUMAN)
SERVICES)
Agency)
_____)

OEA Matter No. 1602-0234-97P99

Date of Issuance: **January 14, 2004**

OPINION AND ORDER
ON
PETITION FOR REVIEW

On March 31, 1997, Employee, a Clerical Assistant, Grade DS-5 in the Career Service, filed with the Office of Employee Appeals (OEA) a Petition for Appeal from Agency's final decision denying a grievance Employee's union had filed on her behalf. In that grievance, Employee requested the following relief: (1) documentation to show that she had been detailed to the higher-graded position of Data Entry Clerk; (2) back pay for performing at the higher grade level; (3) a promotion to the next grade level of Data Entry Clerk; and (4) a desk

audit to show the true grade level of her position of record. Agency denied Employee's grievance for the following reasons: (1) Employee had never been detailed to an assignment with higher grade responsibilities; (2) the word processing and data entry functions that Employee performed were her duties as assigned as Agency increased its computerized automation functions; (3) the position of Data Entry Clerk did not exist in the Bureau in which Employee worked; and (4) although management did not see a demonstrated need for a desk audit at that time, Employee was free to request a desk audit if she desired. Agency subsequently issued a memorandum to its support staff encouraging any staff member to make a listing of assignment requests not included in his or her current position description so that a request for a desk audit could be initiated.

The Administrative Judge assigned to this appeal issued an Initial Decision on August 9, 1999 in which she sustained Agency's decision to deny Employee's grievance. The Administrative Judge determined that even if Employee's allegation was correct that she had been detailed to the higher-graded position of Data Entry Clerk, she would not be entitled to back pay because of the basic principle of District personnel management that "an employee is only entitled to be compensated for the position to which he or she was appointed; if performing duties of a higher grade level, compensation at that higher level is possible only on promotion or by job reclassification." *Whitt v. District of Columbia*, 413 A.2d 1301, 1303 (D.C. 1980); see also *Employee v. Agency*, OEA Matter No. 1602-0307-94 (Oct. 29, 1996), ___ D.C. Reg. __ ().

The Administrative Judge also concluded that Employee is not entitled to a promotion to the position of Data Entry Clerk because an agency's decision to promote an employee is discretionary and this Office lacks the authority to order an agency to promote an employee absent a showing, which was not made here, that the agency had a mandatory duty to do so. *See Whitt*, 413 A.2d at 1303. Lastly, the Administrative Judge determined that Agency has provided the sole relief to which Employee is entitled regarding her claim for a desk audit. It is an employee who must initiate the process of a desk audit by first reporting any significant changes in work assignments. *See* Vol. II, DPM, Chapter 11, Part II, Subpart 1, § 1.16, p. 11A-21. The Administrative Judge found that Agency had invited Employee to initiate that process by submitting such a report and that Employee had not done so.

Employee subsequently filed a Petition for Review of the Initial Decision with this Board. She contends that she was covered by a collective bargaining agreement that required Agency to adjust her pay once she was detailed or assigned to perform duties of a higher-graded position for more than 120 days. The contractual provisions she quotes in her Petition appear to support her argument. However, it is not clear from the record whether those provisions covered the terms of her employment at the relevant time period. That is a decision for the Administrative Judge to make in the first instance. Therefore, we must remand this matter to the Administrative Judge with instructions to permit the parties to supplement the record on that issue.

Employee also claims that the Administrative Judge erred when she concluded that Agency has provided the sole relief to which she is entitled regarding her claim for a desk audit. She admits that she was required to report significant changes in her work assignments when she requested a desk audit; however, she disagrees with the Judge's factual finding that she did not make such a report.

We have reviewed the record in this case and find no evidence indicating that Employee reported to her supervisor any specific significant changes in the work assignments of her position of record. Rather, the gravamen of Employee's complaint is that she was allegedly detailed to the higher-graded position of Data Entry Clerk for approximately four years without receiving the salary of that position. Therefore, we must uphold the Administrative Judge's determination regarding Employee's claim for a desk audit.

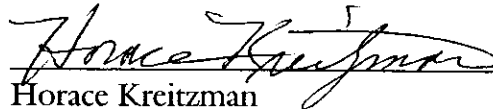
ORDER

Accordingly, it is hereby **ORDERED** that this appeal is **REMANDED** to the Administrative Judge for further action consistent with this order.

FOR THE BOARD:



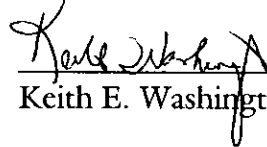
Erias A. Hyman, Chair



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.