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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

<u>In the Matter of:</u>)	
)	
ANNE MCHUGH)	OEA Matter No. 2401-0075-04C05
Employee)	
)	Date of Issuance: October 17, 2005
v.)	
)	Daryl J. Hollis, Esq.
)	Senior Administrative Judge
D.C. PUBLIC SCHOOLS)	
<u>Agency</u>)	

Frazer Walton, Jr., Esq., Employee Representative
Harriet Segar, Esq., Agency Representative

ADDENDUM DECISION ON COMPLIANCE

INTRODUCTION AND PROCEDURAL HISTORY

On June 3, 2004, Employee, an Art Teacher at Miner Elementary School, filed a petition for appeal from Agency's final decision separating her from Government service pursuant to a modified reduction-in-force (RIF).

The case file contained an August 13, 2004 letter to Agency's Interim Superintendent from this Office's Executive Director. In pertinent part, that letter reads as follows:

The Employee named above has appealed to the Office of Employee Appeals a [RIF] from [Agency]. Enclosed, please find a copy of the Employee's Petition for Appeal.

Pursuant to OEA Rule 608.2, 46 D.C. Reg. 9297, 9302 (1999), the Agency is required to file an Answer within 30 calendar days of service of this Petition for Appeal. Accordingly, Agency's Answer must be filed by **September 13, 2004**. Failure to file an Answer by the stated deadline shall result in this matter being referred to an Administrative Judge who may impose sanctions, including issuing a decision in favor of the Employee.

The time to answer may be extended upon a showing of good cause. Any motion for an extension of time to file an Answer must be directed to the Executive Director by mail at the [Office's] above address or by facsimile transmission at (202) 727-5631.

(emphasis in original).

On September 9, 2004, Agency, through its representative, requested an extension of time until October 1, 2004 to file its Answer. After consulting with this Office's Executive Director, I granted Agency's request in a memorandum dated September 13, 2004. That memorandum was mailed to the agency representative at her address of record, and was never returned to the Office as undelivered. Further, the Office has no record of Agency requesting an additional extension of time in which to file its Answer. However, Agency did not submit its Answer by the October 1, 2004 deadline.

By Initial Decision (ID) issued on October 15, 2004, I held that Agency had failed to defend its case against Employee, and therefore reversed its action separating her from service pursuant to the RIF. I ordered Agency to restore Employee to her position of record or a comparable position, and to reimburse her all back pay and benefits due her.

On November 22, 2004, Agency filed a petition for review of the ID with this Office's Board. On April 25, 2005, the Board issued an Opinion and Order on Petition for Review, in which it upheld my decision. No further appeals were taken, and on May 2, 2005, the ID became the Office's Final Decision in the matter. *See* OEA Rule 633.3, 46 D.C. Reg. 9319 (1999). Pursuant to the terms of the Order in what was then the Final Decision, Agency should have reinstated Employee no later than June 2, 2005. However, it did not do so.

On July 7, 2005, Employee, who at that time was unrepresented, filed a motion for compliance in which she asserted that Agency had yet to reinstate her. On July 29, 2005, in

a written response to an Order from me dated July 8, 2005, Agency admitted that it had not yet reinstated Employee, and requested an additional two weeks to do so. By Order dated August 1, 2005, I granted Agency's request and ordered it to reinstate Employee no later than August 12, 2005.

On August 18, 2005, Employee submitted a document in which she claimed that Agency had failed to reinstate her by the August 12, 2005 deadline. However, also on August 18, 2005, Agency submitted two documents dated August 12, 2005, both of which showed that effective August 23, 2005, Employee was being reinstated to a position comparable to that from which she had been separated. Agency also submitted a document pertaining to back pay. On September 14, 2005, Agency filed a Submission Regarding Compliance which contained the documents previously submitted on August 18. Additionally, the submission contained the following:

The Agency Representative was informed that the Employee accepted the offer of employment. Nevertheless, it was also stated that Employee has not reported to work. The Agency asserts that it has complied with the OEA decision based on the fact that the Employee was offered and accepted the position.

Submission Regarding Compliance at 3.

By Order dated September 16, 2005, I ordered Employee to respond to Agency's Submission Regarding Compliance. I specifically asked her to advise me of the current status of her employment. On September 22, 2005, Employee, now through her attorney, responded to my Order. The essence of the response was that Employee was attempting to take an "Early Out" retirement "in order to help care for her elderly father, who had been injured in an earlier traffic accident." Employee's Submission at 2. Further, Employee claimed that her attempt to retire was not a rejection of Agency's offer of reinstatement. Additionally, the submission reads as follows:

Employee McHugh respectfully moves this tribunal to issue an order granting her the right and privilege of accepting an "Early Out" retirement based upon her age and length of service to [Agency]. Therefore, Employee McHugh respectfully moves the Office of Employee Appeals to amend its Order dated October 15, 2005 (sic).

Id.

On September 22, 2005, I issued an Order Regarding Employee's Response to Agency's Submission Regarding Compliance, in which I wrote: "Employee's submission evidences several misconceptions about the current posture of this case as well as my authority in this matter. Through this Order, I hope to clear up these misconceptions." I then set forth the procedural history of this matter to date and concluded the Order as follows:

At this time, this matter is before me only on the issue of compliance. In a compliance matter, I have two and only two options: 1) if I determine that Agency is in compliance with the Final Decision, then I issue an Addendum Decision on Compliance dismissing the matter; or 2) if I determine that Agency is not in compliance with the Final Decision, then I issue an Addendum Decision on Compliance certifying the compliance matter to our General Counsel for further action. *See* OEA Rule 636, 46 D.C. Reg. 9321 (1999).

In her September 22, 2005 submission, Employee asks that I "issue an order granting her the right and privilege of accepting an "Early Out" retirement based on her age and length of service to [Agency] [and] amend [my] Order dated October 15, 2005 (sic)." However, as I will now explain, I lack the authority to do either.

Neither I nor any other member of this Office has any say over Employee's decision to attempt to retire at this time. Retirement discussions are entirely within the purview of the parties, and not this Office. Thus, I have absolutely no authority to interfere in those discussions. Therefore, Employee's request that I "issue an order granting her the right and privilege of accepting an 'Early Out' retirement" is DENIED. Likewise, her request that I amend my Initial Decision is DENIED.

As I stated above, at this point the only issue before me is that of compliance, and in that regard I still need to know Employee's current employment status. Specifically, has Employee reported for duty as she was required to do? Employee is hereby ORDERED to submit her response to that question by the close of business on September 29, 2005.

Failure to respond to this Order by the deadline will result in a determination that the agency is in compliance with the final decision in this matter.

September 22, 2005 Order at 2. (emphasis in original). By Orders issued on September 29 and October 6, 2005, I extended the original September 29, 2005 deadline for Employee's response to my September 22 Order until October 13, 2005.

On October 13, 2005, Employee responded to my September 22, 2005 Order. In part, her response reads as follows:

The [Employee and the Agency] were unable to resolve the issues related to Ms. McHugh's request for an "early out" retirement, but those negotiations are continuing and [we] are hoping that the issue will be resolved amicably.

Ms. McHugh has previously given a medical excuse to the agency explaining the problems she has encountered as a result of this situation, and she has requested a delay in her employment reporting time.

Employee's Response at 3. Employee goes on to state that she is currently being treated for "job stress, anxiety and depression" at the National Counseling Group and the Mt. Vernon Primary Care Associates. *Id.* Her response concludes as follows: "Ms. McHugh respectfully moves the [Agency] and the Office of Employee Appeals to grant her request for a medical leave of absence, and postponement of her duty reporting date." *Id.* The record in this compliance matter is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

Whether this compliance matter may now be dismissed.

ANALYSIS AND CONCLUSIONS

OEA Rule 636.7, 46 D.C. Reg. at 9322, states that in a compliance matter, the Administrative Judge “shall take all necessary action to determine whether the final decision is being complied with and shall issue a written opinion on the matter.”

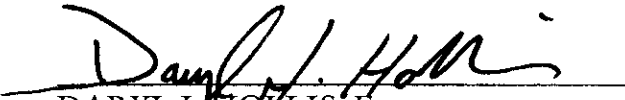
As with my previous determination that I have no jurisdiction over Employee’s request for an “early out”, I likewise have no authority to grant Employee’s request for a medical leave of absence and postponement of her duty reporting date. The resolution of those issues is entirely within the purview of the parties, and not this Office.

As to the compliance issue, based on my review of all of the pertinent documents, I conclude that Agency has offered Employee a comparable position, and that she has accepted that offer. The documents also show that Agency is processing Employee’s back pay. Thus, Agency is now in compliance with the terms of the Final Decision in the underlying matter. Therefore, I conclude that this compliance matter may now be dismissed.

ORDER

It is hereby ORDERED that this compliance matter is DISMISSED.

FOR THE OFFICE:


DARYL L. HOLLIS, Esq.
Senior Administrative Judge