THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
GEORGE P. SURGENT Employee	OEA Matter No. 2405-0096-91C00
v.	Date of Issuance: December 21, 2005
DEPARTMENT OF HUMAN SERVICES Agency	

OPINION AND ORDER
ON
PETITION FOR REVIEW

George Surgent ("Employee") worked as a DS-13 Auditor for the Department of Human Services ("Agency") until November 15, 1991, when a reduction-in-force ("RIF") action was taken against him. On December 3, 1991, Employee appealed Agency's RIF action. The Administrative Judge for the Temporary Appeals Panel ("TAP") of the Office of Employee Appeals ("OEA"), on November 23, 1992, issued an Initial Decision. The Initial Decision reversed the RIF action; ordered Agency to reinstate Employee; and ordered Agency to restore Employee with all pay and benefits

lost as a result of the RIF. Agency appealed the Initial Decision to the full TAP and subsequently appealed the matter to the D.C. Superior Court on January 27, 1993.

In November of 1993, Employee accepted a position with the D.C. Metropolitan Police Department, where he remained until September 8, 2000 when he retired. On April 14, 1994, Agency withdrew its appeal in Superior Court. Employee then filed a Petition for Enforcement of the November 23, 1992 Order. As a result of that petition, the attorney fees and back pay amounts were paid by Agency. However, reimbursement of Employee's health insurance premiums were still outstanding.

On March 26, 2003, OEA's Administrative Law Judge ("ALJ") issued an Addendum Decision on Compliance in which he concluded that Employee was entitled to reimbursement of up to seventy-five percent (75%) of the amount paid. This represents the amount Agency would have paid for Employee's health insurance premiums. Agency filed a Petition for Review on April 30, 2003, arguing that it pays its portion of the insurance premiums directly to the insurance carrier and not the employee. Therefore, Employee is not entitled to reimbursement of Agency's share of the insurance premiums because a cash reimbursement to Employee would violate 5 U.S.C. § 8909(a). On June 9, 2003, Employee filed a response to Agency's petition. He argued that in the interest of equity and justice, he was entitled to reimbursement of the benefits he paid on Agency's behalf.

This Board disagrees with Agency's interpretation of 5 U.S.C. § 8909(a) and finds Employee's argument for reimbursement more persuasive. The relevant portion of 5 U.S.C. § 8909(a) provides that:

> "(a) An employee enrolled in a health benefits plan under this chapter [*5 USCS § 8901* et seq.] who is removed or suspended without pay and later reinstated or restored to duty on the ground that the removal or suspension was unjustified or unwarranted may, at his option, enroll as a new employee or have his coverage restored, with appropriate adjustments made in contributions and claims, to the same extent and effect as though the removal or suspension had not taken place."

The statute addresses two separate elements pertaining to health insurance benefits. First, it addresses an employee's option of enrolling as a new employee or having his coverage restored. Second, it provides that appropriate adjustments shall be made for contributions as though the employee's removal had not taken place.

Agency's Petition for Review deals with the issue of restoration of Employee's coverage, but it neglects to address the "appropriate adjustments made in contributions" portion of the statute. But for Employee's wrongful removal, Agency would have continued to pay 75% of his health benefits with the remaining 25% to be paid by Employee. Employee provided proof that he paid the entire 100% of the health benefits during his wrongful removal, therefore, Agency is required to reimburse him for his payment on its behalf. Otherwise, Agency would benefit from its improper removal of Employee because it would be relieved from the actual payment and reimbursement of the payment. Furthermore, at this point Agency could not pay the insurance carrier directly because it would result in the insurance carrier being paid twice for the period that Employee was removed. Accordingly, we hereby deny Agency's Petition for Review.

ORDER

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

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Jeffrey J. Stewart

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 date 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.