Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager 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:	)	
	)	
ANGELITA BUCKMAN	)	
Employee	)	
	)	OEA Matter No.: 1601-0215-04
v.	)	
	)	Date of Issuance: November 13, 2008
DEPARTMENT OF HUMAN SERVICES	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Angelita Buckman ("Employee") was an Investigator in the Income Maintenance Administration unit of the Department of Human Services ("Agency"). As part of her duties, Employee was required to visit homes, conduct studies of those homes, and submit the findings to Agency.

In April 2003 Employee asked Agency to place her on light duty due to various medical conditions afflicting her. Agency claimed that it had no light duty positions available for Employee. For the rest of that year, Employee's attendance at work was so

sporadic that in December, Agency placed Employee on an Absent Without Leave ("AWOL") status.

From January 5, 2004 to April 9, 2004, Employee continued to be absent. As a result, Agency charged Employee with AWOL and proposed terminating her. The termination took effect on July 23, 2004.

Thereafter, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). Throughout the appeal, Employee never denied that she was absent from work during the period for which she was charged with being AWOL. She claimed, however, that Agency failed to accommodate her condition which, according to Employee, required that she be placed on light duty.

As proof that she had a condition which required light duty, Employee presented to the Administrative Judge during the evidentiary hearing several medical certificates dated for the months of April, May, June, and July 2003. Moreover Employee testified that her last contact with Agency was in December 2003. Employee also argued that this Office's decisions in *Tywania Nesmith v. Dep't of Human Services,* OEA Matter No. 1601-0116-02 (March 12, 2004), ___D.C. Reg.___ ( ) and *Teshome Wondafrash v. Dep't of Human Services,* OEA Matter No. 1601-0126-96 (May 1, 2002), ___D.C. Reg.___ ( ) lent further support to her position.

In an Initial Decision issued March 14, 2006, the Administrative Judge upheld Agency's removal action. The Administrative Judge stated that Employee had to "establish that she was having significant health problems that prohibited her from working during 2004, the period that form[ed] the basis for her removal."[1] She went on

[1] *Initial Decision* at 7.

to find that the "record does not support the conclusion that Employee had one or more medical conditions that prohibited her from returning to work in 2004."[2]

With respect to this Office's decisions relied upon by Employee, the Administrative Judge distinguished those cases from Employee's case. The Administrative Judge found the *Nesmith* case to be inapplicable because "there [was] no evidence that Employee attempted to return to work in 2004 and was refused the right to do so by Agency"[3] as was the circumstance in *Nesmith.* Concerning *Wondafrash*, the Administrative Judge stated that unlike the employee in that case who presented his primary care physician and his psychologist as witnesses, "Employee presented no witnesses to support a conclusion that her medical condition was sufficiently serious that she was unable to work during the period that formed the basis for her removal."[4] After reviewing all of the evidence and arguments made by both Agency and Employee, the Administrative Judge held that "Agency [had] met its burden of proof by a preponderance of the evidence that the removal should be sustained."[5]

Employee has now filed a Petition for Review. In it she asks that we accept her petition and reverse the Initial Decision for the following reasons: the decision makes no mention of her inability to return to work during the period for which she was charged with AWOL; she was charged erroneously for health insurance even though she had been terminated; the union failed to represent her in these proceedings; she was not given a copy of Agency's closing argument; and her case was not decided in accordance with *Wondafrash*.

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[2] *Id.*
[3] *Initial Decision* at 6.
[4] *Id.* at 7.
[5] *Id.*

We disagree with Employee's contentions. The Administrative Judge evaluated all of the evidence and found that Employee had not presented any evidence to sustain her claim that she was not able to work from January 5, 2004 to April 9, 2004. Employee's arguments regarding the erroneous payment for health insurance and the failure of her union to represent her are not issues which we can address. Those are issues more in the nature of a grievance which we are without the jurisdiction to consider. Furthermore we believe it to be harmless error if Employee did not receive Agency's closing argument. Lastly the Administrative Judge sufficiently distinguished Employee's case from *Wondafrash* and Employee has not given us any reason to second guess the Administrative Judge's finding on that issue. For the foregoing reasons we are compelled to deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

_____
Sherri Beatty-Arthur, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

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.