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**THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:)	
)	OEA Matter No.: 1601-0056-23
EMPLOYEE, ¹)	
Employee)	
)	
v.)	Date of Issuance: September 18, 2024
)	
D.C. DEPARTMENT OF TRANSPORTATION,)	
Agency)	
)	MICHELLE R. HARRIS, ESQ.
)	Senior Administrative Judge
Joseph F. Davis, Employee Representative		
Nana Bailey-Thomas, Esq., Agency Representative ²		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 4, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Transportation’s (“Agency” or “DDOT”) decision to suspend her from service for ten (10) days.³ The effective date of the suspension was August 2, 2023. OEA issued a letter on August 8, 2023, requiring Agency to submit an Answer to Employee’s Petition for Appeal by September 8, 2023. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on September 8, 2023. Agency did not file its Answer by the deadline. Accordingly, on September 13, 2023, the undersigned issued an Order for Agency Answer and Statement of Good Cause. Agency was ordered to file its Answer by the close of business on September 25, 2023. On September 22, 2023, Agency filed its Statement of Good Cause requesting time through October 6, 2023, to file its Answer.⁴ On September 25, 2023, Employee’s representative notified the undersigned of its consent to Agency’s request. On September

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

²Agency was previously represented in this matter by Shawn Brown, Esq. Following correspondence from the undersigned regarding the new Agency representative, Agency filed its Designation of Representation on September 12, 2024.

³ The Final Notice cited that the cause of action was based upon DPM §§1605.4(f) and 1607.2(f)(3) – Unauthorized absence of one (1) workday or more, but less than five (5) workdays; and DPM §§ 1605. 4 (e) and 1607.2 (e) – Neglect of Duty.

⁴ Agency cited therein that its representative had been ill and had other schedule conflicts which prevented the filing of its Answer.

25, 2023, I issued an Order granting Agency's request and required that the Answer be filed by October 6, 2023. Agency filed its Answer to Employee's Petition for Appeal on October 11, 2023.

On October 11, 2023, I issued an Order Convening a Prehearing Conference for November 8, 2023. Prehearing Statements were due by October 31, 2023. Both parties appeared for the Status Conference on November 8, 2023, as required. During the Conference, the undersigned determined that briefs were warranted. A Post Prehearing Conference Order was issued on November 8, 2023, requiring the parties to submit briefs. Agency's brief was due on or before December 18, 2023, Employee's brief was due by January 26, 2024, and Agency had the option to submit a sur-reply brief by February 8, 2024. On December 21, 2023, Agency filed a Consent Motion for an Extension of Time to file the brief. Agency asserted that Employee's representative consented to its request for Extension of Time to file its brief. On December 23, 2023, I issued an Order granting Agency's Motion. Agency's brief was due on or before January 12, 2024, Employee's brief was due on or before February 13, 2024, and Agency had the option to submit a Sur-Reply brief on or before February 24, 2024.

On January 10, 2024, Agency's representative emailed the undersigned and included a Second Consent Motion for an Extension of Time to file its brief.⁵ Agency asserted that Employee's representative consented to the request for an extension of time. As a result, on January 11, 2024, I issued an Order granting Agency's request and extended the time for briefs. Agency's brief was due on or before February 2, 2024, Employee's brief was due on or before March 1, 2024, and Agency had the option to submit a sur-reply by March 14, 2024. Agency filed its brief on February 9, 2024. On March 7, 2024, I issued an Order for Statement of Good Cause to Employee because the brief had not been submitted by the prescribed date. On March 12, 2024, Employee, by and through her representative, filed a Motion for an Extension of Time. Employee's representative cited therein that more time was needed due to serious medical challenges he was facing. On March 13, 2024, I issued an Order granting Employee's Motion. Employee's brief was now due on March 29, 2024, however that Order also noted that given the circumstances regarding the seriousness of the medical circumstances faced by Employee's representative, should more time be needed, an order would be issued based upon the information provided. Additionally, that Order gave Agency the option to submit its sur-reply brief on or before April 15, 2024.

Employee's representative filed Employee's brief on March 21, 2024. Shortly thereafter, on March 28, 2024, Employee's representative notified the undersigned of ongoing serious medical challenges he was facing which impacted his representation of matters before OEA.⁶ He also provided a courtesy copy of Employee's brief. Agency's representative also responded to this email correspondence, citing that it requested additional time for which to submit a sur-reply brief as it had only received the brief on March 28, 2024. The undersigned advised Agency's representative to file a motion with this request for the record. Agency did not file a motion. On April 23, 2024, the undersigned sent email correspondence inquiring further regarding Agency's sur-reply brief, as it had not been filed by that time. Agency's representative responded and noted that at that time he would not be filing a sur-reply brief. Agency's representative also provided notice that he would be departing Agency and that the General Counsel would notify the undersigned of the new

⁵ Agency's representative noted that due to sick leave, he was unable to file the instant Motion. As a result, the undersigned has made an exception and has accepted the email copy of the Motion for consideration for the record.

⁶ Notification made via email correspondence. Given the circumstances of Employee's representative medical challenges and medical leave, the undersigned stayed this matter pending Employee's representative return to work in August 2024.

representative. Upon review of the record, the undersigned determined that supplemental information was needed. However, the undersigned instituted a stay of this matter pending Employee's representative return to representation following medical leave. Employee's representative returned to representation in August 2024.

On August 27, 2024, the undersigned sent email correspondence to the parties to determine the status and ascertain Agency's representation. Agency replied on September 10, 2024, and cited that a new designation would be filed. On September 12, 2024, Agency filed its new designation. Employee's representative also replied to that email correspondence on September 10, 2024, noting that he would be seeking to dismiss the matter due to the unexpected passing of Employee. On September 17, 2024, Employee's representative submitted a Motion for Withdrawal of this matter, citing that Employee was deceased. I have determined that an Evidentiary Hearing in this matter is not warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this appeal should be dismissed based upon Employee's voluntary withdrawal.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In the instant matter, Employee's representative submitted a withdrawal of the Petition for Appeal to this Office. Employee's representative cited therein that Employee was deceased and requested the matter be dismissed. For these reasons, I find that Employee's Petition for Appeal should be dismissed.

ORDER

It is hereby **ORDERED** that Employee's Petition in this matter is hereby **DISMISSED**.

FOR THE OFFICE:

/s/ Michelle R. Harris
Michelle R. Harris, Esq.
Senior Administrative Judge