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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
OMONHODION OKOJIE,)	
Employee)	OEA Matter No. 1601-0314-10-R16
)	
v.)	Date of Issuance: July 8, 2016
)	
D.C. DEPARTMENT OF)	
MENTAL HEALTH,)	
Agency)	Eric T. Robinson, Esq.
)	Senior Administrative Judge
_____)	
D. Michael Lyles, Esq., Employee Representative)	
Frank McDougald, Esq., Agency Representative)	

INITIAL DECISION ON REMAND

INTRODUCTION AND PROCEDURAL HISTORY

Pursuant to a notice of proposed adverse action (“Notice”) dated January 28, 2010, Omonhodian Okojie (“Employee”) was advised that he was being recommended for termination due to misconduct. The Notice further advised Employee that he could request an administrative review of the matter that would be conducted by a hearing officer. On February 16, 2010, Employee signed a Designation of Representation form which authorized Edward J. Smith, Esq., to represent him in “responding to the notice of proposed removal.” Mr. Smith is a staff attorney for the District of Columbia Nurses Association (“DCNA” or “the Union”). The DCNA is a union and at the time of the Notice, Employee was a member of DCNA. On February 19, 2010, Mr. Smith submitted a reply to the Notice and on March 12, 2010, the hearing officer completed the administrative review of the matter.

In a letter to Employee dated May 6, 2010, he was advised that a decision had been made to terminate his employment effective May 14, 2010. The letter was also sent to Mr. Smith. On May 6, 2010, by electronic mail, Mr. Smith filed a “Step 4 Grievance” with the Director of the Department of Mental Health to challenge the removal. See Agency Motion to Dismiss at

Attachment 2. On May 21, 2010, Mr. Smith advised the Director of the Agency that the final decision to terminate Employee had been received and that “DCNA maintains the Step 4 grievance and maintains that Dr. Canavan’s decision is untimely and therefore not appropriately before you.” See Agency Motion to Dismiss at Attachment 3. On June 1, 2010, Mr. Smith advised the Director of the Agency that “DCNA hereby withdraws the Step 4 grievance” See Agency Motion to Dismiss at Attachment 4. No explanation was provided for the withdrawal. On or about June 10, 2010, Employee filed a Petition for Appeal with the Office of Employee Appeals, challenging his removal.

I was initially assigned this matter on or about July 10, 2012. On October 2, 2012, the undersigned convened a Prehearing Conference (“PC”) in the above-captioned matter. As part of the PC, the Undersigned determined that there existed a question as to whether the OEA may exercise jurisdiction over this matter. The undersigned noted that D.C. Official Code § 1-616.52 *et al* provides that an employee who has appeal rights through both a collective bargaining agreement and the Office of Employee appeals may file through either *mechanism but not both*. Moreover, whichever mechanism is chosen first is the only avenue that Employee may utilize in challenging Agency’s action. Thereafter, the parties submitted legal briefs addressing the jurisdictional concerns noted. After reviewing the submissions, the Undersigned issued an Initial Decision (“ID”) on December 2, 2013. The Undersigned found that the OEA lacked jurisdiction due to Mr. Smith’s, on Employee’s behalf, opted to initiate a Step 4 grievance in this matter thereby invoking Employee’s right of review through the Collective Bargaining Agreement. Thereafter, Employee filed a Petition for Review with the District of Columbia Superior Court (“the Court”). The court opted to remand this matter to Undersigned noting that Employee did not make the choice to file a Step 4 grievance, but rather, that decision was made by Mr. Smith without Employee’s consent.

The matter was then reassigned to the Undersigned. While this matter was proceeding towards an Evidentiary Hearing, the parties participated in settlement talks under the guidance of the OEA’s Mediation department. Recently, Senior Administrative Judge Joseph E. Lim informed the undersigned that the settlement talks were successful. Thereafter, on July 7, 2016, Employee, through counsel, submitted an executed Praecept of Dismissal with Prejudice. It noted that the parties had reached a settlement in this matter and requested that this matter be dismissed in compliance with the settlement agreement. Considering the record as a whole, I find that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether this matter should be dismissed.

ANALYSIS AND CONCLUSION

I am guided by the OEA rules in this matter. OEA 606.2¹ provides that “the Office shall exert every possible effort to resolve matters by mediation, to the extent possible, rather than through litigation.” Furthermore, OEA Rule 606.11 states that “if the parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code § 1-606.06(b) (2006 Repl.)” It is evident from the record that the parties have settled their differences in this matter. Accordingly, I find that Employee’s Petition for Appeal should be dismissed in accordance with OEA Rule 606.11.

ORDER

Based on the foregoing, it is hereby ORDERED that this matter be DISMISSED.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Senior Administrative Judge

¹ 59 DCR 2129 (March 16, 2012).