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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)
In the Matter of:)
) OEA Matter No. 1601-0073-06
JOHN CLAYTON)
EMPLOYEE) Date of Issuance: March 30, 2010
)
v.) Sheryl Sears, Esq.
) Administrative Judge
D.C. FIRE AND EMERGENCY)
MEDICAL SERVICES)
DEPARTMENT)
AGENCY)
_____)

James T. Maloney, Esq., Employee Representative
Andrea G. Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

John Clayton (“Employee”) was a Communications Operations Liaison Specialist, DS-301-14 with the D.C. Fire and Emergency Medical Services Department (“Agency”). Agency removed him, effective on June 16, 2006, upon charges that Employee submitted fraudulent claims for overtime pay and retained overtime compensation to which he knew or should have known he was not entitled. On June 21, 2006, Employee filed a petition for appeal with this Office. Therein, he set forth several challenges to the action. Concurrently, a criminal prosecution was initiated against Employee.

The parties convened for a pre-hearing conference in this matter on October 18, 2006. Pursuant to their joint request, the matter was stayed pending the disposition of possible criminal charges arising from the same set of facts as the appeal. In periodic updates to the Judge, the parties expressed their preference that the stay remain in effect.

In a conference call on October 19, 2009, the parties advised the Judge that Employee agreed to a settlement of the criminal charges that arose from the same incident from which the appeal was taken. On November 16, 2009, Agency filed a motion for summary disposition upon the grounds that, in the settlement agreement, Employee admitted to committing the wrongful conduct that caused his termination by Agency. The agreement, between the District of Columbia and John D. Clayton states, in relevant part, “Mr. Clayton . . . acknowledges that the claims submitted to the Fire and Emergency Medical Services of the District of Columbia and retaining of overtime compensation to which he knew or should have known he was not entitled, were in fact knowingly fraudulent.” The document contains Employee’s signature.

Employee was granted until December 8, 2009, to submit a response to the motion for consideration by this Judge. On December 30, 2009, Employee submitted the following statement: “The Employee John Clayton respectfully informs this Court that he will not be filing any opposition to the *Agency’s Motion for Summary Disposition*.”

JURISDICTION

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

ANALYSIS AND CONCLUSION

Agency has filed an unopposed motion for the summary disposition of this matter. The rules of the Office provide, as follows:

616 SUMMARY DISPOSITION

- 616.1 If, upon examination of the record in an appeal, it appears to the Administrative Judge that there are no material and genuine issues of fact, that a party is entitled to a decision as a matter of law, or that the appeal fails to state a claim upon which relief can be granted, the Administrative Judge may, after notifying the parties and giving them an opportunity to submit additional evidence or legal argument, render a summary disposition of the matter without further proceedings.
- 616.2 An Administrative Judge may render a summary disposition either *sua sponte*, after notice under Rule 616.1, or upon motion of a party.
- 616.3 An order granting summary disposition shall conform to the requirements for initial decisions set forth in Rule 632.

Employee has admitted the behavior that was cause for the removal he appealed. Inasmuch as he admitted the behavior, Agency is entitled to a decision in its favor as a matter of law. There are no longer grounds for the appeal. In accordance with the rules of this Office, it will be dismissed.

ORDER

It is hereby ordered that the petition in this matter is dismissed with prejudice.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE