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

In the Matter of:)	
)	OEA Matter No.: 1601-0072-23
EMPLOYEE, ¹)	
Employee)	
)	
v.)	Date of Issuance: February 27, 2024
)	
D.C. DEPARTMENT OF PUBLIC WORKS,)	
Agency)	
)	MICHELLE R. HARRIS, ESQ.
)	Senior Administrative Judge

Vanessa Dixon-Briggs, Employee Representative
Kevin Poge, Employee Representative
Millicent M. Jones, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On September 22, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Public Works’ (“Agency” or “DPW”) decision to terminate him from service.² The effective date of the termination was August 25, 2023. OEA issued a letter on September 22, 2023, requiring Agency to submit an Answer on or before October 23, 2023. Agency filed its Answer to Employee’s Petition for Appeal on October 23, 2023. This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on October 25, 2023. On October 26, 2023, I issued an Order scheduling a Prehearing Conference in this matter for November 16, 2023.

On November 14, 2023, Agency filed a Consent Motion to Extend the Deadline and Reschedule the Prehearing Conference. Agency cited therein that the parties required additional time for completion of discovery prior to filing the Prehearing Statements. An Order was issued on November 15, 2023, granting this request and rescheduled the Prehearing Conference to November 30, 2023. On November 20, 2023, Agency filed a Consent Motion to Stay the Deadline to submit Prehearing Statements and the Prehearing Conference. Agency cited therein that on November 17, 2023, it confirmed that Employee’s alcohol test had been misinterpreted and that Employee should

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

² The Final Notice cited that the cause of action was based upon DPM 1607.2(g)(2) -Intoxicants/Alcohol and Spirits and DPM 1607.2(h)(3)-Controlled Substances/Paraphernalia.

not have been terminated. Agency further cited that it intended to rescind the termination and reinstate Employee on or before November 27, 2023. On November 28, 2023, I issued an Order granting Agency's Motion, in part. That Order stayed the proceedings pending the holding of a Status Conference on November 30, 2023.

Both parties appeared for the Status Conference on November 30, 2023, as required. Agency cited therein that Employee's Return to Duty paperwork had been executed and that Employee was to return to work on December 4, 2023. The parties noted during the conference that there was a remaining outstanding issue regarding backpay owed from the time of termination, that the parties were still working to ascertain. Accordingly, the undersigned advised the parties that given the circumstances, this matter would be treated as the parties engaging in settlement discussions and that upon the resolution of the matter (return to work and backpay), that the matter would be dismissed upon receipt of a withdrawal of the Petition for Appeal. Parties were also advised to provide a status update in this matter. An Order was issued on November 30, 2023, requiring the parties to submit a status update/report by or before December 15, 2023.

On December 15, 2023, Agency filed a Consent Motion to Extend the time to file a status update, citing that the parties were still working to resolve outstanding issues regarding the reinstatement, including driving privileges and substance abuse evaluations. In an Order issued on December 18, 2023, the undersigned noted that the December 15 submission was a sufficient status report and that Agency's Motion is moot. This Order further required that the parties provide a status update on or before December 22, 2023. On December 22, 2023, the parties filed a Joint Status Update which included a summary of the actions to date and stipulated facts. That statement provided that Employee had been reinstated and returned to work as of December 4, 2023, and that the only outstanding issue was Employee's claims for reimbursement for a substance abuse evaluation wherein, Employee had to pay out of pocket. After no receipt of any subsequent updates or the submission of a notice of withdrawal from Employee, on January 24, 2024, the undersigned issued an Order scheduling a Status Conference for February 7, 2024.

The parties appeared for the Status Conference on February 7, 2024, as required. During the Status Conference, the parties asserted that Employee had been fully reinstated and returned to work as of December 4, 2023. Further, it was determined that Employee did not have any lapse in pay, so backpay was not at issue. Employee's representatives conveyed that the only outstanding issue for their settlement discussions was regarding whether Employee should receive reimbursement for substance abuse evaluation he was required to attend and that he paid out of pocket. Agency asserted that it was its position that this was not an expense that could be reimbursed. Employee's representative noted that this was the reason why a notice of withdrawal had not yet been submitted. The undersigned advised the parties that because the action has been rescinded, and Employee had been fully reinstated and that there were no issues regarding backpay, the disposition of this matter was ripe for dismissal before this Office.³ On February 23, 2024, Employee submitted a Notice of Withdrawal of this matter. 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).

³ The undersigned further noted that the ongoing settlement discussions regarding the substance abuse evaluation costs was not an issue for this tribunal to determine.

ISSUE

Whether this appeal should be dismissed based upon the rescission of the adverse action and Employee's voluntary withdrawal.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

In the instant matter, the parties reached an agreement as provided in the December 22, 2023, Joint Statement, wherein the adverse action was rescinded, and Employee reinstated to duty. Furthermore, on February 23, 2024, Employee submitted a withdrawal of the Petition for Appeal to this Office. 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