

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. 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:)	
)	
BRANDON DICKENS,)	
Employee)	
)	OEA Matter No.: 1601-0020-15
v.)	
)	Date of Issuance: September 13, 2016
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Brandon Dickens (“Employee”) worked as a Motor Vehicle Operator with the Office of the State Superintendent of Education (“Agency”). On November 12, 2014, Agency issued a final notice demoting him from a Motor Vehicle Operator to a Bus Attendant.¹ The notice provided that he was being reduced in grade and salary based on his refusal to submit to a “Fit for Duty” assessment. The effective date of the demotion was November 30, 2014.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 28, 2015. He argued that Agency should not have demoted him and requested that he be reassigned to another division.² Agency filed its Answer on December 11, 2014. It stated that

¹ *Petition for Appeal* (January 28, 2015).

² *Id.*, p. 4.

Employee's refusal to submit to a fitness assessment served as a sufficient basis for the reduction in grade and pay action.³ Therefore, it asked that OEA deny Employee's Petition for Appeal.⁴

An OEA Administrative Judge ("AJ") was assigned to this case on February 23, 2015. On March 3, 2015, the AJ ordered Employee to submit a notice of withdrawal to this Office because the matter was settled during a mediation conference.⁵ He did not reply to the order. The AJ subsequently issued an Initial Decision on April 14, 2015. She held that Employee failed to submit a notice of withdrawal by the required deadline, thereby violating her March 3, 2015, order.⁶ She, therefore, dismissed his Petition for Appeal for failure to prosecute.⁷

Employee subsequently filed a Petition for Review with the OEA Board on April 28, 2015. He argues that he has consistently complied with each of OEA's request to submit documentation and states that his failure to respond to the AJ's order was merely a harmless error.⁸ Employee states that he has been diligent in prosecuting his appeal before this Office and apologizes for his failure to submit a written notice of withdrawal.

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;

³ *Agency Answer to Petition for Appeal* (December 14, 2014).

⁴ *Id.* at 2.

⁵ *Order Requesting Notice of Withdrawal* (March 3, 2015).

⁶ *Initial Decision* at 3.

⁷ *Id.*

⁸ *Petition for Review* (April 28, 2015).

- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

In this case, Employee has not raised any of the aforementioned reasons as a basis for granting his Petition for Review. It should be noted that his appeal includes the following statement “Employee has also consistently complied with all of the requirements of OEA...except for requesting [a] withdrawal which he herein does now.”⁹ While it is unclear to this Board the exact purpose for which he filed a Petition for Review, any argument that Employee is presenting is moot. The matter has been fully settled by the parties. The AJ previously dismissed the Petition for Appeal for failure to prosecute on April 14, 2015 in light of the settlement agreement. Based on the foregoing, Employee’s Petition for Review must be dismissed.

⁹ *Id.*

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.