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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
EMPLOYEE ¹)	OEA Matter No. 1601-0017-20
v.)	Date of Issuance: September 21, 2021
DISTRICT OF COLUMBIA DEPARTMENT OF MOTOR VEHICLES Agency)	Lois Hochhauser, Esq. Administrative Judge
Gina Walton, Employee Representative)	
Jhumur Razzaque, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 5, 2019, Employee filed a petition with the Office of Employee Appeals (“OEA”), appealing the decision of the District of Columbia Department of Motor Vehicles (“Agency”) to terminate her employment, effective November 9, 2019. Agency filed a *Motion for Summary Disposition in Favor of the Department of Motor Vehicles or in the Alternative Dismissal of Petition* on January 3, 2020, arguing, in pertinent part, that Employee violated OEA Rule 608.4 by failing to state the reasons for her allegation that Agency wrongfully removed her; and that without this information Agency could not to answer the Petition for Appeal (“PFA”). Agency further asserted that it would be prejudiced, and the proceedings would be “unduly” delayed if Employee was allowed to amend the PFA.

On January 13, 2020, Employee filed *Employee’s Motion to Amend Appeal* and *Employee’s Motion in Opposition of Agency’s Motion for Summary Disposition or in the Alternative Dismissal of Petition*, contending that her failure to include the reasons for her contention that Agency wrongfully removed her, was due to an inadvertent error, *i.e.*, she forgot to attach certain documents to the PFA, although the PFA referred to the attachment of documents. On January 23, 2020, Agency filed *Agency’s Response to Employee’s Motion to Amend Appeal*, in which it maintained its earliest arguments.

¹ The person filing a Petition for Appeal with this Office is not identified by name, but rather by the designation “Employee,” in published decisions.

By Order dated June 18, 2020,² the Administrative Judge (“AJ”) granted Employee’s motion and denied Agency’s motions. The AJ found that Agency would not be prejudiced, and the proceedings would not be unduly delayed if Employee was permitted to amend the PFA; but that dismissal of the appeal would deprive Employee of the right to challenge the removal, and would be an inappropriately harsh penalty for an inadvertent error, particularly a first error. She directed Employee to amend the PFA and Agency to answer the amended PFA by stated deadlines.

The parties responded with timely submissions. However, the AJ determined, for reasons detailed in the October 20, 2020 Order; that neither submission fully complied with her directives or applicable OEA Rules. The parties were directed to file submissions consistent with the Order, and were cautioned that failure to comply could result in the imposition of sanctions. The parties filed timely submissions. On February 24, 2021, an Order was issued scheduling oral argument for April 7, 2021. At the request of the parties, oral argument was continued.

Agency contended, during oral argument on May 17, 2021 that Employee’s second amended PFA failed to comply with the October 20 Order since it was unchanged from the earlier PFA. Employee, through her representative, argued that the document that she had hand-delivered to OEA for filing on October 28, 2020, had included the necessary changes. The AJ noted that the copy sent to her, like the copy Agency received, was unchanged from the earlier PFA; and that OEA administrative staff had informed her that it did not have a record of filing of the second amended PFA. The AJ stated that she would ask OEA staff undertake another investigation to locate the second amended PFA. On July 21, 2021, the AJ informed the parties, in an Order issued on that date, that OEA staff had completed two additional investigations and still had not located a second amended PFA. The AJ directed Employee representative to submit an affidavit, signed before a Notary Public, with specific information regarding when and where she filed the document and the additional information in the document that complied with the prior Order. The representative filed the affidavit with the required information in a timely manner. On August 16, 2021, the AJ issued an Order directing Agency to file objections, if it had any, to the affidavit; and stating that she would accept the affidavit and schedule the matter for an evidentiary hearing, unless Agency’s objections established good cause. Agency did not file objections.

The AJ scheduled the evidentiary hearing for October 24, 2021. However, on September 14, 2021; Employee filed *Employee’s Notice of Withdrawal of Appeal*, which states, in pertinent part, that the parties had “entered into a Settlement Agreement,” and that pursuant to its terms, Employee was “withdraw[ing] her pending petition for appeal of her termination with prejudice.” The *Notice* was signed by her representative. The record in this matter closed on September 15, 2021.

JURISDICTION

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

ISSUE

Should the petition be dismissed?

² Delays in this matter were primarily the result of restrictions required by the District of Columbia Government due to the COVID-19 Pandemic.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee's Notice of Withdrawal of Appeal, signed by her authorized representative, states that Employee was withdrawing her PFA with prejudice, pursuant to the settlement agreement reached by the parties. D.C. Official Code §1-606.06(b) (2001) states that the AJ may dismiss a petition for appeal based on a voluntary settlement by the parties. *See, e.g., Rollins v. District of Columbia Public Schools*, OEA Matter No. J-0086-92, *Opinion and Order on Petition for Review* (December 3, 1990). The settlement agreement appears to have been entered into voluntarily by the parties. The AJ, upon review and consideration, concludes that the matter should be dismissed pursuant to D.C. Official Code §1-606.06(b).

ORDER

The petition for appeal is dismissed.³

FOR THE OFFICE:

Lois Hochhauser, Esq.
Administrative Judge

³ The AJ commends the parties on their successful resolution of this matter.