

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Robert Alvarado)	OEA Matter No. 1601-0069-13
Employee)	
)	Date of Issuance: March 9, 2016
v.)	
)	Senior Administrative Judge
D.C. Fire & Emergency Medical Services)	Joseph E. Lim, Esq.
Agency)	
_____)	
Megan Mechak, Esq., Employee Representative)	
Andrea Comentale, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION

On March 27, 2013, Robert Alvarado (“Employee”), a Lieutenant at the D.C. Fire & Emergency Medical Services (“Agency”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) from Agency’s action demoting him for charges of insubordination.

This matter was assigned to me on February 25, 2014. After I conducted a Prehearing Conference on May 9, 2014, I ordered the parties to submit legal briefs on the issues identified. After their submissions, the parties requested mediation on April 13, 2015, and thus, this matter was assigned to a mediator. On May 13, 2015, Agency informed this Office that it had reversed its adverse action against Employee and had the mediation cancelled. Employee’s demotion was rescinded and he was restored to his position of Lieutenant retroactive to July 1, 2012. In addition, all back pay and benefits lost during the demotion period were reimbursed. Agency then filed a Motion to Dismiss on the grounds that the appeal is moot. Employee submitted its response on February 17, 2016, and argued that he still had outstanding issues.

I held a Status Conference on March 4, 2016, where both sides presented their arguments regarding Agency’s motion. Since this matter could be decided based on the parties’ representations as well as the documentary evidence of record, no further proceedings were held. The record is closed.

JURISDICTION

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

ISSUE

Whether this matter should be dismissed as moot.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

The following facts are not subject to genuine dispute:

1. As a result of a Fire Trial Board hearing held on May 16, 2012, on Case No. U-12-073 and Case No. U-12-077, Agency demoted Employee from Lieutenant to Sergeant and suspended him without pay for two hundred sixty four duty hours for neglect of duty and insubordination.
2. Employee appealed this adverse action in OEA Matter No. 1601-0173-12. This matter was assigned to Senior Administrative Judge Eric Robinson.
3. On February 28, 2013, while that matter was pending, Agency issued an Amended Letter of Decision/Demotion to Employee, informing him that he would be demoted again from Sergeant to Firefighter effective March 10, 2013, for an insubordination charge on Case No. U-12-216.
4. On March 27, 2013, Employee filed a Petition for Appeal on Case No. U-12-216 with OEA, where it was labeled as this instant matter, OEA Matter No. 1601-0002-16. This matter was assigned to me.
5. On February 2, 2015, Judge Robinson issued an Initial Decision ("ID") in OEA Matter No. 1601-0173-12 reversing Agency's action.
6. On or around March 10, 2015, Agency informed Employee that it would not seek review of 1601-0173-12, and would implement Administrative Judge Robinson's decision.
7. On May 13, 2015, Agency issued to Employee a Rescission of Final Agency Decision: Demotion. The letter informed Employee that Agency will reinstate him to the rank of Lieutenant retroactive to July 1, 2012, and that Agency will also reimburse all his back pay and benefits lost during the demotion period. Further, all Agency records pertaining to Case U-12-216 will be removed from its files. Employee was

then directed to assume his duty station at the rank of Lieutenant effective May 31, 2015.

At the March 4, 2016, Status Conference, Agency argued that the adverse action which is the subject of this appeal had been totally rescinded and Employee made whole. Employee opposed the dismissal of his appeal on the ground that while his rank has been restored, he argued that the matter is not moot as he had not been able to test for the position of Captain and he believes he has not received all his back pay and benefits. Agency then countered that those issues would be resolved by Employee asking for the full implementation of Judge Robinson's ID. But as for this matter, Agency stressed that it had fully rescinded its adverse action and thus, this particular appeal is moot. After fully considering the parties' positions and making a finding that Employee has been made whole from this particular adverse action, I agree and conclude that this matter is indeed moot.

There is no requirement that this Office adjudicate a matter which is moot. *See Culver v. D.C. Fire Department*, OEA Matter No. 1601-0121-90, *Opinion and Order on Petition for Review* (January 16, 1991). It is well established that an appeal that is based on a personnel action which has been rescinded is moot. *See, e.g., Champion v. Department of Human Services*, OEA Matter No. 2401-0136-96 (July 2, 1998); *Britt et al. v. Department of Human Services*, OEA Matter No. 2401-0135-96 (August 12, 1997); *Mason v. D.C. Public Schools*, OEA Matter No. 1601-0347-96 (October 19, 1999).

Here, it is undisputed that the demotion was in fact rescinded prior to its effective date and based. I conclude that Employee's appeal is now moot and must therefore be dismissed.

ORDER

It is hereby ORDERED that this matter is DISMISSED.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge