

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:	)	
	)	OEA Matter No.: 1601-0055-20
EMPLOYEE <sup>1</sup> ,	)	
Employee	)	
	)	Date of Issuance: August 9, 2022
v.	)	
	)	
D.C. OFFICE OF UNIFIED	)	Michelle R. Harris, Esq.
COMMUNICATIONS,	)	Administrative Judge
Agency	)	
	)	
	)	
	)	
	)	
Joseph M. Creed, Esq., Employee Representative		
Daniel Thaler, Esq., Agency Representative		

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On August 6, 2020, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Office of Unified Communications’ (“Agency” or “OUC”) decision to terminate her from service.<sup>2</sup> The effective date of the termination was July 6, 2020. On September 23, 2020, this Office issued a letter requesting Agency submit an Answer in this matter. Following a request for an extension, Agency filed its Answer on November 20, 2020. This matter was assigned to the undersigned Administrative Judge (“AJ”) on February 26, 2021. On March 3, 2021, I issued an Order scheduling a Prehearing Conference in this matter for March 24, 2021. On March 16, 2021, Employee filed a Motion to Continue the Prehearing Conference citing the need to complete discovery in this matter. Employee requested an additional 60 days. An Order was issued on March 19, 2021, granting this request and rescheduled the Prehearing Conference to May 24, 2021.<sup>3</sup> On May 17, 2021, Agency filed a Motion to Continue citing more time was needed for discovery. On May 24, 2021, I issued an Order granting

<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website

<sup>2</sup> It should be noted that much of the correspondence in this matter occurred during the District of Columbia Government Covid-19 State of Emergency. Thus, filings and otherwise were accepted pursuant to policies in place at that time, to include email. Additionally, proceedings were held virtually via WebEx.

<sup>3</sup> An Order was also issued March 22, 2021, to provide due dates for Prehearing Statements. Prehearing Statements were due on or before May 17, 2021.

the request and rescheduled the Prehearing Conference to June 21, 2021. Prehearing Statements were due on or before June 17, 2021.

On June 6, 2021, Employee filed a Consent Motion to Reschedule citing a schedule conflict. The parties requested the date be set for July 15, 2021. I issued an Order on June 9, 2021, granting the parties' request and rescheduled the conference for July 15, 2021. The parties submitted their Prehearing Statements and appeared for the conference as required. Following the Prehearing Conference, the undersigned issued an Order for the parties to submit briefs. The parties were required to submit briefs addressing Employee's Motion to Compel Discovery and were also required to address other issues raised during the Prehearing Conference.<sup>4</sup> Agency's brief was due on September 8, 2021, Employee's brief was due on November 8, 2021, and Agency had the option to submit a Sur-Reply brief by November 22, 2021.

On November 18, 2021, Agency filed a Motion for an Extension of Time to submit its Sur-Reply brief, citing a change in representation and time needed to submit. On November 19, 2021, an Order was issued granting Agency's request and extended the time to December 3, 2021. Briefs were submitted in accordance with the prescribed deadlines. Following a review of the briefs, the undersigned determined that supplemental briefs were required because information required by the July 15<sup>th</sup> Order was not provided. Accordingly, on December 9, 2021, an Order for Supplemental Briefs was issued. Agency's supplemental brief was due on or before December 30, 2021, and Employee's response was due by January 15, 2022.<sup>5</sup> Both parties responded in accordance with those deadlines.

On January 19, 2022, I issued an Order regarding the Motion to Compel. I ordered that Agency comply with discovery by February 11, 2022. Further, I required the parties to submit briefs to address specific issues identified in their previous submissions. Agency's brief was due by February 18, 2022, and Employee's brief was due by February 28, 2022. Further, I scheduled a Status Conference for March 3, 2022. On February 28, 2022, Employee filed a Consent Motion for an Extension of time to file citing extenuating circumstances with a medical emergency for a family member. On February 28, 2022, I issued an Order granting the Motion and required that Employee's brief be submitted by March 4, 2022. The Status Conference was rescheduled to March 9, 2022. The Status Conference was held on March 9, 2022. During that time, I determined an Evidentiary Hearing was warranted. That same day, I issued an Order Convening an Evidentiary Hearing for April 26, 2022, and April 28, 2022. Additionally, Agency was required to submit a supplemental response by March 23, 2022. Agency submitted its response as required.

On April 25, 2022, the parties filed a Joint Motion to Continue the Evidentiary Hearing indicating that they had engaged in settlement negotiations. The parties requested that the Evidentiary Hearing be rescheduled to June 8<sup>th</sup> and 9<sup>th</sup> 2022, if negotiations were unsuccessful. On April 25, 2022, I issued an Order granting the Motion and rescheduled the Evidentiary Hearing for June 8<sup>th</sup> and June 9<sup>th</sup>, 2022, pending the outcome of settlement negotiations. On the evening of June

---

<sup>4</sup> Pursuant to the July 15, 2021 Order, the parties were required to submit briefs addressing the following issues (in pertinent part): (1) Parties should address the Badge Audits of other employees ascertained during discovery in this matter. Specifically, parties should address whether these materials should be classified as privileged attorney work product. Agency should also provide any information regarding the ordinary course of use of **badge audits, to include how they are maintained, conducted and are otherwise utilized as it relates to employees' attendance at Agency.**

<sup>5</sup> The undersigned inadvertently assigned a weekend date (January 15, 2022). However, Employee, by and through counsel submitted a courtesy copy via email on January 14, 2022 and noted therein that hard copies were mailed to the Office. Official copies were received at OEA on January 18, 2022.

7, 2022, the parties contacted the undersigned and indicated that they had reached a settlement in this matter. I convened a Status Conference on June 8, 2022, to discuss and canceled the Evidentiary Hearing.<sup>6</sup> The parties noted their settlement and advised the undersigned that they expected to execute the agreement by the end of July. On August 8, 2022, Employee, by and through her counsel, filed a Notice of Withdrawal of Appeal, citing therein that it was filed “subject to the terms of the written Settlement Agreement and General Release.”

### JURISDICTION

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

### ISSUE

Whether this appeal should be dismissed based on the parties’ settlement of this matter.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

D.C. Official Code § 1-606.06 (b) (2001) states in pertinent part that:

If the parties agree to a settlement without a decision on the merits of the case, a settlement agreement, prepared and signed by all parties, shall constitute the final and binding resolution of the appeal, and the [Administrative Judge] shall dismiss the appeal with prejudice.

In the instant matter, the parties have agreed upon, and executed a settlement agreement. Furthermore, Employee submitted a withdrawal of the Petition for Appeal to this Office. For these reasons, and pursuant to the aforementioned code provision, I find that Employee’s Petition for Appeal should be dismissed.

### ORDER

It is hereby **ORDERED** that Employee’s Petition in this matter is **DISMISSED with prejudice**.

FOR THE OFFICE:

/s/ Michelle R. Harris  
Michelle R. Harris, Esq.  
Administrative Judge

---

<sup>6</sup> The parties notified the undersigned via email, and I scheduled the Status Conference in lieu of the Evidentiary Hearing to address this matter.