THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ROBERT LAYNE,	)	OEA Matter No. 1601-0127-09
Employee	)	
	)	Date of Issuance: October 25, 2010
	)	
	)	
DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Robert Layne ("Employee") worked as a correctional officer with the D.C. Department of Youth Rehabilitation Services ("Agency"). On May 5, 2009, Agency issued a notice of final decision terminating Employee. Employee was charged with neglect of duty and incompetence because of on duty acts or omissions that interfered with the efficiency and integrity of government operations. Specifically, he was accused of violating Agency's rules for handling youth conduct, use of force policy, use of physical restraints policy, reporting unusual incidents policy, and employee conduct policy.[1]

On June 5, 2009, Employee filed a Petition for Appeal with the Office of Employee

[1] *Supplement to Petition for Appeal* (June 8, 2009).

Appeals ("OEA"). He argued that Agency's claim was unsubstantiated. Employee denied that he used excessive force in restraining an Agency resident. Additionally, he asserted that Agency could not meet its burden of proving that he violated the collective bargaining agreement or terms of the District Personnel Manual. Therefore, he requested that he be reinstated with back pay and benefits.[2]

Agency filed its Answer to Employee's Petition for Appeal on July 13, 2009. It contended that Employee "hog tied" a resident who was allegedly acting unruly during an appearance in court. Agency provided that this was a clear violation of the regulations as outlined in its notice of removal. Hence, in accordance with *Stokes v. District of Columbia,* 502 A.2d 1006, 1011 (D.C. 1985), Agency asserted that it was justified in removing Employee from his position.[3]

The OEA Administrative Judge ("AJ") held a Pre-hearing Conference on March 26, 2010. Shortly after the conference, he received an email from Agency indicating that the parties settled the matter. On April 29, 2010, the AJ dismissed the matter based on Agency's contention that a settlement was reached.[4]

Employee filed a Petition for Review with the OEA Board on September 17, 2010. The petition provided that a settlement agreement was not reached between the parties. Employee alleged that he never signed a settlement agreement. Thus, he requested that the Board reopen this matter.[5]

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[2] *Petition for Appeal,* p. 3 (June 5, 2009).
[3] *Agency's Answer to Employee's Petition for Appeal* (July 13, 2009).
[4] *Initial Decision* (April 29, 2010). A subsequent "Corrected Initial Decision" was issued on May 5, 2010. The corrected decision includes a statement that "the parties engaged in settlement talks wherein Employee sought to resign his position."
[5] *Petition for Review* (September 17, 2010).

There are no OEA Rules that address the specific issue presented in this case. However, there are some rules that can be used as guidance in this matter. Although the record does not show that the parties utilized OEA's mediation program in their attempts to reach a settlement agreement, OEA Rules 607.9 and 607.10 offer the best instructions on how matters involving failed settlement agreements should be handled.

OEA Rule 607.10 provides that "if parties reach a settlement, the matter shall be dismissed in accordance with D.C. Official Code §1-606.06(b)." Additionally, OEA Rule 607.9 provides that "upon the failure of parties to reach a settlement through mediation and conciliation, the Senior Administrative judge shall refer the matter to the assigned Administrative Judge for adjudication." Thus, a case can only be dismissed **if** an agreement is actually reached [Emphasis added]. An email from one party in a suit proclaiming that a settlement has been reached is not sufficient. The AJ hastily dismissed this matter before securing a copy of the alleged settlement agreement between both parties. Consequently, the merits of this case were not considered prior to its dismissal.

An egregious err was made by the AJ in this matter. In accordance with OEA Rule 607.9, Employee is entitled to have his case adjudicated after a failed settlement. As a result, we grant Employee's Petition for Review. Per Employee's request, this matter is remanded and should be assigned to a new Administrative Judge.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and **REMANDED** to an Administrative Judge.

FOR THE BOARD:

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Clarence Labor, Chair

_____
Barbara D. Morgan

_____
Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.