

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:	)	
	)	
CURTIS ELLERBE,	)	
Employee	)	OEA Matter No. J-0014-20
	)	
v.	)	Date of Issuance: January 7, 2021
	)	
D.C. DEPARTMENT OF PUBLIC WORKS,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
_____	)	
James L. Brinkley, Esq., Employee's Representative	)	
Connor Finch, Esq., Agency's Representative	)	

**INITIAL DECISION<sup>1</sup>**

**INTRODUCTION AND PROCEDURAL HISTORY**

On November 27, 2019, Curtis Ellerbe (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the District of Columbia Department of Public Works’ (“Agency”) decision to terminate him from his position as a Heavy Mobile Equipment Mechanic Supervisor. Employee was terminated for performance deficits effective October 25, 2019. On January 6, 2020, Agency filed its Answer to Employee’s Petition for Appeal, noting that OEA lacked jurisdiction over this Appeal.

This matter was assigned to the undersigned on January 8, 2020. On January 10, 2020, I issued an Order requiring Employee to submit a brief addressing the jurisdiction issue raised by Agency. Agency was also afforded the opportunity to submit a reply brief no later than February 10, 2020. Employee submitted a timely brief. On February 10, 2020, Agency filed a Consent Motion to Extend Briefing Schedule due to a delay in receiving Employee’s brief.<sup>2</sup> On February 14, 2020, Agency filed its Response on the Issue of Jurisdiction, wherein, Agency maintained that this matter must be dismissed for lack of jurisdiction because Employee’s Petition for Appeal was untimely. Subsequently, Employee filed a Response to Agency’s Motion to Dismiss on February 21, 2020. Employee argued that pursuant to the USPS Certified Mail receipt, the Petition for Appeal in this

<sup>1</sup> This decision was issued during the District of Columbia's COVID-19 State of Emergency.

<sup>2</sup> While this Consent motion was not signed by both parties, Agency noted that it contacted Employee’s counsel by telephone on February 10, 2020, and he consented to the relief requested in Agency’s Motion.

matter was delivered to OEA on November 25, 2019, at 4:43pm. Thus, the Petition for Appeal was timely, and as such, OEA has jurisdiction over this matter.

On March 9, 2020, I issued an Order on Jurisdiction finding that OEA had jurisdiction over this matter. This matter was then referred to mediation. After an unsuccessful mediation attempt, a telephonic Status Conference was convened on September 14, 2020. During the teleconference, the parties informed the undersigned that they were engaged in settlement talks. After several status updates, in an email dated December 15, 2020, Employee's representative stated that "DPW and Mr. Ellerbe have agreed on a settlement. The agreement has been signed by both parties. Currently, Mr. Ellerbe is awaiting DPW to tender their consideration of the settlement." The undersigned emailed the parties requesting that they submit a copy of the settlement agreement, as well as a voluntary withdrawal of the Petition for Appeal. On December 24, 2020, Agency's representative emailed the undersigned wherein, he attached a copy of the executed settlement agreement, along with a notice of voluntary withdrawal. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether Employee's Petition for Appeal should be dismissed.

### 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, since the parties have agreed and executed a settlement agreement, and Employee's representative has requested that the matter be dismissed, I find that Employee's Petition for Appeal should be dismissed.

### ORDER

It is hereby **ORDERED** that the Petition for Appeal in this matter is **DISMISSED**.

FOR THE OFFICE:

/s/ Monica N. Dohnji

MONICA DOHNJI, Esq.  
Senior Administrative Judge