

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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**

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In the Matter of:	)	
	)	
RAMESH SHARMA,	)	OEA Matter No. 2401-0163-09
Employee	)	
	)	Date of Issuance: October 3, 2011
	)	
	)	
OFFICE OF CONTRACTING AND	)	
PROCUREMENT,	)	
Agency	)	
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OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Ramesh Sharma (“Employee”) worked as a Contract Specialist with the D.C. Office of Contracting and Procurement. On May 18, 2009, Agency issued a reduction-in-force (“RIF”) notice to Employee. Employee filed an appeal with the Office of Employee Appeals (“OEA”) on July 16, 2009. He made several arguments regarding Agency’s failure to follow the RIF and transfer and bumping procedures. Accordingly, Employee requested that he be reinstated to his position with back pay and benefits.<sup>1</sup>

Agency filed a response to Employee’s petition on September 9, 2009. It contended that OEA’s jurisdiction was limited to determining if Agency provided Employee with a 30-day

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<sup>1</sup> *Petition for Appeal* (July 16, 2009).

written notice and if he was afforded one round of lateral competition. Agency explained that Employee was removed as a result of a lack of work. He was placed on the retention register, but because he was the only employee within his competitive level, he was removed after receiving 30 days notice.<sup>2</sup>

The OEA Administrative Judge (“AJ”) requested that both parties submit briefs on OEA’s jurisdiction. However, Employee withdrew his Petition for Appeal prior to the briefing deadline. Employee described in his withdrawal motion that he was withdrawing the matter to protect his rights on issues pending before the Equal Employment Opportunity Commission, the Department of Justice, Inspector General’s Office, the D.C. Auditor’s Office, the Mayor, and City Council.<sup>3</sup>

The AJ issued his Initial Decision on April 13, 2010. He provided in his decision that he sent Employee an email stating that he was in receipt of his withdrawal motion. However, the AJ clarified that if Employee voluntarily withdrew his Petition for Appeal, then his matter would be dismissed *with* prejudice (emphasis added), and he would not be allowed to proceed with any other claims before OEA. Employee informed the Judge that he understood the ramifications and still wanted to withdraw his matter. Accordingly, the AJ dismissed the case with prejudice.<sup>4</sup>

Despite his voluntary withdrawal, Employee filed a Petition for Review on May 16, 2010. He requested that the Initial Decision be reconsidered and a simplified and neutral decision be issued to replace it. Employee reasoned that he withdrew his Petition for Appeal because he received limited documents during discovery; because of OEA’s lack of jurisdiction

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<sup>2</sup> *Agency’s Answer to Employee’s Petition for Appeal*, p. 4-5 (September 9, 2009).

<sup>3</sup> *Employee’s Withdrawal of Complaint and Request Protection of Full Rights on All Issues Before Other Courts*, p. 1 (April 12, 2010).

<sup>4</sup> *Initial Decision*, p. 2-3 (April 13, 2010).

over union matters; and because an evidentiary hearing was not conducted. He argued that if OEA did not issue a “simplified and neutral” decision that it would cause undue harm.<sup>5</sup> Agency requested that Employee’s Petition for Review be denied because he failed to establish a legal basis for review or reversal.<sup>6</sup>

Employee requested that a neutral decision be issued. We are assuming that he takes issue with the AJ’s dismissal with prejudice. OEA has consistently held that when a Petition for Appeal is withdrawn, the matter is dismissed.<sup>7</sup> Employee concedes in his Petition for Review that he withdrew his Petition, and he outlines various reasons for his decision to withdraw his appeal before OEA. Thus, the matter remains dismissed as a result of his request for a withdrawal.

As it pertains to the dismissal with prejudice, the only D.C. Official Code section that discusses OEA dismissing a matter with prejudice occurs when both parties agree to a settlement of the case before it is heard on its merits. *See* D.C. Official Code § 1-606.06. This clearly did not occur in this case. The parties did not settle the matter. Employee decided instead that filing claims before other agencies would be a better option for him. Therefore, without the AJ offering any reasons, we find no justification for his dismissal of the case with prejudice.<sup>8</sup> Accordingly, Employee’s Petition is simply DISMISSED.

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<sup>5</sup> *Employee’s Request for “Reconsideration” of Initial Decision Plus “Clarifications,”* p. 1-2 (May 6, 2010).

<sup>6</sup> *Agency’s Response to Employee’s Petition for Review* (May 14, 2010).

<sup>7</sup> *Lawanda Manor v. D.C. Public Schools*, OEA Matter No. 2401-0156-04 (May 12, 2005); *Jessie Jones-Cobb v. D.C. Public Schools*, OEA Matter No. 1601-0117-06 (October 4, 2006); *Kevin C. Best v. Metropolitan Police Department*, OEA Matter No. 1601-0114-06 (October 24, 2006); *Joan Sweeny v. Department of Transportation*, OEA Matter No. 1601-0049-06 (October 4, 2006); and *Osei Debrah v. D.C. Public Schools*, OEA Matter No. 1601-0108-06 (October 12, 2006).

<sup>8</sup> *Geoffrey Kamanda v D.C. Public Schools*, OEA Matter No. 1601-0039-06, Opinion and Order on Petition for Review (November 13, 2008).

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is  
**GRANTED** and Employee's Petition for Appeal is **DISMISSED**.

FOR THE BOARD:

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Clarence Labor, Chair

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Barbara D. Morgan

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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.