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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
VICKIE YOUNG)	OEA Matter No. 1601-0186-10
Employee)	
v.)	Date of Issuance: November 20,
)	2012
DISTRICT OF COLUMBIA PUBLIC SCHOOLS/)	Lois Hochhauser, Esq.
DEPARTMENT OF TRANSPORTATION/)	Administrative Judge
OFFICE OF THE STATE SUPERINTENDENT)	
OF EDUCATION)	
Agency)	
Ms. Vickie Young, Employee)	
Frank McDougald, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Ms. Vickie Young, Employee herein, filed a timely petition with the Office of Employee Appeals (OEA) on November 30, 2009, appealing the decision of the District of Columbia Public Schools/Department of Transportation, now known as the Office of the State Superintendent of Education (OSSE)¹, Agency herein, to remove her from her position as a Motor Vehicle Operator. At the time of the challenged action, Employee was in career service with a permanent appointment. The matter was assigned to me on February 16, 2012.

Upon reviewing the file, I found that the only notice from Agency regarding the removal, dated March 10, 2009, stated that the removal was “effective immediately”, but provided Employee with the right to obtain an administrative reviewing within 15 calendar days. The notice informed Employee of her right to grieve the action pursuant to a collective bargaining agreement, but did not advise her of her right to appeal the removal to OEA. Therefore, on February 21, 2012, I issued an Order directing Agency to submit the final Agency notice; and if the November 10, 2009 notice was the final Agency action, to address whether any sanction was warranted based on Agency’s failure to issue a final notice which provided Employee with information regarding her right to appeal to this office.

In its response, Agency stated that the November 10, 2009 was the only notice it provided to Employee and served as the final Agency notice. It contended that the notice was sufficient and that no sanction was warranted, since Employee had filed her petition for appeal

¹ OSSE assumed the responsibilities of the District of Columbia Public Schools/Department of Transportation in 2010.

with OEA in a timely manner, and therefore was not negatively impacted by any failure by Agency to fully comply with D.C. Code § 1-606.04(e) and OEA Rule 605.1. On May 16, 2012, I issued an Order notifying the parties that they should be prepared to address this issue as well as other jurisdictional issues at the June 14, 2012 prehearing conference.

At the June 14, 2012 prehearing conference, the parties addressed these matters and Employee summarized the events that led to the removal. She also agreed to pursue mediation. Agency was directed to respond to Employee's representations and to notify me if it was amenable to mediation by July 20, 2012. The proceedings were memorialized by Order dated June 15, 2012. Agency submitted a timely response and agreed to mediation, and the matter was therefore referred to mediation by Order dated July 23, 2012.

On or about October 16, 2012, I was advised by Judge Wanda Jackson that the matter had been settled but that no settlement documents had been submitted. I contacted the parties by email on that date and directed them to advise me if the matter was settled and if so, whether settlement documents, including the request that the petition be dismissed, had been, or would soon be filed with this Office. I stated that if I did not receive email responses from the parties by October 18, 2012, I would issue an Order. Mr. McDougald responded on that date that he had also been advised by Judge Jackson that the matter was settled, and that he was drafting the necessary documents. Employee did not respond. Therefore, on October 24, 2012, I issued an Order directing Employee to notify me by November 6, 2012, whether the matter had been settled and the appeal should be dismissed or if she wanted to proceed to a hearing. She was cautioned that her failure to respond to this Order in a timely manner could result in the dismissal of the petition. Employee thereafter contacted me by telephone and email several times, stating that the matter had been settled and that the appeal should be dismissed. I explained to Employee that since there were no settlement documents or written request to have the matter dismissed in the file, I would issue another Order memorializing her request to have the matter dismissed. In the Order, issued on October 31, 2012, I summarized Employee's statements to me requesting that the petition be dismissed based on the settlement by the parties, and directed that the record would close and the matter would be dismissed unless Employee filed an objection by November 8, 2012. Employee telephoned me thereafter, advising me that she had received the Order, and confirming that the matter had been settled and that the petition should be dismissed. The record closed on November 6, 2012.

JURISDICTION

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

ISSUE

Should this matter be dismissed?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

D.C. Official Code §1-606.06(b) (2001) states that a petition for appeal will be dismissed when the parties enter into a voluntary settlement of the matter. *See also, Rollins v. District of Columbia Public Schools*, OEA Matter No. J-0086-92, *Opinion and Order on Petition for Review* (December 3, 1990). Although documentation of the settlement and a

written request by an employee that the appeal be dismissed, are preferable, they are not required. In this matter, Employee requested several times that her petition for appeal be dismissed based on the resolution of the matter. Two Orders were issued giving Employee several opportunities to notify me that the matter was not settled and that a petition should be not dismissed. The Orders advised Employee that if she did not respond, the appeal would be dismissed based on the representations that the matter was settled and her request that the appeal be dismissed. In response, Employee confirmed that the matter was settled and the petition should be dismissed.

ORDER

Based on these findings and conclusions, and consistent with this analysis, it is hereby ordered that the petition for appeal is dismissed.

FOR THE OFFICE:

LOIS HOCHHAUSER, Esq.
Administrative Judge