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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0300-10
ANURAK DUANGPHUT,)	OEA Matter No.: 1601-0272-10
Employee)	
)	Date of Issuance: December 5, 2013
v.)	
)	
DISTRICT OF COLUMBIA)	
OFFICE OF THE INSPECTOR GENERAL,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Michael J. Schiller, Employee Representative		
Andrea Comentale, Esq. Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On February 8, 2010, Anurak Duangphut (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) contesting the D.C. Office of the Inspector General’s (“Agency” or “OIG”) decision to place her on enforced leave. Agency placed Employee on enforced leave based on allegations that she falsified official records relevant to obtaining D.C. residency preference on her employment application. Prior to being terminated, Employee worked as a Staff Assistant in Career Service. Employee subsequently filed a second Petition for Appeal on April 27, 2010, after Agency issued a decision to remove her based on the same underlying facts.¹

On August 2, 2012, Agency filed a Motion to Consolidate OEA Matter Nos. 1601-0272-10 and 1601-0300-10 into one matter. Agency’s motion was granted and the matters were therefore consolidated in an August 20, 2012 Order. Employee had previously filed Motions for Summary Disposition on June 8, 2010, August 9, 2010 (OEA Matter No. 1601-0300-10),² August

¹ On the final notice of termination, Employee was charged with “any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations.”

² Employee argued that Agency did not make the required showing of good cause in its written request for an extension of time in which to file and answer to Employee’s petition for appeal.

10, 2010 (OEA Matter No. 1601-0272-10), August 24, 2012 (consolidated matters), August 30, 2012 (consolidated matters), and September 5, 2012 (consolidated matters).

On September 13, 2012, Agency filed an Opposition to Employee's Motion for Summary Disposition. Agency argued that Employee was not entitled to a judgment as a matter of law and that the parties were in disagreement on the material procedural and legal facts.³ On October 10, 2012, Agency filed a Motion for Summary Disposition. Agency asserted that Employee was barred from pursuing an appeal before this Office based on the doctrine of equitable estoppel. Agency argued that it is "undisputable that the parties' contractual relationship was induced by the employee's intentional false statement" and that Employee perpetuated fraud by making a false residency claim on her residency certification form.⁴ On October 11, 2012, I issued an Order on Summary Disposition, denying both Employee's and Agency's motions because it appeared from the pleadings that material issues of fact were at issue in this case.

On December 12, 2012, I held a Prehearing Conference for the purpose of clarifying the issues to be addressed during the evidentiary hearing, in addition to identifying witnesses and documents to be offered as evidence. On February 21, 2013, an evidentiary hearing was held at this Office. On March 18, 2013, I issued an Order notifying the parties that a transcript of the hearing was available for retrieval at this Office. The order further instructed the parties to submit written closing briefs. Agency submitted a response to the order on April 30, 2013; however, Employee did not. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency's actions were taken for cause.
2. Whether the penalties imposed were appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

³ Agency's Opposition to Summary Disposition (September 13, 2012).

⁴ Agency's Motion for Summary Disposition (October 10, 2012).

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

Agency's Position

Agency argues that Employee falsified government records for the purpose of satisfying the residency required to remain employed by the District.⁵ According to Agency, Employee received residency preference because she indicated on her application that she was a bona fide resident of the District of Columbia ("District" or "D.C."), but actually resided in Maryland. Employee was required to maintain District residency for a total of five (5) consecutive years following her hire as a Staff Assistant. Agency contends that Employee's false representations on her application resulted in her being hired over other similarly qualified applicants.⁶ In addition, Agency stated that Employee knowingly provided false information on an executed sworn Certification of Compliance on November 4, 2009, affirming that she resided at an address in the District. Agency further states that its investigation revealed that Employee was in fact living with her mother-in-law in Silver Spring, Maryland, and that the address she provided as her home address in PeopleSoft was a post office box located at a UPS store, and not a residential address. It is Agency's position that Employee's act of falsifying government documents was illegal and "undermined the confidence the Agency is charged with protecting."⁷

Employee's Position

Employee contends that Agency did not have cause to place her on enforced leave or to terminate her. She argues that Agency denied her certain due process rights during her investigation, which ultimately led to her termination. Employee states that the decision to change her address in PeopleSoft to a post office box was not made with the intent to deceive, but was solely for the purpose of changing her mailing address. Employee also claims the following:

1. Inspector General, Charles Willoughby, made false statements and omitted information in his November 13, 2012 memorandum to Richard Mattiello. Employee also believes that other Agency employees provided false information during the investigation.

⁵ Agency Answer to Petition for Appeal (August 9, 2010).

⁶ Agency Closing Argument at p. 6 (April 30, 2013).

⁷ *Id.* at 1.

2. The District Personnel Manual Table of Appropriate Penalties was misapplied.
3. Agency did not demonstrate a nexus between Employee's alleged misconduct and the charges levied against her.
4. Employee's placement on enforced leave was improper because Agency failed to allege that Employee provided false information on her employment application when she received notice of the adverse action.
5. Employee's termination was improper because the evidence presented by Agency was inaccurate, hearsay, unverified, and insufficient to support its findings.⁸

SUMMARY OF RELEVANT TESTIMONY

Agency's Case in Chief

Stacie Pittell (Transcript pages 57-115)

Stacie Pittell ("Pittell") was appointed as the General Counsel for the Board of Ethics and Government Accountability in December of 2012. (Tr. pg. 57). Prior to her appointment, Pittell worked as the Assistant Inspector General for Investigations at OIG. She was involved in the investigation of Employee's residential hiring preference. According to Pittell, OIG was alerted that Employee had submitted a form related to her residency, and that there may have been an issue concerning its accuracy. (Tr. pg. 59). OIG had previously referred the matter to the Department of Human Resources ("DCHR") for a compliance investigation. To Pittell's knowledge, DCHR's investigation concluded that Employee was not a District resident, and that one of the addresses Employee provided was, in fact, a post office box. (Tr. pg. 60). Pittell testified that OIG conducted its own independent investigation into Employee's residency status. She identified Agency's Exhibit 13 as a memorandum that was prepared by Grace Price (deceased), a Human Resource Officer. The memorandum summarized a meeting that Ms. Price had with Employee about her residency. Pittell summarized the memorandum by stating the following:

"...Ms. Duangphut had [stated] that she had lived in the District for a time, but had moved into Maryland and that she had used a District address, based on conversations and actions she had engaged in with...Ceryl Ferrara, who was also an OIG employee, and that later, Mr. Duangphut had called her back and said that she

⁸ Employee's Prehearing Statement (October 22, 2012).

was taking responsibility for it and didn't want to blame Cheryl for what happened." (Tr. pg. 62).

Pittell further opined that Ms. Price seemed to suggest, in the memorandum, that Employee told her that she had never lived in the District of Columbia when she applied for the position. (Tr. pg. 62). Pittell stated that she personally interviewed Employee a total of three (3) times throughout the course of OIG's investigation. In an interview conducted with Pittell, Employee discussed the conversation she had with Ms. Price. (Tr. pg. 64). According to Pittell, Employee's version of the conversation differed from Ms. Price's version because Employee gave a lot more detail about where she lived and what paperwork she had used to prove residency. (Tr. pg. 65). Pittell stated that, during this interview, Employee insisted that she was residing in the District of Columbia at the time she submitted her application. (Tr. pgs. 65-66).

Agency's Exhibit 15 was identified and admitted as a summary of an interview conducted by Pittell with Employee on November 19, 2009. Pittell stated that, during this interview, Employee brought in several documents, including a lease agreement for the Columbia Road address, her resume, voter registration card, and job/reference letters in attempt to prove District of Columbia residency. (Tr. pgs. 67-68). Pittell testified that Agency's Exhibit 16 was the lease agreement that Employee provided OIG with to prove that she lived at the Columbia Road address in Northwest D.C. The lessor listed on the lease of Daryl Enterprises, Inc., and the agent on the lease was identified as Dallas Rausch. (Tr. pg. 69). Pittell stated that she attempted to confirm the validity of the lease, but discovered that there was not a company named Daryl Enterprises, Inc. that was connected to the Columbia Road property. According to Pittell, Daryl Enterprises was discovered to be a company in Texas that specialized in assisting people with finding jobs in the nursing field. (Tr. pgs. 69-70). The notary's name on the lease that Employee submitted to OIG was identified as Tonya Faulkner, an administrative assistant in the Investigations Division. Pittell testified that she asked Ms. Faulkner if she actually notarized the lease for Employee, and she said no. (Tr. pg. 71). In support thereof, Ms. Faulkner stated that she kept meticulous records, and had a log book for entering information. There was not an entry on December 4, 2007, which indicated that she did not sign the document.

Agency's Exhibit 17 was identified and admitted as copies of checks that purported to represent payment of rent from Employee to Daryl Enterprises. One check, written from Cheryl Ferrara ("Ferrara") to Employee on January 25, 2008, was in the amount of approximately \$1398.00. According to Pittell, Ferrara was the former Deputy Assistant Inspector General for the Audit Division and Employee's supervisor. She resigned from Agency shortly before criminal charges were brought against her. Pittell explained that Ferrara "had access to this Bank of America account which we referred to as the 11570, the last digits, and [Ferrara] was giving Ms. Duangphut money...from that account so that Ms. Duangphut could write the rent checks, without it actually costing her money to make it look like she was paying rent." (Tr. pg. 76.) Pittell stated that no money was actually being paid to Daryl Enterprises.

Agency's Exhibit 19 was identified and admitted as an Accurant report, which is a database utilized by LexisNexis. The database allows users to access information about a person

and their residence(s). (Tr. pg. 77). Pittell testified that, as of November 19, 2009, the Accurant report stated that Employee resided at 13600 Stoner Drive in Silver Spring, Maryland from June 2004 until November 2009. (Tr. pg. 78). The report did not indicate that Employee lived at 1746 Columbia Road in Northwest D.C. in 2007, 2008, or 2009. According to Pittell, Mina Akhlaghi (“Akhlaghi”) was the owner of the building located at 1746 Columbia Road. Exhibit 19 was identified by Pittell as a memorandum of the conversation she had with Akhlaghi on November 19, 2009. During the interview with Pittell, Akhlaghi stated that she did not know Employee, and to the best of her knowledge, no one with Employee’s name resided at 1746 Columbia Road during the time period in question. (Tr. pgs.78-80). Pittell further testified that Akhlaghi utilized a property management company called FAS Management, not Daryl Enterprises. FAS did not have a record of Employee or her husband living at the property on Columbia Road. (Tr. pg. 82). Pittell also indicated that she spoke with Employee’s mother-in-law, Mrs. Schiller on November 19, 2009. Mrs. Schiller indicated that Employee moved in with her at the 13600 Stoner Drive address in Silver Spring a while ago. She did not know where Employee resided prior to that, but stated that it was somewhere in D.C. (Tr. pgs. 84-85).

Based on its investigation, DCHR concluded that Employee had been living in Maryland and had falsified documents to say that she was living in the District of Columbia. DCHR recommended that OIG cite Employee with an adverse action and place her on enforced leave. (Tr. pg. 85). Pittell testified that she conducted a third interview with Employee on December 3, 2009. During the interview, Pittell characterized Employee’s behavior as uncooperative and that Employee insisted she lived in the District. (Tr. pg. 87).

On January 23, 2009, Employee changed her address in PeopleSoft to 1718 M Street, Northwest, Number 255, Washington, D.C. 20036. According to Pittell, Agency’s investigation revealed that the address was located at a store that had small post office boxes. Agency’s Exhibit 26 was identified and admitted as a UPS Store mailbox service agreement for mailbox number 255. Employee’s name was listed as the customer for #255; however, the address provided by Employee on the agreement read as “13600 Stoner Drive, Silver Spring, D.C. 20904.” (Tr. pgs. 91-92). The mailbox service agreement was signed on April 11, 2008. Pittell concluded that, as of April 2008, Employee was residing in Silver Spring, Maryland. In summation, Pittell stated that Employee was terminated because she was fraudulently hired under a residency preference, but was not a resident of the District. (Tr. pg. 96).

On cross examination, Pittell explained that residency is a term of art that has to do with one’s legal residence. She stated that the rules require that a person’s legal residence be in the District. (Tr. pg. 97). Pittell recalled that Akhlaghi had a dental practice on the first floor in the property located at 1746 Columbia Road, but did not remember if Akhlaghi actually lived in the building. (Tr. pgs. 100). Pittell stated that she remembered interviewing Hezekiah Williams as part of his exit interview, but said that Mr. William’s interview was not the impetus of the initiation of Employee’s termination. (Tr. pgs. 100-101). She further identified Employee’s Exhibit 2 as written instructions on how to change an employee address in PeopleSoft. Pittell testified that there can be a difference between a person’s home address versus where they receive their mail, but if an employee is required to be a District resident, then their home

address must be located in the District. (Tr. pg. 106). Pittell clarified that when an Accurant report is run in LexisNexis, data regarding a specific address is gathered from a variety of places. The address is referred to as a lead in the law enforcement realm. The addresses listed in the report could be non-verified, but it would nonetheless be a lead for investigative purposes. (Tr. pgs. 111-112).

Richard Mattiello (Transcript pages 116-155)

Richard Mattiello (“Mattiello”) works as a Workmen’s Compensation Hearing Officer for the Metropolitan Police Department. (Tr. pg. 116). During the time of Employee’s investigation, Mattiello was a compliance review manager with DCHR. As a compliance manager, he was responsible for compliance and enforcement of the D.C. residency preference for employment. According to Mattiello, DCHR is required to ensure that individuals who apply for positions within District government and elect to claim District residency as a reference in the employment process, abide by the requirement to maintain their residency in the District for either five or seven years after employment. Mattiello testified that DCHR maintains copies of its investigation reports and the materials it relied upon in drafting the reports at the Office of the General Counsel, Compliance unit. (Tr. pg. 121). In Mattiello’s opinion, Employee’s claim, that the supporting documentation relevant to her investigation was not available to her between January 2010 and March 2010, was not true. If Employee would have requested documentation, the Compliance Unit would have shared it with her. (Tr. pg. 122).

Mattiello stated that at the time the investigation began, Employee’s address of record was 1718 M Street, Northwest D.C., which was a UPS box. (Tr. pg. 123). Mattiello’s office reviewed Employee’s personnel file after receiving the Inspector General’s complaint regarding her residency. He explained that on January 23, 2009, Employee changed her address in PeopleSoft. Mattiello knew that it was Employee who changed the address because PeopleSoft has an audit tracking device that can tell who make changes to personnel records. (Tr. pg. 127). After reviewing the Inspector General’s documents, Mattiello testified that he went to visit the two D.C. addresses that Employee provided to OIG in an attempt to verify their validity. When Mattiello visited the 1746 Columbia Road address, he knocked on Apartment number four and there was someone living there who did not know Employee. (Tr. pgs. 129-130).

Agency’s Exhibit 12 included a statement from Ms. Grace Price regarding a conversation she had with Employee on November 18, 2009. Mattiello summarized Ms. Price’s memorandum, stating that “Ms. Duangphut admitted that she lived in Maryland at the time and that at one time, she lived in Virginia, but that she lived in Maryland. She also implicated another employee by the name of Cheryl Ferrara [who] had been involved in telling her to apply and use a District address for her residency preference.” (Tr. pg. 131). Mattiello stated that he had a residency conference with Employee, wherein she admitted that she had moved out of the District in January of 2009 and that she admitted to entering the 118 M Street, Northwest D.C. address (UPS store) in PeopleSoft in an attempt to maintain District residency. (Tr. pgs. 132-133). According to Mattiello, Employee stated that her husband had filled out the residency form, placed it in front of her, and told her to sign it. Mattiello further testified that Employee

understood what the form said and did not request interpretive services because she was capable of reading the document. Based on his investigation, Mattiello determined that Employee was residing in Silver Spring, Maryland at the time she updated her address in PeopleSoft. (Tr. pg. 134). Mattiello concluded that Employee provided false information on the November 4, 2009 certification of compliance form, and he recommended that she be cited for disciplinary action.

On cross examination, Mattiello testified that he showed Employee the attachments that were included with the memorandum from Willoughby to Mattiello, but did not recall if Employee was given the documents from the law enforcement database. (Tr. pg. 136). Mattiello recalled that Employee did not have a “Chapter 3” residency hearing because she was terminated based on falsification of documents; therefore, there was no reason to move forward with the hearing. (Tr. pg. 145; 148).

Shelly Elliott (Transcript pages 155-188)

Shelly Elliott (“Elliott”) works as the director for Squad 3 in the Investigations Division of OIG. Elliot was involved in Employee’s investigation regarding her residency preference. (Tr. pg. 156). Agency Exhibit 1 was identified and admitted as a job description for the Staff Assistant position. Elliott explained that the residency preference is what the District government gives to any application who is actually a resident of the District. Those applicants are awarded additional points for being a resident of the District when they apply for a position. The additional points may increase an applicant’s chance of getting the position. (Tr. pg. 159). According to Elliott, Employee indicated that she was a District resident when she applied for the Staff Assistant position and was required to maintain residency for five consecutive years. (Tr. pg. 160).

Elliott testified that based on OIG’s investigation, Employee did not maintain District residency for five consecutive years. Agency Exhibit 6 was identified and admitted as a lease issued from the management company for the 1746 Columbia Road, Apartment 4, address. The lease commenced on June 2007 through June 2008, and was signed by an individual named Matthew and Kelli M., who was the property owner. (Tr. pg. 164-165). Elliott stated that Employee was not a party to the lease. Elliott testified that she was involved in three interviews with Employee, and that Employee admitted that she was not living in the District. (Tr. pgs. 171-172). Accordingly, Elliott stated that Agency initiated an adverse action against Employee because she had certified that she was a District resident at the time of employment, but was not. (Tr. pg. 172). She further opined that Employee’s behavior in this case was egregious because OIG is tasked with investigating employees for misconduct, so having an employee within OIG who committed misconduct was especially frowned upon. (Tr. pg. 173). Elliott stated that OIG’s mission is to “weed out fraud, waste and abuse, and we also promote efficiency within the District government,” thus Employee’s actions went against what Agency actually enforces. (Tr. pg. 174).

On cross examination, Elliott explained that OIG promotes the efficiency of District government by investigating, auditing, and inspecting agencies to see how they can provide

better services to employees and contractors. (Tr. pgs. 174-175). Elliott testified that Employee failed to promote the efficiency and integrity of the District government by allowing herself to be hired under false pretense. (Tr. pg. 176).

Employee's Case in Chief

General Charles Willoughby (Transcript pages 15-52)

General Charles Willoughby ("Willoughby") works as the Inspector General of the District of Columbia, and has held this position since 2005. He is responsible for all final personnel actions at Agency. Willoughby recalled that Employee was placed on enforced leave for allegedly falsifying records with regard to her residency, which was the basis for her being hired with Agency. (Tr. pg. 11). Willoughby stated that the address information Employee entered into PeopleSoft was false because 1718 M Street, Northwest was a post office box and not an actual residence where she resided. In addition, Willoughby testified that Employee was required to reside in the District because it was the basis of her hiring. (Tr. pg. 15). According to Willoughby, members of Agency's investigatory team physically visited the addresses Employee provided as her home addresses, and determined that she did not reside in the District. (Tr. pgs. 22-23). Willoughby stated that he deliberately did not initiate an adverse action against Employee during the holiday season because he didn't think it was appropriate. (Tr. pg. 23). Willoughby also stated that the issue of Employee's residency first arose in November of 2009, but he wanted to see if there was a legitimate explanation for the problem. He also recalled giving Employee an opportunity to rebut any of the information gathered during the course of OIG's internal investigation. (Tr. pg. 26). Willoughby further stated that "[a]ny time you have false information, and particularly in a job...in government and particularly in the work of the Inspector General's Office, the record keeping is extremely important. And if you can't rely on the record keeping, then that can be a serious flaw in the process...because we look at things from a programmatic and operational standpoint." (Tr. pgs. 30-31). He further stated that Employee was subject to adverse action based on her furnishing false information to the government, and not on the basis of a residency determination. (Tr. pg. 36).

On cross examination, Willoughby identified Agency's Exhibit 2 as Employee's employment application that she submitted in December of 2007. The address Employee supplied on the application was listed as 1746 Columbia Road, Northwest, Apartment 4, in Washington, DC. (Tr. pg. 45). Willoughby testified that, according to his office's investigation, Employee never resided at that address. He further identified Agency's Exhibit 2 as Employee's Residency Preference form, in which she identified her residence as the District of Columbia. Willoughby stated that, on January 23, 2009, Employee changed her address in the PeopleSoft system from the address she had listed on her employment application to 1718 M Street, Northwest D.C., Number 255. (Tr. pg. 47). According to Agency's investigation, this address was a UPS mailbox. Willoughby further testified that, if Employee had difficulty obtaining personnel records from the Department of Human Resources, she could have contacted Agency to get assistance. (Tr. pg. 48).

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Uncontested Facts

1. On December 13, 2007, Employee applied for the position of Staff Assistant, CS-301, for the Audit Division of the Office of the Inspector General. Employee listed her address on the application as 1746 Columbia Road, Apartment 4, Washington, D.C. 20009 (“Columbia Road”).
2. Her application for employment included a “Residency Preference for Employment” section. On the application, Employee certified that she was a bona fide resident of the District of Columbia and claimed a residency preference for the Staff Assistant position. The application also stated that if Employee was selected for the position, she would be required to submit proof of District residency and maintain such residency for a period of five (5) consecutive years.
3. Employee received additional residential preference points on her employment application based on her claim that she was a bona fide District resident. Agency hired Employee on March 17, 2008.
4. On November 4, 2009, Employee signed an affidavit entitled “Certification of Compliance with the Residency Preference Requirement for the Year 2009.” Employee listed her current and previous home addresses as 1718 M Street, and 1746 Columbia road, respectively.
5. On January 23, 2009, Employee changed her address of record in the PeopleSoft system to 1718 M. Street, Northwest, #255, Washington, D.C. Employee left blank the section entitled “mailing address.” (“M Street”)⁹
6. Agency conducted an investigation in an attempt to verify the documents that Employee submitted regarding her residency.
7. On November 13, 2009, Inspector General, Charles Willoughby, issued a memorandum entitled “Allegation of Residency Non-Compliance—Anurak Duanghut” to the D.C. Department of Human Resources Compliance Review Manager, Richard Mattiello. The memorandum alleged that there was reasonable cause to believe that Employee had failed to comply with the District’s residency preference requirements. DCHR was asked to conduct an independent investigation into the matter.
8. After conducting its investigation, DCHR recommended that Employee be cited for disciplinary action for falsifying government documents and records.

⁹ PeopleSoft is a Human Resource Management System utilized by the District Government. Employees of the District may use the application to enter contact information, timesheets, and other pertinent information.

9. On January 6, 2010, Agency issued Employee a Notice of Proposed Enforced Leave. The notice proposed placing Employee on enforced leave for a period of five (5) days. The notice cited the following cause: “A determination has been made that an employee utilized fraud in securing his or her appointment or that he or she falsified records.” Employee submitted a response to the proposed adverse action.
10. On January 13, 2010, Agency issued Employee a Notice of Final Decision—Proposed Enforced Leave. Agency determined that there was enough evidence in the record to support a finding that Employee had falsified records regarding her residency. Employee’s enforced leave became effective on January 14, 2010.
11. On February 6, 2010, Employee filed a Petition for Appeal contesting her placement on enforced leave.
12. On February 5, 2010, OIG issued Employee an Advance Written Notice of Proposed Removal. The notice cited Employee with “any on-duty or employment-related act stated that Employee had the right to respond to the proposed removal in writing. Employee did not submit a response to the notice.
13. On March 15, 2010, a hearing officer issued a review of the proposed removal, wherein he found that the charges against Employee were supported by a preponderance of the evidence. The hearing officer recommended that Employee be terminated.
14. On March 23, 2010, Employee received notice that she was being terminated effective March 29, 2010.
15. On April 27, 2010, Employee filed a Petition for Appeal contesting her removal.

Whether Agency’s adverse actions were taken for cause.

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

- (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), an adverse action for cause that results in removal, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

In accordance with Section 1651 (1) of the CMPA (D.C. Official Code §1-616.51 (2001)), disciplinary actions may only be taken for cause. As a Staff Assistant, Employee was primarily responsible for providing administrative assistance within Agency's Audit Division. Employee's duties included drafting and maintaining audit reports, and assisting with the preparation of computer-generated documents.¹⁰ Employee's placement on enforced leave was based on the same nucleus of facts which formed the basis for her termination. Based on the testimonial evidence presented during the evidentiary hearing, in addition the documents submitted to the record, I find that Agency had sufficient cause to: 1) place Employee on enforced leave; and 2) terminate Employee from her position as a Staff Assistant.

Section 1620.1 of the DPM provides that:

[n]otwithstanding any other provision of [Chapter 16], a personnel authority may authorize placing an employee on Enforced Leave if:

- (a) A determination has been made that an employee utilized fraud in securing his or her appointment or that he or she falsified official records.

On January 6, 2010, Agency issued Employee a Notice of Proposed Enforced Leave pursuant to § 1620.1 of the DPM. The notice stated that Employee had fraudulently falsified official records in securing her employment. Employee was placed on enforced leave for a period of five (5) days beginning on January 7, 2010, and ending on January 13, 2010.¹¹ On January 13, 2020, Agency issued its Notice of Final Decision on Proposed Enforced Leave. In the notice, Inspector General Charles Willoughby, held that the proposal to place Employee on enforced leave was supported by "direct and corroborative evidence to support the recommendations of DCHR."¹²

Section 1603.3 of the District Personnel Manual ("DPM") defines cause to include "[a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations."¹³ On February 5, 2010, OIG issued Employee an Advance Written Notice of Proposed Removal. On March 23, 2010, Employee was given a Final Decision Notice on Proposed Removal. Employee was charged with: 1) making a false entry into the PeopleSoft system for the purpose of maintaining a District of Columbia address; and 2) intentionally falsifying D.C. Form 307 (Certificate of Compliance with Residency Preference Requirement), in violation of DPM § 1803.1(a)(6).

¹⁰ Agency Exhibit 1.

¹¹ Agency Exhibit 27.

¹² Agency Exhibit 28.

¹³ Chapter 16 DPM § 1603.3.

On November 4, 2009, Employee signed a Certification of Compliance with the Residency Preference Requirement for the Year 2009. The affidavit certified that she was a bona fide resident of the District of Columbia as her “actual, regular, and principal place of residency.”¹⁴ Employee listed the addresses on M Street and Columbia Road as her current and previous addresses in the District. The document further stipulated that the failure to maintain a bona fide District residency for the applicable five (5) or seven (7) year period would result in forfeiture of the employee’s position and separation from District government employment. Employee’s signature was notarized by Kamal Ramchandani on November 4, 2009.¹⁵

The evidence presented by Agency supports a finding that Employee never resided at 1746 Columbia Road, Apartment 4, Washington, D.C. 20009 (form 307). According to Pittell, Employee provided a fabricated lease as proof of residency at this address. Through further investigation, it was determined that the lessor Employee listed on the lease (Daryl Enterprises, Inc.) did not exist. Employee also provided a fabricated notary signature on the lease. (Tr. pgs. 69-71). As additional proof that Employee never resided at the Columbia Road address, Agency presented a copy of the actual lease for the specific apartment Employee purported to reside in. The lease for Apartment 4 was between Mathew and Kelli M., the property owner. (Tr. pgs. 164-165). I find that all of Agency’s witnesses provide truthful testimony during the course of the evidentiary hearing and I find no reason to doubt the veracity of the documents presented in support thereof.¹⁶

On January 23, 2009, Employee changed her address in PeopleSoft to 1718 M Street, Northwest, Number 255, Washington, D.C. 20036.¹⁷ I find that there is sufficient, credible evidence in the record to support a finding that Employee never resided at this address either. The documentary and testimonial evidence shows that this address was a post office box located in a District UPS store. Employee asserts that the decision to change her address in PeopleSoft to a post office box was not made with the intent to deceive, but was only for the purpose of changing her mailing address. I disagree. The evidence proves that Employee initiated the change of her address to the post office box on M street, when she was actually residing with her mother-in-law in Silver Spring, Maryland. Both Pittell’s testimony and the Accurint report produced by Agency state that Employee resided at 13600 Stoner Drive in Silver Spring, Maryland from June 2004 until November 2009. In addition, Elliott testified that she conducted three interviews with Employee, and that Employee admitted that she was not living in the District. (Tr. pgs. 171-172). Mattiello also stated that he had a residency conference with Employee, wherein she admitted that she had moved out of the District in 2009 and that she admitted to entering the M Street address in PeopleSoft in an attempt to maintain District residency. When called to testify during the evidentiary hearing, Employee was duly sworn in, but refused to provide a statement to the record and denied Agency’s request to examine her. (Tr. pgs. 191-192).

¹⁴Agency Exhibit 10.

¹⁵Agency Exhibit 25.

¹⁶ Employee has failed to provide any credible evidence that the information produced during the course of her investigation was false or inaccurate.

¹⁷ Agency Exhibit 9.

Agency's form 307 (Residency Preference for Employment) required that an applicant claiming residency preference: 1) be a bona fide District residence; and 2) maintain a District residence for five (5) consecutive years. Employee falsely attested that she was a District resident, when she was residing in Maryland at the time she applied for the position of Staff Assistant.¹⁸ Employee was aware that the failure to maintain District residency would result in forfeiture of her position and separation from District government employment. Instead of providing truthful information on form 307, and in PeopleSoft, Employee chose to deceitfully claim that she resided in the District to gain an unwarranted advantage over other equally qualified employees who were applying for the same position.

Based on the evidence presented, I find that Employee falsified official records (Form 307 and her home address PeopleSoft) in securing and maintaining her appointment as a Staff Assistant. Under DPM § 1620.1(a), Agency had substantial evidence to serve as a basis for placing Employee on enforced leave based on DCHR's investigation. I further find that Employee's misconduct constituted an act that interfered with the efficiency and integrity of government operations. OIG is charged with eliminating fraud, waste, and abuse within the District government. Employee's actions were repugnant to Agency's mission and undermined the government's goal of promoting truthfulness and efficacy in its daily operations. Thus, Employee's argument that there was not a nexus between Employee's misconduct and her position is without merit. Based on the foregoing, I find that Agency has proven by a preponderance of the evidence that Employee was placed on enforced leave and subsequently terminated for cause.¹⁹

Whether the penalty was appropriate under the circumstances.

Any review by this Office of the agency decision selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.²⁰ Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."²¹ When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."²²

¹⁸ Agency Exhibit 2.

¹⁹ It should be noted that on May 10, 2010, Employee plead guilty in the United States District Court for the District of Columbia for having stated that she was a District resident when applying for her position with OIG. *See* Agency Answer to Petition for Appeal, Exhibit K (August 9, 2010).

²⁰ *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, Opinion and Order on Petition for Review (July 2, 1994).

²¹ *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985). 1601-0417-10

²² *Employee v. Agency*, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C. Reg. 2915, 2916 (1985).

Agency has the discretion to impose a penalty, which cannot be reversed unless “OEA finds that the agency failed to weigh relevant factors or that the agency’s judgment clearly exceeds the limits of reasonableness.”²³ The Table of Appropriate Penalties, found in Section 1619 of the DPM, provides general guidelines for imposing disciplinary sanctions when there is a finding of cause.

Enforced Leave

With respect to the decision to place Employee on enforced leave for five (5) days, I find that Agency acted reasonably within the parameters established in the DPM. Section 1620.1(a) provides that an employee may be placed on enforced leave if there is a finding that an employee utilized fraud in securing his or her appointment or if there is a determination that he or she falsified official records. As previously discussed, I find that there was sufficient evidence in the record to support a finding that Employee provided false information on her employment application, form 307 (Certification of Compliance), and in the PeopleSoft system. Accordingly, I find that placing Employee on enforced leave, pending the outcome of further investigation, was not an abuse of discretion. Agency’s primary function is to investigate District government employees who engage in misconduct. It is within the realm of reasonableness to place an employee on enforced leave who has allegedly engaged in misconduct of such a serious nature. In sum, I find that Agency acted reasonably and within the parameters allowed by law.

Termination

In addition, the penalty for a first offense of any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations is reprimand to removal. In this case, I find that Employee’s act of intentionally providing false information on an official District government document to establish residency constitutes an act that interfered with the efficiency and veracity of Agency’s operations. Employee had an ethical duty to provide truthful and accurate information to her employer, but failed to do so.²⁴ By falsifying records to gain an advantage over other employees in the hiring process, Employee not only committed a criminal act, but also compromised the public’s confidence in Agency’s ability to perform its functions. I further find that Agency acted reasonably within the parameters established in the Table of Penalties when it terminated Employee.

Due Process

Employee argues that she was denied certain due process rights by Agency. Employee’s primary argument is that Agency refused to make available to her the documents that were acquired during the course of her investigation. In *Cleveland Bd. of Educ. v. Loudermill*, the U.S. Supreme Court held that the “essential requirements of due process...[are] notice and [an] opportunity to respond.”²⁵ Pursuant to the holding in *Loudermill*, the employing agency must

²³ See *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985).

²⁴ See 6B DCMR § 1803.1 (a)(6).

²⁵ 470 U.S. 532, 546 (U.S. 1985).

provide: 1) oral or written notice of the charges against him or her, 2) an explanation of the employer's evidence; and 3) an opportunity to offer the reasons, in person or in writing, explaining why the proposed action should not be taken.²⁶

Here, I find that there is no *credible* evidence in the record to support a finding that Employee was denied due process at the agency level. The documents Agency relied on in their investigation were made available to Employee during her interviews with OIG's investigators. According to Mattiello, if Employee wanted a specific document that was gathered during the course of her investigation, she could have requested it from Agency. In addition, Employee was given written notice of the: 1) Notice of Proposed Enforced Leave; 2) Notice of Final Decision—Proposed Enforced Leave; 3) Advance Written Notice of Proposed Removal; and 4) Final Notice of Removal. In each case, Employee was notified of the proposed charges being levied against her. In addition, the written notices included the evidence that served as the basis for the charges. Employee was also given an opportunity to respond in writing if she chose to do so. It should be noted that Employee does not argue that she never received notice of her proposed/final placement on enforced leave, or her subsequent proposed/final notice of termination. Accordingly, I find no merit to Employee's argument that she was denied procedural due process.

Based on the foregoing, I conclude that Agency's decision to place Employee on enforced leave was the appropriate penalty and should be upheld. I further find that Agency's subsequent decision to terminate Employee was the appropriate penalty for her actions and should also be upheld.

ORDER

It is hereby **ORDERED** that Agency's action is upheld.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

²⁶ *Id.*