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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
ANTHONY FLOYD	)	
Employee	)	
	)	OEA Matter No.: 1601-0071-09
v.	)	
	)	Date of Issuance: January 26, 2011
D.C. DEPARTMENT OF	)	
TRANSPORTATION	)	
Agency	)	
_____	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Anthony Floyd (“Employee”) began working with the D.C. Department of Transportation (“Agency”) as a Safety Technician. In that capacity, Employee assisted children in safely crossing streets and intersections and controlled the flow of traffic for the protection of pedestrians. At the end of the 2007-2008 school year, Employee notified Agency that he would like to retire. He even attended a retirement celebration at

that time hosted by Agency. Unfortunately, on July 1, 2008, the Benefits and Retirement Office informed Employee that he was not eligible to retire.

When it was time for Employee to report for duty at the beginning of the 2008-2009 school year, he failed to report. As a result, Agency charged Employee with being absent without leave for ten consecutive days for the period of September 29, 2008 through October 10, 2008 and for 13 consecutive days for the period of October 14, 2008 through October 31, 2008. On November 14, 2008, Agency issued to Employee an advance written notice of proposed removal. After an administrative review, Agency notified Employee that he would be removed effective on January 2, 2009.

Thereafter, Employee filed a Petition for Appeal with the Office of Employee Appeals on January 16, 2009. By Initial Decision issued September 18, 2009, the Administrative Judge upheld Agency's action. The Administrative Judge concluded that Employee had "posited no excuse for his absence other than his decision not to report due to his belief that his retirement was imminent [nor did Employee] proffer[] [any] evidence or argument that Agency should have considered."<sup>1</sup> Therefore, she ordered that Employee's removal be upheld.

Subsequently, Employee filed a Petition for Review. In the petition Employee states that in mid-September, he spoke with his supervisor and asked to be placed on annual leave. According to Employee, his supervisor consented to this request. Employee goes on to state that because he had 298 hours of sick leave, he then asked his supervisor to place him on sick leave. The petition provides that Employee "neglected to

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<sup>1</sup> *Initial Decision* at pg. 5.

mention this in [his] response to the motion to dismiss because of the intense pressure and stress [he] was under due to the situation [he's] in.”<sup>2</sup>

Even though Employee has raised these arguments albeit belatedly, the law is clear that “when an employee offers a legitimate excuse, such as illness, for being absent without leave, the absence is justified and therefore excusable.” *Employee v. Agency*, OEA Matter No. 1601-0137-82, 32 D.C. Reg. 240 (1985); *Tolbert v. Dep’t of Public Works*, OEA Matter No. 1601-0317-94 (July 13, 1995), \_\_D.C. Reg.\_\_( ). Further, when an employee’s absence is excusable, the absence “cannot serve as a basis for adverse action.” *Richardson v. Dep’t of Corrections*, OEA Matter No. 1601-0249-95 (April 14, 1997), \_\_D.C. Reg.\_\_( ).

According to Employee, he can “provide documentation from [his] doctor to verify [his] illness during this period of time. . . .”<sup>3</sup> Based on Employee’s claim we will grant his Petition for Review and remand this appeal for further proceedings consistent with this opinion. The Administrative Judge is instructed to open the record for the limited purpose of allowing Employee to present documentation that will substantiate his claim that his absences should be excused because of illness. Agency should then be allowed to respond after which the Administrative Judge should render his or her decision.

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<sup>2</sup> *Petition for Review* at pg. 1.

<sup>3</sup> *Id.*

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and this appeal is **REMANDED** for further proceedings consistent with this opinion.

FOR THE BOARD:

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Clarence Labor, Jr., 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.