

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:	)	
	)	
FRANK COPELAND,	)	
Employee	)	OEA Matter No. 1601-0054-18
	)	
v.	)	
	)	Date of Issuance: May 28, 2019
D.C. DEPARTMENT OF PUBLIC	)	
WORKS,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Frank Copeland (“Employee”) worked as a Parking Officer with the D.C. Department of Public Works (“Agency”). On May 8, 2018, Agency terminated Employee for “(1) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: neglect of duty: failure to observe precautions regarding safety; careless or negligent work habits and (2) any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: misfeasance: careless work performance.” The effective date of Employees removal was May 11, 2018.<sup>1</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on

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<sup>1</sup> *Petition for Appeal*, p. 5 and 8 (June 11, 2018).

June 11, 2018. Employee argued that this was his first offense and that within his fourteen years of service, he never experienced an accident in a government vehicle.<sup>2</sup>

On July 13, 2018, Agency filed its Answer to Employee's Petition for Appeal. It argued that its adverse action against Employee was warranted. Agency explained that pursuant to District Personnel Manual ("DPM") § 1616.2, an employee may be suspended or removed summarily when his or her conduct: (a) threatens the integrity of District government operations; (b) constitutes an immediate hazard to the agency, to other District employees, or to the employee; or (c) is detrimental to the public health, safety, or welfare. Agency asserted that Employee's action of exiting a vehicle while leaving the ignition on and in gear, was a failure to follow instructions or precautions regarding safety and showed that Employee engaged in careless and negligent work habits. Moreover, Employee's failure to perform his duties in a safe manner resulted in injury to two people and significant property damage. Therefore, Agency requested that its removal action be upheld.<sup>3</sup>

The OEA Administrative Judge ("AJ") held a Pre-hearing Conference on March 26, 2019. Agency appeared for the Pre-hearing Conference; however, Employee failed to appear. The AJ issued a Show Cause Order on the same date, ordering Employee to provide a Statement of Good Cause for failing to appear at the Pre-hearing Conference. The statement was due on or before April 2, 2019. On April 9, 2019, the AJ issued his Initial Decision. He held that Employee did not file a Good Cause Statement by the deadline. Consequently, he dismissed Employee's appeal.<sup>4</sup>

On May 6, 2019, Agency filed its Petition for Review. It explains that without knowledge to the AJ, the parties executed a settlement agreement on April 7, 2019, pursuant to which

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Agency's Answer*, p.11-13 (July 13, 2018).

<sup>4</sup> *Initial Decision*, p. 1-3 (April 9, 2019).

Employee was required to withdraw his case with prejudice by April 22, 2019. Accordingly, Agency requests that the matter be remanded to the AJ so that he can properly dismiss the case with prejudice.<sup>5</sup>

As provided, the AJ issued an Initial Decision on April 9, 2019, dismissing the matter for failure to prosecute. However, unbeknownst to the Administrative Judge, two days before he issued his Initial Decision, the parties executed a settlement agreement on April 7, 2019. Agency is requesting that the Board remand the matter to the AJ for the limited purpose of having the judge issue a final judgement which accurately reflects the actual disposition of this matter. This Board believes that a remand is warranted. Therefore, the matter is remanded to the AJ for the aforementioned purpose.

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<sup>5</sup> *Agency's Petition for Review*, p. 1-3 (May 6, 2019).

**ORDER**

It is hereby ordered that Agency's Petition for Review is **GRANTED**. Accordingly, this matter is REMANDED to the Administrative Judge.

**FOR THE BOARD:**

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Clarence Labor, Chair

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.