**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of: | ) | |
| | ) | |
| EUGENE GOFORTH, | ) | |
| Employee | ) | OEA Matter No. 1601-0004-19 |
| | ) | |
| v. | ) | Date of Issuance: November 18, 2020 |
| | ) | |
| DEPARTMENT OF PUBLIC WORKS, | ) | |
| Agency | ) | |
| | ) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Eugene Goforth ("Employee") worked as a Heavy Mobile Equipment Mechanic for the Department of Public Works ("Agency"). On September 7, 2018, Agency issued a Notice of Final Decision on Summary Removal. The notice provided that Employee was being summarily removed under District Personnel Manual ("DPM") § 1612.2(c) for "conduct detrimental to the public health, safety or welfare" and §§ 1605.4(h) and 1607.2(h)(6) for "unlawful possession of controlled substances and paraphernalia: interfering with or refusing or failing to submit to a properly ordered or authorized drug test."[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on October 5, 2018. He asserted that he did not refuse to submit to a random drug test. Employee

[1] *Petition for Appeal*, p. 16 (October 5, 2018).

explained that he provided an initial specimen sample, and according to the testing collector, the sample did not meet the temperature requirements. Employee claimed that the collector failed to read the temperature strip affixed to the outside of the collection container to determine the actual temperature, and she failed to mark the appropriate box on the Federal Drug Testing Custody and Control Form. According to Employee, the collector discarded his sample and marked the "None Provided" box on the form. It was Employee's position that if the temperature was out of range, the collector should have completed the collection and immediately initiated a new collection under direct observation. He reasoned that both samples should have been submitted for testing with the appropriate markings on the form. Therefore, Employee requested that the summary removal action be removed from his personnel file; that he be reinstated to his position; that he receive back pay and benefits lost as a result of the termination; and that he receive a reimbursement of attorney's fees.[2]

Agency filed an Answer to the Petition for Appeal on November 8, 2018. It argued that Employee's position required a Commercial Driver's License ("CDL"). According to Agency, CDL holders were subjected to random drug testing procedures. It provided that Employee's first sample was outside of the required temperature range. Agency further explained that under 49 Code of Federal Regulations ("CFR") § 40.65(h)(5), when an initial sample is out of the acceptable temperature range, a drug test is not considered complete until the second sample is collected. Additionally, Agency provided that pursuant to 49 CFR § 40.191(a)(2), leaving a testing facility before providing a sample is considered a refusal, which results in a positive test result. Agency also asserted that there were multiple witness accounts that Employee willfully refused to provide a second urine sample under direct observation, which is a violation of section 1605.4(h) of the DPM. It was Agency's position that Employee had an obligation to provide a

[2] *Id.*, 6-7.

second sample under direct observation to comply with the Department of Transportation ("DOT") regulations and District policy. Agency noted that it considered whether there were mitigating, aggravating, or other relevant factors, as provided in *Douglas v. Veterans Administration,* 5 MPSR 280 (1981).[3] As a result, it requested that Employee's removal action be upheld.[4]

On December 12, 2019, the OEA Administrative Judge ("AJ") requested that the parties

[3] Those factors include:

(1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
(2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
(3) the employee's past disciplinary record;
(4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
(5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
(6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
(7) consistency of the penalty with any applicable agency table of penalties;
(8) the notoriety of the offense or its impact upon the reputation of the agency;
(9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
(10) potential for the employee's rehabilitation;
(11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
(12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

For the nature and seriousness of the offense, Agency found that Employee's refusal to provide a second sample under direct observation, was considered a positive result and a violation of the DOT regulations for a CDL. For Employee's job level and type of employment, Agency provided that Employee was held in a position of trust by other government employees and the public who depended on the reliability of his repairs. Agency found that although Employee had no past disciplinary action within the past three years prior to this incident; no past performance issues; and that he possessed the ability to get along with fellow workers, this did not mitigate the seriousness of Employee's refusal to provide a urine sample for a properly directed random drug test. Additionally, Agency found that it was no longer confident that Employee could perform his duties of the position after he violated DOT and Agency regulations. Moreover, it submitted that its decision to remove Employee was consistent with disciplinary action taken against similarly situated employees, and the penalty was consistent with Chapter 16 of the DPM's Table of Illustrative Actions. Agency also found that its reputation would be seriously damaged if the public were to become aware that an employee responsible for operating potentially dangerous equipment could continue their employment after refusing to submit to a drug test. It provided that Employee was aware of the consequences of refusing to submit to a random drug test, as evidenced by courses he completed and an acknowledgment receipt of Agency's policy on testing. Agency provided that there was no potential for rehabilitation or mitigating factors. Finally, it submitted that it was unaware of an effective alternative sanction that would have deterred Employee or others from engaging in such conduct in the future.

[4] *Agency's Answer*, p. 3-6 (November 8, 2018).

submit legal briefs on whether Agency had cause to remove Employee, and whether removal was appropriate under the circumstances.[5] In its brief, Agency asserted many of the same arguments presented in its Answer to Petition for Appeal, related to its cause to remove Employee.[6] Agency further explained that pursuant to DPM § 1607.2(h)(6), the penalty for a first occurrence of "interfering with, refusing or failing to submit to a properly ordered or authorized drug test" is removal. As a result, Agency requested that its adverse action be upheld.[7]

Similarly, Employee reiterated many of the arguments in his brief that were previously presented in his Petition for Appeal.[8] Additionally, he asserted that he did not refuse to provide a specimen sample; however, he refused to expose his penis to the collector. Employee explained that he felt uncomfortable and violated when he was asked to remove his pants and urinate in front of the collector. He expressed that this action was degrading, and it triggered his Post-Traumatic Stress and Bipolar Disorders. It was Employee's position that these mitigating circumstances supported his reason for not providing the second sample. Finally, Employee provided that he was previously randomly selected for drug testing on several occasions and was always found to be drug-free. Therefore, he requested that the summary removal action be

[5] *Post Prehearing Conference Order* (December 12, 2019).
[6] Agency argued that its removal action was warranted because Employee held a safety-sensitive position, which required a CDL. Accordingly, employees must comply with the drug and alcohol testing under the DOT regulations, federal, and District laws. Additionally, Agency submitted that the testing collector did not need to note the exact temperature of the sample once it was determined that the specimen was not within the acceptable temperature range on the temperature strip of the collection cup. According to Agency, the test collector noted in the "remarks" section of the form that Employee's initial specimen was outside of the temperature range and that he refused to be re-tested. Agency provided that because Employee refused to provide a second sample under direct observation, he violated 49 CFR Part 40 Subpart E, § 40.65(b)(7). Consequently, his failure to provide a specimen constituted a refusal to take the drug test.
[7] *Agency's Brief*, p. 3-10 (January 9, 2020).
[8] Employee claimed that he did not fail to submit to an authorized drug test. Additionally, he argued that Agency did not have cause to remove him because the collector failed to follow the collection procedures mandated by the DOT guidelines. Employee contended that if the temperature was out of range, then the collector should not have discarded the specimen sample and should have immediately initiated a new collection under direct observation. It was Employee's position that the collector should have kept the first specimen, marked it properly, and submit it along with the second sample taken under direct observation.

reversed.[9]

Agency filed a Reply Brief on March 4, 2020. It argued that Employee's refusal to provide a second sample under direct observation was considered a refusal to take a drug test, regardless of whether Employee was uncomfortable exposing himself. Agency contended that the collector's affidavit provided that she read the temperature strip on the specimen cup and only when the strip did not change color, did she determine that the temperature was not within the acceptable range. The collector also provided that she read the temperature strip within four minutes of Employee providing the urine specimen, as required by DOT regulations. As for Employee's assertion that the first sample was discarded before he refused to provide a second sample, Agency argued that this position is contradicted by the collector's statement that the sample was only discarded after Employee refused to provide a second sample under direct observation. Finally, Agency asserted that Employee's prior negative drug tests had no bearing on the test that was administered on June 13, 2018. Therefore, it requested that Employee's termination be upheld.[10]

The AJ issued his Initial Decision on April 30, 2020. As it related to the conduct detrimental to the public health, safety, or welfare charge, the AJ found that Employee's refusal to submit to the drug test did not rise to the level of conduct detrimental to the public health, safety, or welfare. However, he did find that pursuant to DPM § 1607.2(h)(6), Agency had cause for Employee's refusal or failure to submit to a properly ordered or authorized drug test. The AJ also disagreed with Employee's argument that the Federal Drug Testing and Custody and Control Form was incomplete. He ruled that Employee's argument failed because although the "Yes" or "No" box was not checked, the response to the question was clearly indicated in the

[9] *Employee's Brief*, p. 8-11 (February 10, 2020).
[10] *Agency's Reply Brief*, p. 2-4 (March 4, 2020).

remarks section which provided "donor temperature out of range." Thus, the AJ held that the remarks indicated that the temperature was outside of the acceptable range of 90 to 100 degrees Fahrenheit. Therefore, he determined that the omission of the "Yes" or "No" box being checked was *de minimis*.[11]

Moreover, the AJ opined that Employee failed to provide evidence that the collector prematurely discarded the initial specimen. He reasoned that the initial specimen was only discarded after Employee refused to submit to a drug test under direct observation. The AJ further explained that since a second specimen was not provided under direct observation, the DOT provisions pursuant to 49 CFR Part 40, §§ 40.191(a)(4) and 40.67, permitted the initial specimen to be discarded. Therefore, he found that Employee's specimen was not prematurely discarded.[12]

Finally, regarding the direct observation process, the AJ opined that despite Employee's discomfort, Agency – through Metro Lab – was within its authority to require Employee to provide a new sample under direct observation. As for the penalty, the AJ held that the Table of Illustrative Actions in the DPM provided that removal was an appropriate penalty for the first offense of refusing or failing to submit to a properly authorized drug test. Accordingly, the AJ ordered that Agency's termination action be upheld.[13]

On June 9, 2020, Employee filed a Petition for Review with the OEA Board. Employee submits many of the same arguments raised throughout his appeal. He also argues that Agency failed to properly apply the *Douglas* factors and consider the mitigating factors, such as harassment, job tensions, and his mental health issues. Therefore, Employee requests that the

[11] Additionally, the AJ noted that despite Employee's contention, there was no rule or regulation that required the test collector to show him the temperature strip to confirm that it was out of range. *Initial Decision*, p. 5-8 (April 30, 2020).
[12] *Id.*
[13] *Id.*

Initial Decision be withdrawn; his summary removal be revoked; or that the record be reopened so that an evidentiary hearing can be held.[14]

Agency filed its Opposition to Employee's Petition for Review on July 7, 2020. As it relates to Employee's argument regarding the consideration of mitigating factors, Agency provides that Employee did not mention any concerns or alleged issues related to his mental health until after he was placed on administrative leave. Moreover, Agency asserts that Employee failed to provide any medical documentation to prove that he suffered from Post-Traumatic Stress Disorder or any other alleged mental illness at the time he refused to submit to the drug test, or that his refusal was linked to such a mental impairment. Therefore, it held that it correctly found no mitigating circumstances and requests that the Initial Decision be upheld.[15]

Substantial Evidence

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding.[16]

Charge One

In accordance with DPM § 1616.2(c), "an employee may be removed summarily when his or her conduct is detrimental to the public health, safety, or welfare."[17] However, the AJ found that

[14] *Petition for Review*, p. 1, 5-6 (June 9, 2020).
[15] *Agency's Opposition to Employee's Petition for Review,* p. 9-11 (July 7, 2020).
[16] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[17] Per Agency's Final Notice, it relied on this regulation to remove Employee. *Petition for Appeal,* p. 16-21 (October 5, 2018).

Employee's refusal to submit to a properly ordered drug test did not rise to the level of conduct detrimental to the public health, safety, or welfare. He determined that there was no evidence in the record that Employee was under the influence of any controlled substances or alcohol while on duty. Additionally, the AJ held that there was no evidence that Employee operated a government-owned or leased vehicle while under the influence of a controlled substance or alcohol. Consequently, he ruled that there was insufficient evidence that Employee's conduct was a detriment to the public health, safety, or welfare.[18]

This Board agrees with the AJ's assessment, as it relates to this charge. There is no evidence in the record to support the charge that Employee engaged in any conduct, let alone that the conduct was detrimental to the public health, safety, or welfare. Accordingly, we find that there is substantial evidence to uphold the AJ's ruling related to this charge.[19]

Charge Two

DPM § 1602.1 provides that ". . . no employee may be reprimanded, suspended, demoted, placed on enforced leave or removed without cause, as defined in this chapter." According to Agency's Notice on Final Decision, it relied on DPM § 1605.4(h) to remove Employee.[20] The regulation provides the following:

> Though not exhaustive, the following classes of conduct and performance deficits constitute cause and warrant corrective or adverse action: unlawful possession of a controlled substance or paraphernalia or testing positive for an unlawful controlled substance while on duty.

When considering the cause of action taken against Employee, Agency used its Alcohol and Drug Testing Policy to reach a determination. According to the policy, its purpose is to ensure a

[18] *Initial Decision,* p. 5 (April 30, 2020).
[19] This Board must also note that neither Employee nor Agency dispute the AJ's finding in their Petition for Review or Opposition to the Petition for Review. Agency acknowledges the AJ's finding related to this charge, but it does not offer an argument to the Board that the decision was not based on substantial evidence.
[20] *Petition for Appeal,* p. 16-21 (October 5, 2018).

safe and drug-free transportation environment; to reduce the potential for vehicle accidents and casualties; and to comply with the U.S. Department of Transportation's regulations to eliminate the illegal use or abuse of alcohol and controlled substances among CDL drivers. Additionally, the policy provides that CDL drivers are expected and required to report to work fit for duty and remain able to perform their job duties throughout the day. To that end, Agency must comply with the requirements for testing of the United States DOT and other federal and District laws and regulations. Therefore, any CDL driver at work who tests positive for a controlled substance without a legitimate medical explanation, fails an alcohol test, or is in possession of any controlled substance without a prescription, shall be subject to discipline up to and including removal from employment.[21]

Agency also relied on 49 CFR Part 40, Subpart E, § 40.65(b)(1) which provided that the test collector ". . . must check the temperature of the specimen no later than four minutes after the employee has given . . . the specimen." Additionally, it provides that "the acceptable temperature range is 32-38 °C/90-100 °F." Moreover, 49 CFR Part 40, Subpart E, § 40.65(b)(2), provides that the collector must determine the temperature of the specimen by reading the temperature strip attached to the collection container. Finally, 49 CFR Part 40, Subpart E, § 40.65(b)(4) provides that if the specimen temperature is outside the acceptable range, the collector must mark the "No" box and enter in the "Remarks" line their findings about the temperature. In its Answer to Employee's Petition for Appeal, Agency provided a copy of Employee's toxicology report prepared by Elham Ahmed which does not indicate if the temperature of the specimen was between 90° and 100°.[22] In his Initial Decision, the AJ found that although the "No" box was not marked on the form, the collector did remark "donor

[21] *Agency Answer*, Tab #11 (November 8, 2018).
[22] *Id.* at Tab #12.

temperature out of range," indicating that Employee's specimen was not within the acceptable range of 90 to 100 degrees Fahrenheit.[23] The Board agrees with the AJ's assessment that the collector's failure to select the "No" box was *de minimus* because his remarks establish that the specimen was outside of the appropriate range for testing. As a result, we find that there is substantial evidence to support the AJ's ruling on this issue.

Once it was determined that a specimen temperature is outside of the acceptable range, 49 CFR Part 40, Subpart E, § 40.65(b)(5) provides that collectors must immediately conduct a new collection using direct observation procedures, as outlined in 49 CFR Part 40, Subpart E, § 40.67. However, the record reflects that Employee refused to provide a new collection under direct observation.[24] In his Petition for Review, Employee provided that he refused to take a second urine test because the test administrator demanded that the test be done in full view of his private parts without any proof that a second test was necessary.[25] Despite Employee's assertions, 49 CFR Part 40, Subpart E, § 40.67(j) provides that the person making the direct observation must ". . . watch the employee urinate into the collection container. Specifically, . . . watch the urine go from the employee's body into the collection container." Thus, despite Employee's discomfort, Agency was within its authority to require a submission under direct observation after Employee's initial test was outside of the acceptable range.[26] The plain language of 49 CFR Part 40, Subpart E, § 40.67(j) and documentary evidence provided by

[23] *Initial Decision,* p. 5 (April 30, 2020).
[24] Agency provided an affidavit from Kassahun Tefera, who was a Medical Technologist, a Medical Review Officer, and owner and manager of the Metro Lab D.C. The affidavit provided that Employee's first sample was lower than a normal temperature, and Employee refused to provide a sample under direct observation and continued to refuse to provide the sample after being instructed that a refusal would be treated as a positive test. *Agency Answer,* Tab #10 (November 8, 2018). Further, Agency employee, Dejun Hogan, provided an affidavit offering that "[Employee's] initial test was out of the acceptable temperature range[,] and he refused a second sampling attempt under direct observation." *Id.* at Tab #9. Finally, Agency employee, Glennis Jackson, submitted a statement which provided that Employee was informed by a lab technician that his urine was not within the acceptable temperature, so he was required to provide a second test. Glennis Jackson provided that Employee stated that he was uncomfortable with the lab technician behind closed doors. *Id.* at Tab #8.
[25] *Petition for Review,* p. 4 (June 9, 2020).
[26] *Initial Decision,* p. 7 (April 30, 2020).

Agency support the AJ's holding on this issue. Therefore, there was substantial evidence to support the AJ's ruling regarding charge two against Employee.

Penalty within the Range Allowed by Law, Regulation, or Applicable Table of Penalties

Agency relied on DPM § 1607.2(h)(6) when determining the penalty to imposed against Employee for this charge. DPM § 1607.2(h)(6) provides the following:

> The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from the penalties outlined in the table.[27]

| Nature of Circumstances | First Occurrence |
|---|---|
| (6) Interfering with, refusing or failing to submit to a properly ordered or authorized drug test, including substituting, adulterating, or otherwise tampering with a urine sample. | Removal |

Therefore, removal was within the range of penalty for Employee's refusal or failure to submit to an authorized drug rest.

Appropriateness of Penalty

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).[28] According to the *Stokes* Court, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there

[27] It should be noted that the factors provided in DPM § 1606.2 are the same factors outlined in *Douglas.*
[28] *Anthony Payne v. D.C Metropolitan*, OEA Matter No. 1601-00540-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review (*April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

is clear error of judgment by the agency. The Court in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." OEA has previously held that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[29]

Moreover, the court in *Douglas v. Veterans Administration* held that an agency should consider certain factors when determining the penalty of adverse action matters. Furthermore, the OEA Board held in *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, *Opinion and Order on Petition for Review* (September 17, 2012), that an agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. This reasoning was also presented in *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C. Reg. 352 (1985).

Despite Employee's contention that Agency failed to consider mitigating circumstances as required under *Douglas*, Agency presented evidence that it considered each factor outlined in *Douglas* when deciding to remove Employee.[30] Agency provided that it found no mitigating factors when making its determination. Additionally, Agency correctly contended that Employee failed to provide any medical documentation to prove that he suffered from Post-traumatic Stress or Bipolar Disorder at the time he refused to be tested under direct observation. Employee made assertions but offered no evidence of harassment or mental health issues. As a

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[29] *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); and *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011).
[30] *Petition for Appeal*, p. 17-20 (October 5, 2018).

result, we will abide by the holdings in *Holland* and *Butler* and uphold Agency's decision because the *Douglas* factors were properly considered in this case.

Conclusion

This Board agrees with the AJ's assessment that there was not substantial evidence in the record to hold that Agency had cause for DPM § 1616.2. However, there is substantial evidence in the record to uphold the AJ's ruling that Agency had cause to remove Employee for violating DPM § 1605.4(h). Moreover, removal was within the range of penalty for DPM § 1605.4(h). Additionally, the penalty imposed by Agency was based on the relevant *Douglas* factors, and there was no clear error of judgment by Agency. Accordingly, this Board must deny Employee's Petition for Review.

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

**FOR THE BOARD:**

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Clarence Labor, Jr. Chair

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

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Dionna Marie Lewis

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.