THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE[1]	
v.	OEA Matter No. 1601-0083-22R24R25
OFFICE OF THE CHIEF TECHNOLOGY OFFICER,	Date of Issuance: November 6, 2025
Agency	

THIRD OPINION AND ORDER
ON
PETITION FOR REVIEW

This matter was previously before this Board. Employee worked as an Information Technology Specialist for the Office of the Chief Technology Officer ("Agency"). On August 31, 2022, Agency issued a final notice of separation removing Employee from his position. Employee was charged with falsifying time entries, in violation of 6-B District of Columbia Municipal Regulations ("DCMR") §§ 1607.2(c)(1) – knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents and 1607.2(b)(2) – misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations. Agency alleged that Employee falsified time logs by submitting entries for hours not worked between

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.

August 4, 2021, and February 11, 2022, which resulted in Agency overpaying $53,391.66 in wages to Employee. Additionally, Agency contended that during its investigation, Employee provided conflicting answers and refused to answer questions related to the overpayment of funds. Consequently, Employee was terminated.[2]

On September 30, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He argued that he did not knowingly submit false time logs. Employee contended that he was unaware that PeopleSoft was automatically inputting his time.[3] As a result, he requested that the termination action be rescinded and that he be reinstated to his previous position.[4]

According to Agency, Employee admitted that he manually input his time for days he reported to work in-person, which was a direct violation of its Exception Time Reporting ("ETR") policy.[5] Moreover, it argued that Employee received ETR training and was aware that manually entering his regular hours constituted a violation of its policy and that his actions could have resulted in an overpayment of wages. Agency also asserted that Employee misrepresented, falsified, or concealed material facts during an official investigation.[6] Further, it contended that

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[2] *Petition for Appeal*, p. 7 (September 30, 2022).

[3] PeopleSoft is a software application used by District employees, where they are able to input time, submit a leave request, review paycheck and benefits, request training, and update their personal information. Employee claimed that he and several of his colleagues, including his supervisor, were unaware of the automatic update in PeopleSoft. Further, he argued that he did not notice the overpayment because his paychecks were directly deposited into his bank account.

As it related to his refusal to answer questions, Employee contended that he did not answer questions only after investigators badgered him and asked the same questions to which he had already provided an answer. Thus, it was Employee's position that he did not misrepresent, falsify, or conceal any material facts or records related to Agency's investigation. Additionally, he argued that Agency failed to follow the progressive discipline guidelines provided under 6-B DCMR § 1607.2.

[4] *Petition for Appeal*, p. 2 and 5 (September 30, 2022).

[5] Agency is an exception-based time reporting agency, which means that employees only report time exceptions on their time sheet — i.e., annual leave, routine telework, jury duty, etc. According to Agency, employees were not to report regular time when they worked in-person; they were required to leave the day blank because the system would automatically enter their time for those days.

[6] Agency claimed that when it inquired about the overpayment of wages, Employee provided that he was unaware of the overpayment because his wife handled their finances. However, it contended that Employee admitted to routinely

based on the Table of Illustrative Actions in 6-B DCMR § 1607.2, removal was appropriate given Employee's conduct. Agency explained that it considered the *Douglas*[7] factors when selecting the penalty of removal.[8] Therefore, it requested that the Petition for Appeal be dismissed.[9]

The Administrative Judge ("AJ") issued an Initial Decision on July 18, 2023. She held that Employee accurately submitted his time manually into the PeopleSoft system, which was approved by his supervisor. The AJ noted that PeopleSoft automatically recorded the time for the same period that Employee submitted his time; thereby, prompting the payroll system to consider the additional time entered by Employee as overtime pay. Moreover, she determined that although Employee's lengthy history of complying with the ETR policy proved that he was aware of how

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withdrawing money from the bank account in which he received direct deposits of the overpayment. Agency also claimed that Employee refused to answer relevant questions and provided conflicting explanations as to why the overpayment wages were no longer in his bank account.

[7] The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

> 1) the nature and seriousness of the offense, and its 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.

[8] Agency reasoned that Employee's conduct of consistently submitting false time sheets over a six-month period adversely impacted its reputation; betrayed his position of public trust; showed his inability to be rehabilitated; and necessitated an adequate disciplinary action to deter others.

[9] *Agency's Answer*, p. 4-11 (October 31, 2022).

to accurately report his time, Agency failed to consider the impact that the Covid-19 Public Health Emergency had on its time recording policy.[10] The AJ reasoned that Agency failed to prove that Employee knowingly submitted, or allowed the submission of, falsified time logs into the payroll system. Furthermore, she held that Employee did not misrepresent, falsify, or conceal material facts or records in connection with Agency's investigation. According to the AJ, Employee offered to repay the overpayment with one $25,000 installment, followed by smaller installments. Consequently, she concluded that Agency lacked cause to terminate Employee. As a result, she ordered that Employee be reinstated and that Agency reimburse Employee all back pay and benefits lost, less the overpayment amount of $53,391.66.[11]

Agency disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on August 23, 2023. It contended that the AJ's decision regarding its misrepresentation and falsification charges were based on an erroneous interpretation of the regulations and its policy. Agency claimed that its ETR policy remained the same throughout, and after, the pandemic. It further maintained that employees were required to use PeopleSoft to manually enter time when working outside of the office and could not enter time for hours worked in the office.[12] Thus, Agency argued that the AJ incorrectly determined that Employee accurately submitted his time manually; that Agency failed to consider the impact of the pandemic on its ETR policy; and that Agency did not meet its burden of proof to establish that Employee knowingly submitted false time logs. Accordingly, it requested that the Board grant its petition because the AJ's conclusions

[10] The AJ noted that during the pandemic, Agency's time reporting policies changed. Employees were required to manually enter their time using the time reporting code "STTW" for Telework (Situational). According to the AJ, Agency did not provide any evidence to dispute this assertion.
[11] *Initial Decision*, p. 8-13 (July 18, 2023).
[12] Agency submitted that it did not instruct its employees to switch to manual time reporting from situational telework to regular pay. It argues that Employee entered "REG" manually, which was incorrect and a direct violation of the ETR policy.

of law were unsupported by the record, and the decision was based on an erroneous interpretation of OEA's regulations and Agency's policies.[13]

On September 27, 2023, Employee filed a Response to Agency's Petition for Review. He opined that the AJ correctly determined that Agency failed to offer proof of his intent to falsify his time logs. Employee argued that the AJ took judicial notice that all District employees were required to use the time reporting code "STTW" while teleworking during the Covid-19 Public Health Emergency, which represented a change in policy for reporting time prior to the pandemic. Finally, he contended that Agency lacked proof that Employee offered inconsistent statements or concealed evidence during its investigation. Therefore, Employee requested that Agency's Petition for Review be denied.[14]

The OEA Board found that the Initial Decision was not based on substantial evidence. Moreover, it determined that the Initial Decision did not address all material issues of fact in this case. The Board explained that although the AJ requested briefs from both parties, the briefs offered conflicting facts, and the documents submitted created more questions than answers. Thus, rendering it harder for the Board to rule that the Initial Decision was based on substantial evidence.[15]

The Board also held that the parties' positions regarding time reporting pre-pandemic, during the pandemic, and after the pandemic contradicted each other. As it related to the misrepresentation, falsification, or concealment of material facts in connection with an investigation, the Board held that a review of Agency's investigation offered evidence of Employee being evasive or providing no response to several questions. It further opined that Employee

[13] *Agency Petition for Review*, p. 1-13 (August 23, 2023).
[14] *Employee's Response to Agency Petition for Review*, p. 5-20 (September 27, 2023).
[15] *Employee v. Office of the Chief Technology Officer,* OEA Matter No. 1601-0083-22, *Opinion and Order on Petition for Review*, p. 9-11 (November 16, 2023).

seemed to concede that he refused to answer questions during the investigation because he felt that the investigator was "badgering" him.[16] Accordingly, the Board remanded the case to the AJ to adequately address the material issues of facts in dispute.[17]

On September 23, 2024, the AJ issued an Initial Decision on Remand. She determined that Agency's ETR time entry procedure did not change during or after the pandemic. Accordingly, she held that Employee violated the time entry policy and should have allowed the system to automatically enter eight hours of regular pay instead of manually entering the hours himself, which resulted in the overtime payments. However, she found that there was no evidence that Employee knowingly supplied incorrect information with the intention of defrauding, deceiving, or misleading Agency and that he provided a plausible explanation to negate an intent to deceive or mislead Agency.[18] Moreover, the AJ opined that Employee had a duty to answer questions during the investigation, and she found that Employee did not answer the questions or found his answers to be evasive. However, she ruled that Employee's responses were not intended to defraud or mislead Agency for his own private gain. Accordingly, she again reversed Agency's termination action and ordered that Employee be reinstated with backpay, less the $53,391.66 overpayment.[19]

Agency disagreed and filed another Petition for Review on October 28, 2024. It argued that the AJ erroneously interpreted the law applicable to Employee's violation of DCMR § 1607.2(b)(2) by insisting that there be an intent to defraud, deceive, or mislead Agency for a private material gain. As for the misrepresentation, falsification, or concealment charge, Agency opined

[16] *Petition for Appeal*, p. 5 (September 30, 2022).
[17] *Employee v. Office of the Chief Technology Officer,* OEA Matter No. 1601-0083-22, *Opinion and Order on Petition for Review*, p. 11-12 (November 16, 2023).
[18] The AJ found that Agency did not provide testimonial or documentary evidence to show that a manager did not inform Employee to enter his time manually when he returned to work. She also held that one other employee made the same erroneous time submissions.
[19] *Initial Decision on Remand*, p. 11-19 (September 23, 2024).

that although the AJ found that Employe had a duty to cooperate with the investigation and failed to do so, she, again, erroneously relied on the intent to defraud, deceive, or mislead for private material gain element. According to Agency, this is a higher burden and should not have been imposed. Therefore, it requested that the OEA Board reverse the Initial Decision on Remand.[20]

On December 9, 2024, Employee filed his response to Agency's Petition for Review and argued that while DCMR § 1607.2(b)(2) does not explicitly provide a private material gain requirement, it does not mean that it cannot be imputed to the requirements for proving the charge. Thus, according to Employee this is not a basis for reversing the Initial Decision on Remand. He also asserted that he did not have the requisite intent and that there was a lack of rebuttal witnesses who could have contradicted his version of events. Therefore, Employee requested that the Petition for Review be denied.[21]

The OEA Board issued its Second Opinion and Order on Petition for Review. It found that the Initial Decision on Remand was not based on substantial evidence. The Board held that the AJ erred in holding that Agency must prove by preponderance of evidence that Employee knowingly supplied incorrect information with the intent of defrauding, deceiving, or misleading Agency. Additionally, it opined that although the AJ found that Employee's time entry reporting was plausible, the AJ's analysis was based on the incorrect DCMR subsections. Moreover, the Board held that historically, OEA Administrative Judges have correctly relied on an analysis that did not include the private material gain requirement. Therefore, the Board remanded the matter for the AJ to consider the merits of the case while applying the applicable regulations and case law.[22]

On June 11, 2025, the AJ issued her Second Initial Decision on Remand. She held that the

[20] *Agency Petition for Review* (October 28, 2024).
[21] *Employee's Response to Agency's Petition for Review* (December 9, 2024).
[22] *Second Opinion and Order on Petition for Review,* p. 7-10 (May 29, 2025).

record is void of any evidence to suggest that Employee knowingly submitted false time logs for hours not worked. According to the AJ, knowingly is defined as "an attempt to commit fraud" pursuant to the Black's Law Dictionary (12th ed. 2024). The AJ further found that Employee did not deliberately enter his time incorrectly and therefore, was not in violation of 6-B DCMR § 1607.2(c)(1). Additionally, she conceded that Employee's answers during the August 1, 2022, video interview appeared evasive and that he failed to respond to some questions. The AJ concluded that pursuant to 6-B DCMR § 1607.2(b)(2), his responses were not intended to mislead, misrepresent, conceal, or falsify material facts in connection with the investigation. She also determined that Employee's answers were consistent and that his refusal to answer repeated questions was valid, as he felt badgered. Finally, the AJ ruled that Agency lacked cause for its adverse action against Employee. Consequently, she reversed Agency's termination action and ordered that Employee be reinstated with backpay, less the $53,391.66 overpayment.[23]

Agency disagreed with the Second Initial Decision on Remand and filed a Petition for Review on July 16, 2025. It contends that the AJ's findings regarding the 6-B DCMR §§ 1607.2 (c)(1) and 1607.2(b)(2) charges are based on erroneous interpretations of law and lack substantial evidence. Agency further asserts that the AJ improperly modified the factual findings of the Second Initial Decision on Remand. It argues that the AJ applied the incorrect definition of "knowing"[24] derived from a non-binding source, Black's Law Dictionary, and misrepresented that definition. Accordingly, Agency requests that the OEA Board reverse the Second Initial Decision on Remand, or if further proceedings are necessary, reassign the matter to an impartial Administrative Judge.[25]

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[23] *Second Initial Decision on Remand*, p. 12-19 (June 11, 2025).
[24] Agency claims that the AJ took the phrase "a knowing attempt to commit fraud" and falsely represented it as part of the definition itself.
[25] *Agency's Petition for Review*, p. 2-11 (July 16, 2025).

On August 21, 2025, Employee filed his Response to Agency's Petition for Review. He argues that the AJ neither erred nor exceeded her authority in referencing 6-B DCMR §§ 1607.2 (c)(1) and 1607.2(b)(2), in the Second Initial Decision on Remand. Employee maintains that the AJ's interpretation of the term "knowingly" was supported by substantial evidence and complied with the Board's remand instructions. He also asserts that the AJ acted within her discretion in concluding that Agency failed to meet its burden of proof. As a result, Employee requests that Agency's Petition for Review be denied.[26]

Cause

Employee was charged with violating DCMR §§ 1607.2(c)(1) – knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s) and 1607.2(b)(2) – misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations. DCMR §§ 1607.2 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.
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> (b) False Statements/Records
>
> (2) Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations
>
> (c) Fiscal Irregularities
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> (1) Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).

[26] *Employee's Response to Agency's Petition for Review*, p. 2-11 (August 21, 2025).

Agency's final notice provides that he was removed in accordance with DCMR § 1607.2(c)(1) which relates to fiscal irregularities for knowingly submitting false time records.

Contrary to the AJ's holding, the Black's Law definition of knowing is "having or showing awareness or understanding; well-informed" or "deliberate; conscious." The record is clear that Employee was aware of Agency's ETR time entry procedure. Agency's time reporting system was the same before, during, and after the Covid-19 pandemic. Prior to the pandemic, the Peoplesoft system would automatically input the code "REG" for regular hours payable to Employees.[27] Employee never entered "REG" for hours worked prior to the pandemic and was aware of the process of the system automatically entering this time for employees. Thus, as the AJ held in her Initial Decision on Remand, Employee violated the time entry policy and should have allowed the system to automatically enter eight hours of regular pay instead of manually entering the hours himself, which resulted in the overtime payments.[28] Accordingly, cause was established of Employee's knowing submission of (or causing or allowing the submission of) falsely stated time logs.

As it relates to Agency's second charge of DCMR § 1607.2(b)(2), misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations, in a previous decision the AJ held that while Employee was frustrated by the investigator's questions, he had a duty to answer and that some of his answers were evasive.[29] In our Opinion and Order on Petition for Review,[30] this Board highlighted evidence of Employee

[27] *Agency Response to Post Status/Prehearing Conference Order*, p. 3 (March 27, 2023).
[28] *Initial Decision on Remand*, p. 11-12 (September 23, 2024).
[29] *Id.*, 11-19.
[30] *Employee v. Office of the Chief Technology Officer*, OEA Matter No. 1601-0083-22, *Opinion and Order on Petition for Review* (November 16, 2023).

being evasive or providing no response to several questions.[31] Furthermore, this Board held and still maintains that Employee conceded that he refused to answer questions during the investigation because he felt that the investigator was "badgering" him.[32] Therefore, there was cause that Employee engaged in misrepresentation, falsification, or concealment of material facts in connection with an investigation.

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

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).[33] According to the Court in *Stokes*, 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 is clear error of judgment by the agency.[34] DPM § 1607.2(c) provides that the penalty for the first

[31] *See* flash drive submitted in *Additional Evidence in Response to Post Status/Prehearing Conference Order* (April 24, 2023). Agency asked Employee the following questions, to which no response was provided:

1. Who owned the bank account to which the overpayment was deposited?
2. What happened to the deposited funds?
3. Are there still funds available in the deposited account?
4. When did the funds leave the account?
5. What is the balance of funds in the deposited account?

[32] *Petition for Appeal*, p. 5 (September 30, 2022).

[33] *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).

[34] The D.C. Court of Appeals 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." As a result, 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. *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).

offense of knowing submission of (or causing or allowing the submission of) falsely stated time logs ranges from suspension to removal. Thus, removal was within the range of penalties. Moreover, DPM § 1607.2(b)(2) provides that the range of penalties for misrepresentation, falsification, or concealment of material facts in connection with an investigation is reprimand to removal. Similarly, removal was also within the range of penalties for this cause of action.

The record shows that the *Douglas* factors were weighed by Agency before imposing its penalty of removal.[35] Agency reviewed each of the twelve *Douglas* factors and rated each factor as aggravating, neutral, or mitigating. There is no evidence of an abuse of discretion. Thus, Agency's penalty determination was appropriate.

Conclusion

Agency had cause to remove Employee for knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents and misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations. The penalty of removal was within the range allowed by law, regulation, and any applicable table of penalties for both

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Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office. *Love* also provided the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[35] *Agency Answer*, Exhibit #12 (October 31, 2022).

causes of action. The penalties were based on relevant factors, and there was no clear error of judgment by Agency. Accordingly, Agency's Petition for Review is granted; the Second Initial Decision on Remand is reversed. Thus, Employee's termination is upheld.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**, and the Second Initial Decision on Remand is reversed.

FOR THE BOARD:

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Pia Winston, Chair

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Arrington L. Dixon

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LaShon Adams

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Jeanne Moorehead

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.