

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

_____	)	
In the Matter of:	)	
	)	
RONDA CRUMEL,	)	OEA Matter No. 1601-0035-19
Employee	)	
	)	
v.	)	Date of Issuance: January 30, 2020
	)	
DEPARTMENT OF PUBLIC WORKS,	)	JOSEPH E. LIM, ESQ.
Agency	)	Senior Administrative Judge
_____	)	
Ronda Crumel, Employee <i>pro se</i>		
Jhumur Razzaque, Esq., Agency Representative		

**INITIAL DECISION**

PROCEDURAL HISTORY

On February 26, 2019, Ronda Crumel (“Employee”) filed a Petition for Appeal with this Office regarding her 45-day suspension from her position as a Parking Enforcement Officer by the Department of Public Works (“Agency” or “DPW”) for using a government vehicle for a personal errand. This matter was assigned to me on June 11, 2019. I held a Prehearing Conference on July 24, 2019, and subsequently concluded that a hearing was not warranted. I ordered the parties to submit their legal briefs on the issue of whether Agency’s choice of Employee’s penalty should be upheld. The record was closed after the parties filed their submissions.

JURISDICTION

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

ISSUES

1. Whether Agency had proper cause to suspend Employee from service for 45 days.
2. If so, whether Agency’s penalty was appropriate under the circumstances.

FINDINGS OF FACT

The following facts are undisputed:

1. Employee began her tenure with DPW as a Parking Enforcement Officer (“PEO”) in DPW’s Parking Enforcement Administration (“PEMA”) on March 11, 2002. Employee’s appointment was for a term set to expire on April 10, 2003.<sup>1</sup>
2. On April 11, 2003, Employee’s term was extended for a period of 13 months.<sup>2</sup>
3. On March 7, 2004, Employee was converted from a term-appointment to a career PEO, and consequently received an increase in pay grade.<sup>3</sup>
4. On July 20, 2016, Employee was suspended from her position as a PEO with DPW for nine (9) days for misfeasance for providing a falsified doctor’s note.<sup>4</sup>
5. DPW raised concerns in Employee’s recent performance reviews that she inadequately performed her core duty of issuing parking tickets as a PEO. Additionally, it was noted that she was “marginal” for attendance.<sup>5</sup>
6. On August 1, 2018, Employee used her government vehicle to complete a personal errand, which was to purchase cigarettes at a Valero gas station located at 1803 West Virginia Avenue, N.E., Washington, D.C.<sup>6</sup>
7. The stop at Valero gas station occurred at approximately 11:00 pm. Employee’s patrol was scheduled to begin an hour earlier at 10:00 pm.<sup>7</sup>
8. The Valero gas station was not a part of Employee’s assigned patrol area.<sup>8</sup>
9. During her brief time at the gas station, Employee was confronted by an unidentified pedestrian.<sup>9</sup> This pedestrian “started banging” on the driver’s side window of the government-issued vehicle and jumped onto the rear of the vehicle as Employee began to drive away.
10. Employee continued driving away down West Virginia Avenue with knowledge that the pedestrian was hanging on to the back of the vehicle. Employee was able to attract the attention of nearby police officers, who arrested the pedestrian.<sup>10</sup>
11. DPW asserts that it was raining at the time of this incident.<sup>11</sup>

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<sup>1</sup> Agency Answer (February 26, 2019) Tab 1 & 2.

<sup>2</sup> *Id.*, Tab 3.

<sup>3</sup> *Id.*, Tab 4.

<sup>4</sup> *Id.*, Tab 16.

<sup>5</sup> *Id.*, Tab 15.

<sup>6</sup> *Id.*, Tab 7 & 8.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*, Tab 12.

<sup>9</sup> *Id.*, Tab 7, 8 & 9.

<sup>10</sup> *Id.*, Tab 9.

<sup>11</sup> *Id.*, Tab 12.

12. Shortly thereafter, PEMA Shift Coordinator Kathy Harrison-Crews received a phone call from Employee stating that a person had jumped on the back of her truck and requesting that Ms. Harrison-Crews respond to the scene. Upon her arrival, Ms. Harrison-Crews observed police officers speaking with Employee and the pedestrian. She further confirmed with Employee that she had been at the Valero gas station to purchase cigarettes. Subsequently, Ms. Harrison-Crews filed an Initial Incident/Accident Report Form with her supervisor, Preston Moore, within 24 hours of the incident.<sup>12</sup>
13. On October 30, 2018, DPW provided Employee with an Advanced Written Notice of Proposed Forty-Five (45) Day Suspension, identifying three causes as a result of the foregoing incident.<sup>13</sup> The charges were as follows:
- a. Conduct Prejudicial to the District Government: Use of a District owned or leased vehicle for use other than official purposes.
  - b. Neglect of duty: Conducting personal business while on duty.
  - c. Safety and Health Violations: Failure or refusal to observe and/or enforce safety and health regulations or to perform duties in a safe manner.
14. Prior to the final decision on her suspension, Employee submitted a written response to the Advanced Written Notice, detailing the hardships she has experienced resulting from this suspension. Additionally, Employee's Union representative submitted a written response on Employee's behalf on December 18, 2018.<sup>14</sup>
15. After careful review of the Advanced Written Notice and Employee's response, the Deciding Official, Johnny Gaither, issued a Final Decision Notice on Proposed Suspension of Forty-Five (45) Days (FDN) on January 2, 2019, finding the cause for the proposed suspension (Conduct Prejudicial to the District Government, Neglect of duty, and Safety and Health Violations) was supported by the evidence and that the proposed 45 day suspension would be upheld.<sup>15</sup>
16. Employee served the period of suspension from Monday, January 28, 2019 through Thursday, March 28, 2019. She subsequently returned to work on Friday, March 29, 2019.<sup>16</sup>

#### ANALYSIS AND CONCLUSIONS OF LAW

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<sup>12</sup> *Id.*, Tab 7.

<sup>13</sup> *Id.*, Tab 10.

<sup>14</sup> *Id.*, Tab 11.

<sup>15</sup> *Id.*, Tab 12.

<sup>16</sup> *Id.*

Employee does not deny any of the charges, but at the Prehearing Conference, she argued that Agency should provide her back pay because this caused her to lose everything and incur financial debt. She also states that she is nearly homeless. Because of Employee's admission, there was never any question that Agency had met its burden of establishing cause for taking adverse action. However, Employee asserts that her penalty should be overturned and that she should be returned to work. Although Employee complained about her penalty, her brief never touched on how her penalty was improper.

As noted above, the only remaining issue is whether the discipline imposed by Agency was an abuse of discretion. Any review by this Office of the agency decision of 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.<sup>17</sup> 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."<sup>18</sup> 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."<sup>19</sup>

The penalty for a first occurrence of Neglect of Duty ranges from counseling to removal.<sup>20</sup> The penalty for a first occurrence of Conduct Prejudicial to the District Government (use of District owned or leased vehicles such as cars, vans, trucks, buses, aircraft, boats or any motor vehicle for use other than official purposes) ranges from a 15-day suspension to removal.<sup>21</sup> The penalty for a first occurrence of Safety and Health Violations (failure or refusal to observe and/or enforce safety and health regulations or to perform duties in a safe manner) ranges from reprimand to removal.<sup>22</sup>

The record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present. For the foregoing reasons, I conclude that Agency's decision to select removal as the appropriate penalty for the employee's infractions was not an abuse of discretion and should be upheld.

### ORDER

It is hereby ORDERED that the agency action removing the employee is UPHELD.

FOR THE OFFICE:

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<sup>17</sup> 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).

<sup>18</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>19</sup> *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).

<sup>20</sup> 6-B DCMR § 1607.2(e) Table of Illustrative Actions (2017).

<sup>21</sup> 6-B DCMR § 1607.2(a)(13) Table of Illustrative Actions (2017).

<sup>22</sup> 6-B DCMR § 1607.2(i)(4) Table of Illustrative Actions (2017).

JOSEPH E. LIM, ESQ.  
Senior Administrative Judge