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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0079-22
v.	)	
D.C. DEPARTMENT OF GENERAL	)	Date of Issuance: September 18, 2025
SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as Special Police Officer with the District of Columbia Department of General Services (“Agency”). On July 25, 2022, Agency issued a final notice of removal to Employee. It charged him with neglect of duty pursuant to District Personnel Manual (“DPM”) § 1607.2(e). According to Agency, while Employee was on duty, he was assigned to post #9 at the District of Columbia National Guard (“DCNG”) building. At this assigned fixed post, Employee was required to remain on the post until he was relieved of his duties by another officer. However, Agency alleged that twice on February 21, 2022, Employee left his post without being relieved. According to Agency, the second time that Employee abandoned his post resulted in a security breach with an unauthorized person gaining access to the building. It was Agency’s position that

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

this breach put the building and its occupants at risk, and it required that the entire DCNG be placed in a lockdown mode. As a result, Agency terminated Employee from his position.²

On August 22, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). Employee argued that he made a request over the radio to be relieved to use the restroom. However, he alleged that he did not receive a response, so he left his post, which he maintained that he did not know was not allowed. According to Employee, his termination was unwarranted and amounted to disparate treatment because similarly situated Special Police Officers who were also charged with neglect of duty received less severe penalties. Additionally, he posited that the *Douglas* factors were not properly considered by Agency.³ Therefore, he requested that he be reinstated to his position and that Agency reimburse him for back pay and benefits.⁴

On November 10, 2022, Agency filed its Answer to Employee’s Petition for Appeal. It

² *Petition for Appeal*, p. 17-24 (August 25, 2022).

³ 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.

⁴ *Petition for Appeal*, p. 2-4 and 8-11 (August 25, 2022).

argued that as an armed Special Police Officer, Employee was required to maintain his post while on duty until he was relieved. It explained that Employee's abandonment of his post allowed an unknown person to wander into the facility, resulting in a lockdown. Agency contended that Employee's duties included screening individuals who entered the facility, in addition to protecting the safety of the workers within the facility. It opined that pursuant to DPM § 1607(e) the Table of Illustrative Actions, Employee was subject to removal for the first offense of abandoning his post on February 21, 2022, as the penalty ranges from counseling up to removal. It asserted that it did consider the *Douglas* factors and concluded that the security breach and lockdown that resulted from Employee's abandonment were so egregious that termination was warranted. As a result, it requested that Employee's termination be upheld.⁵

After conducting a two-day evidentiary hearing, the OEA Administrative Judge ("AJ") issued an Initial Decision on April 14, 2025. He held that Agency established cause for Employee's failure to carry out official duties pursuant to the neglect of duty charge. The AJ found that the testimonies provided by witnesses Wilhelm, Leo, and Godwin were credible and contradicted Employee's assertions. He also found the video footage of Employee abandoning his post and footage of the intruder breaching his post to be clear and consistent with witness testimony. The AJ held that Employee abandoning his post was egregious because his express duty was to screen incoming people and provide armed security to the DCNG facility. As for Employee's disparate treatment argument, the AJ held that none of the comparators provided by Employee were similarly situated given the nature of Employee's actions. The AJ also opined that removal was within the range of penalties in the Table of Illustrative Actions and that Agency considered relevant factors before rendering its decision to terminate Employee. Consequently,

⁵ *Agency's Answer*, p. 1-4 (November 10, 2022).

the AJ upheld Agency's termination action.⁶

Employee disagreed with the Initial Decision and filed a Petition for Review on May 23, 2025. He argues that Agency erroneously alleged that he had a duty to be relieved before leaving his post for breaks. Employee asserts that there was no post order requiring such, and he claims that he was not provided with training. It is Employee's position that he did not wait for another officer to relieve him because, based on past practice, he knew that the officers in post #1A were monitoring his post via video surveillance. Employee also argues that the AJ erroneously held that Agency's witnesses were credible and that the *Douglas* factors were properly considered. As a result, he requests that the Board reverse the Initial Decision.⁷

On July 10, 2025, Agency filed its Opposition to Employee's Petition for Review. It opines that Employee neglected to perform his job duties by leaving his post unmanned twice during one shift. Agency contends that this is untenable behavior for a Special Police Officer whose job is to secure the building to which he was assigned. It explains that the video and audio recordings clearly demonstrate Employee's neglect of duty. Finally, Agency contends that the AJ's credibility determinations were proper. As a result, it requests that Employee's Petition for Review be denied.⁸

Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. 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 they must be accepted even if there is

⁶ *Initial Decision*, p. 10-13 (April 14, 2025).

⁷ *Employee's Petition for Review*, p. 5-17 (May 23, 2025).

⁸ *Agency's Opposition to Employee's Petition for Review*, p. 3-19 (July 10, 2025).

substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.⁹

Cause

As provided in Agency's Final Agency Decision, Employee was charged with neglect of duty for abandoning his post. DPM Chapter 16 defines neglect of duty as follows:

carrying out or failing to carry out official duties or responsibilities as would be expected of a reasonable individual in the same position. Neglect of duty includes a failure to perform assigned tasks or duties, undue delay in completing assigned tasks or duties, careless work habits, wasting time, conducting personal business while on duty, abandoning an assigned post, sleeping or dozing on the job, and loafing.

According to Agency, Employee was assigned to post #9 at the National Guard Armory. He was required to remain at post #9 until he was relieved of his duties by another officer. However, Agency contends, and Employee does not dispute, that he left his post twice without another officer physically relieving him. Consequently, there was a security breach by an unauthorized person which resulted in the entire building being placed in a lockdown mode.¹⁰

This Board agrees with the AJ's holding in the Initial Decision that there was extensive testimonial evidence and a well-documented record that Employee's act of abandoning his post led to the security breach. Moreover, there is video evidence that Employee abandoned his post.¹¹ Additionally, Michael Wilhelm testified that he found Employee's post unmanned.¹² Similarly, Gregory Godwin testified that Employee left his post twice without securing relief from another officer and that he did not own his mistake or show any remorse for the security breach.¹³

⁹ *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).

¹⁰ *Agency's Opposition to Employee Motion to Reverse Agency Action*, p. 1-2 (May 19, 2023).

¹¹ *Joint Trial Exhibit List – Uncontested Exhibits*, Exhibit #4 (October 19, 2023).

¹² *OEA Hearing Transcript*, p. 67-68 (March 13, 2024).

¹³ *Id.*, p. 114 and 170.

Moreover, Wilhelm, Craig Leo, and Herbert Lara provided that the proper procedure would have been for Employee to wait for relief to arrive at his post before leaving for a break.¹⁴ Therefore, Agency did establish cause for the neglect of duty charge.

Witness Credibility

As it relates to witness credibility determinations, the OEA Board has consistently held that it will not second guess the credibility determinations made by the fact finder, who was the AJ in this case.¹⁵ The D.C. Court of Appeals in *Metropolitan Police Department v. Baker*, 564 A.2d 1155 (D.C. 1989), ruled that great deference to any witness credibility determinations are given to the administrative finder of fact. Moreover, the Superior Court for the District of Columbia recently held in *Steven Allen v. District of Columbia Consumer and Regulatory Affairs*, 2024-CAB-002372 (D.C. Super Ct. June 17, 2025)(citing *Kennedy v. District of Columbia*, 654 A.2d 847, 854 (D.C. 1994) and *Washington Metropolitan Transit Authority v. District of Columbia Department of Employment Services*, 683 A.2d 470, 477 (D.C. 1996)) that it is significant that the ALJ heard the testimony and observed the demeanor of the witnesses and that accordingly, due deference must be given to the ALJ's credibility determinations by the OEA.

After reviewing the OEA hearing transcript, a reasonable mind would accept the AJ's credibility assessments as adequate to support his decision to uphold Agency's termination action. The AJ was in the best position to observe and analyze the credibility of each witness. Furthermore, this Board finds that the AJ's conclusions of law flow rationally from the record.

¹⁴ *OEA Hearing Transcript*, p. 51-57 and 230-231 (March 13, 2024) and *OEA Hearing*, p. 106 (March 15, 2024). It should be noted that Employee was the only witness who testified that officers did not have to wait for someone to relieve them before taking a break. *OEA Hearing Transcript*, p. 174 (March 15, 2024).

¹⁵ *Employee v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 31, 2007); *Employee v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Employee v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0014-07, *Opinion and Order on Petition for Review* (November 23, 2009); and *Employee v. D.C. Public Schools*, OEA Matter No. 1601-0070-22, *Opinion and Order on Petition for Review* (September 12, 2024).

Accordingly, we find no credible basis for disturbing his credibility determinations.

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).¹⁶ 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.¹⁷ DPM § 1607.2(e) provides that the penalty for the first offense of neglect of duty ranges from counseling to removal. Thus, removal was within the range

¹⁶ *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).

¹⁷ 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).

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)).

of penalties.

Furthermore, the record shows that the *Douglas* factors were weighed by Agency before imposing its penalty of removal.¹⁸ Agency reviewed each of the twelve *Douglas* factors and rated each factor as aggravating, neutral, or mitigating.¹⁹ There is no evidence of an abuse of discretion. Thus, Agency's penalty determination was appropriate.

Conclusion

Agency had cause to remove Employee for neglect of duty. The penalty of removal was within the range allowed by law, regulation, and any applicable table of penalties. The penalty was also based on relevant factors, and there was no clear error of judgment by Agency. Accordingly, Employee's Petition for Review is denied.

¹⁸ *OEA Hearing Joint Trial Exhibit List*, Exhibit #7 (October 19, 2023). Moreover, during the evidentiary hearing, Gregory Godwin provided an analysis of the *Douglas* factors. *OEA Hearing Transcript*, p. 120-122 (March 15, 2024).

¹⁹ Agency rated nine of the *Douglas* Factors as aggravating and three as neutral.

ORDER

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

FOR THE BOARD:

Dionna Maria Lewis, Chair

Arrington L. Dixon

Lashon Adams

Jeanne Moorehead

Pia Winston

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.