

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:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No. 1601-0019-25
v.	)	
	)	Date of Issuance: September 18, 2025
D.C. OFFICE OF THE CHIEF	)	
TECHNOLOGY OFFICER,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as an Information Technology Specialist with the D.C. Office of the Chief Technology Officer (“Agency”). On December 5, 2024, Agency issued a Proposed Notice of Enforced Leave after it obtained reliable evidence that Employee had been “indicted on, arrested for, charged with, or convicted of a felony charge...” in accordance with Chapter 16, Section 1617.3(c) of the D.C. Municipal Regulations (“DCMR”). Specifically, Employee was charged with four felony counts of sex offenses in the District Court of Maryland for Montgomery County. Agency subsequently issued its final decision placing him on enforced leave effective January 9, 2025.²

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

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

² *Agency Answer to Employee’s Petition for Appeal* (February 13, 2025).

14, 2025. He argued that the criminal charges levied against him were of a personal nature that had nothing to do with his duties as a District employee. Employee further submitted that he was wrongfully punished based on unfounded accusations and not because of work performance issues or a criminal conviction. Finally, he highlighted that the regulations governing enforced leave were discretionary, not mandatory. As a result, Employee asked that Agency return him to full duty status.³

Agency filed its answer on February 13, 2025. It asserted that it fully complied with 6-B DCMR § 1617 and Active Issuance I-202-1017 in placing Employee on enforced leave. Agency explained that Employee was placed on leave following his arrest in the State of Maryland for felony sex crimes. It expressed that Employee conceded that he was both arrested and charged criminally. Further, Agency opined that given the nature of the allegations and the court-mandated prohibition on contact with minors, Employee's presence at work would be inappropriate. Lastly, it reasoned that under 6-B DCMR § 1607.2(a)(3), Employee's placement on enforced leave was the only appropriate course of action. Thus, it requested that the leave action be sustained.⁴

An OEA Administrative Judge ("AJ") was assigned to the matter in February of 2025. The parties were then ordered to submit legal briefs addressing whether Employee's placement on enforced leave was taken in accordance with District laws and whether the penalty was appropriate under the circumstances.⁵ In his brief, Employee argued that the enforced leave action was unwarranted, especially in light of his service to the District government for over twenty-five years. He reiterated that the Maryland criminal charges were of a personal nature and had no bearing on his ability to perform the functions of his position. Employee also noted that he did not receive Agency's December 5, 2024, notice until December 12, 2024, after the United States Marshals confiscated his mailbox key. Additionally, Employee opined that the

³ *Petition for Appeal* (January 14, 2025).

⁴ *Agency's Answer to Employee's Petition for Appeal* at p. 4.

⁵ *Post-Prehearing Conference Order* (March 19, 2025).

enforced leave action constituted double jeopardy because the inability to receive wages during this time imposed a significant financial burden on him. Therefore, he requested that Agency reconsider its decision to place him on enforced leave. Alternatively, Employee suggested that Agency could place him in a fully remote capacity or deplete his annual leave.⁶

The AJ issued an Initial Decision on May 6, 2025. First, she highlighted that under 6-B DCMR § 1617.3(c), an agency can place an employee on enforced leave when they have been indicted on, arrested for, charged with, or convicted of a felony charge. According to the AJ, the record demonstrated that Employee was arrested and later indicted on four felony charges in the State of Maryland as evidenced by the District Court of Maryland for Montgomery County's initial arrest affidavit, Employee's criminal records in the District Court of Maryland for Montgomery County, and the records from the Circuit Court of Maryland for Montgomery County. Thus, she ruled that both the arrest affidavit and Employee's own admission of his arrest could be relied upon in placing him on enforced leave.⁷

Next, the AJ dismissed Employee's arguments regarding alternative penalties like remote work or depletion of his annual leave as irrelevant to Agency's enforced leave action. Because Employee was arrested and charged with four felonies, the AJ assessed that Agency was within its authority to place him on enforced leave in accordance with DCMR § 1617.3. As a result, she held that the Agency's actions were conducted in accordance with all applicable laws, rules, and regulations.⁸

Employee subsequently filed a Petition for Review with the OEA Board on May 22, 2025. He requests that the Initial Decision be reconsidered because the underlying basis of the enforced leave action is no longer applicable. Specifically, Employee submits that as of May 21, 2025, the State of Maryland

⁶ *Employee Brief* (April 7, 2025). On April 21, 2025, Agency notified the AJ via email that it would not submit a formal response to Employee's brief, stating: "...we do not see the need to respond formally. [Employee] has again conceded the only relevant points, *i.e.*, that he was arrested for and charged with multiple felonies." *See Email Communication Thread* at p. 1 (April 21, 2025).

⁷ *Initial Decision* (May 6, 2025).

⁸ *Id.*

has “effectively lifted all the charges previously levied against me.” According to Employee, a jury trial was conducted in Montgomery County, Maryland, wherein he was found not guilty on all counts. Thus, he reasons that the enforced leave action is moot in light of the verdict. Consequently, Employee asks that the enforced leave action be rescinded.⁹

In response, Agency filed a Notice of Plaintiff’s Defective Petition for Review. It contends that Employee’s filing makes no reference to the record relied upon by the AJ; he fails to provide a condition under which a petition can be granted pursuant to OEA Rule 637.4; and Employee does not contest the AJ’s interpretation or findings relative to the enforced leave action. Additionally, Agency suggests that Employee’s purported acquittal of the criminal charges has no bearing on whether his placement on enforced leave should be upheld. Therefore, it believes that the Initial Decision is based on substantial evidence.¹⁰

Substantial Evidence

On Petition for Review, this Board is tasked with determining whether the AJ’s findings of fact and conclusions of law are based on substantial evidence in the record. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. The D.C. Court of Appeals 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. For the reasons discussed herein, this Board finds that the Initial Decision is supported by substantial evidence.

Enforced Leave

Chapter 6-B, Section 1617 of the DCMR addresses enforced leave. Enforced leave occurs when an employee is involuntarily placed in a non-duty leave status, which is neither a corrective nor an adverse

⁹ *Petition for Review* (May 22, 2025).

¹⁰ *Agency’s Notice of Plaintiff’s Defective Petition for Review* (September 2, 2025).

action for purposes of Chapter 6-B of the DCMR. Pursuant to Section 1617.3, an agency may place an employee on enforced leave when there is reliable evidence that he or she:

- (a) Utilized fraud in securing his or her appointment;
- (b) Falsified officials records;
- (c) Has been indicted on, arrested for, charged with, or convicted of a felony charge (including conviction following a plea of nolo contendere); or
- (d) Has been indicted on, arrested for, or convicted of any crime that bears a relationship to his or her position.

Under DCMR § 1617.5, any decision to place an employee on enforced leave must be approved in writing by the appropriate personnel authority and identify the evidence relied upon by the agency to support the action. Finally, in accordance with Section 1617.6, upon finding that the conditions described in § 1617.3 are met, the personnel authority shall place the employee on administrative leave for five days prior to the effective date of the enforced leave action.

In this case, on November 1, 2024, the District Court of Maryland for Montgomery County issued a warrant for Employee's arrest based on the following felony charges: Rape First Degree, Rape Second Degree, Assault First Degree, and Assault Second Degree.¹¹ On November 14, 2024, Employee was charged with a single count of Fugitive from Justice in the Superior Court for the District of Columbia.¹² On or about November 19, 2024, after Employee failed to appear for duty, Agency became aware that he had been arrested as a fugitive in connection with the criminal matter in Maryland. Agency's December 5, 2024, Proposed Notice of Enforced Leave provided that Agency obtained reliable evidence that he had been "indicted on, arrested for, charged with, or convicted of a felony charge..." in accordance with DCMR § 1617.3(c). Thereafter, on December 12, 2024, a grand jury in the Circuit Court for Montgomery County returned an indictment against Employee for two felony counts of Rape Second Degree and two

¹¹ *Agency's Prehearing Statement* at pp. 26-27.

¹² *Id.* at pp. 1-2.

felony counts of Sex Offense Third Degree.”¹³

Employee does not dispute that he was charged or arrested with four felony sex crimes. Further, DCMR § 1617.3 does not contemplate a conviction as a prerequisite to placing an employee on enforced leave. Thus, Employee’s contention that the charges were disposed of by way of a not guilty verdict is of no consequence to Agency’s enforced leave action. Therefore, this Board finds that Agency properly placed Employee on enforced leave pursuant to the relevant regulations. Finally, under the Table of Illustrative Actions, 6-B DCMR § 1607.2(a)(3), only one course of action is recommended for District employees charged with a felony: enforced leave pending criminal prosecution.” In light of the foregoing, we find that the Initial Decision is based on substantial evidence. As a result, we must deny Employee’s Petition for Review.

¹³ *Id.*

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.