THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
VINCENT COVERT,	)	
Employee	)	OEA Matter No. 1601-0043-06
	)	
v.	)	Date of Issuance: August 11, 2008
	)	
OFFICE OF THE ATTORNEY	)	
GENERAL FOR THE DISTRICT	)	
OF COLUMBIA,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
	)	

Robert Mance, Esq., Employee Representative
Kevin Turner, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION

On March 9, 2006, Vincent Covert ("the Employee"), an Investigator with the Child Support Services Division of the Office of the Attorney General for the District of Columbia's ("OAG" or "the Agency") filed a petition for appeal with the Office of Employee Appeals ("OEA" or "the Office") contesting Agency's action which removed him from service. I was assigned this matter on or around May 12, 2006. After convening a prehearing conference, the parties expressed a mutual desire to participate in settlement negotiations. After several months, the parties informed me that they wished to forego any further settlement discussions and wanted to proceed towards a decision on the merits under my supervision. Accordingly, an evidentiary hearing was convened on March 8th and 20th, 2007. The parties have since submitted their respective written closing arguments. The record is closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether the Agency's adverse action of terminating the Employee from service was done in accordance with applicable law, rule, or regulation.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Summary of Relevant Testimony

Agency's Case

Bedell Terry

Bedell Terry ("Terry") testified in relevant part that: he is employed by the District of Columbia Office of Tax and Revenue ("OTR") as the chief of the collection division. Terry identified Agency's Exhibit No. 4 as a release of a tax lien. Terry went on to define a tax lien as follows: "Tax liens are notifications to the public that there's a debt owed by a certain taxpayer, whether it be business or personal. It's a -- it's an obligation against property, real and personal." Tr. at 24.

Terry indicated that for a business entity, sales taxes are due by the 20th of the proceeding month from which it was collected by said business entity. Further, the collection of sales taxes is a self reporting system, wherein it is incumbent on the business entity to file their taxes. OTR is not required to notify a business entity that taxes are due.

Lastly, Terry testified that he had no personal knowledge of the instant matter.

Thomas Trimble

Thomas Trimble ("Trimble") testified in relevant part that: he is employed by the Office of the Inspector General ("OIG"). He defined the mission of the OIG as follows:

> Q. And what is the Office of the Inspector General?
>
> A. The Inspector General's Office for the District of Columbia is responsible for investigating complaints of fraud, waste and abuse within the D.C. Government agencies, programs any contractors involved with the D.C. Government programs and we also conduct employee misconduct investigations of D.C. Government employees.
>
> Tr. at 27-28.

There came a time that the OIG instituted a criminal investigation of the Employee. According to Trimble, the reason behind this investigation was as follows:

> Q. What was the issue, what were the issues that were investigated?
>
> A. The allegation was made that Mr. Covert had submitted fraudulent documents to the District of Columbia Government -- or I'm sorry, not to a District Government Agency, but to a financial institution in an attempt to obtain a loan and subsequently those documents were forwarded back to the D.C. Government Agency, which is the Office of Tax and Revenue. Mr. Covert had a lien on some of his property and that this letter in effect stated that this, Mr. Covert and the Office of Tax and Revenue had worked out some type of agreement where the lien would be lifted and the financial institution subsequently sent a check for a certain percentage of the lien amount to the Office of Tax and Revenue.
>
> And when the check and the letter arrived at the Office of Tax and Revenue, nobody there understood what the rationale was because they weren't aware of any agreement between Mr. Covert and the Office of Tax and Revenue, nor was the document that it was purportedly printed on, it was, it was not on OTR letterhead and the individual that, who is purported to have signed the paperwork stated that that was not her signature or her title in regards to, you know, the agreement between Mr. Covert and the Office of Tax and Revenue.
>
> Tr. at 30-31

Trimble further indicated that the aforementioned documents were submitted to the United States Secret Service for handwriting and fingerprinting analysis. The result of the handwriting analysis was inconclusive and "there were no [fingerprints] of any value lifted off of the document that were associated with [the Employee]." Tr. at 32.

Trimble was able to identify Agency Exhibit No. 6, which is an OIG investigative report No. 2003-0189(S) into the allegation that the Employee presented a falsified document to a financial institution in order to obtain a loan. Trimble further noted that Attachment A of Agency Exhibit No. 6 is the subject letter that was alleged to be falsified by the Employee.

During cross examination, Trimble revealed that the United States Attorney for the District of Columbia declined to prosecute the Employee for his alleged transgressions.

Glenna Barner

Glenna Barner ("Barner") testified in relevant part that: she is employed by the OAG as the Assistant Section Chief of Program Operations for Child Support Services. This unit is tasked with establishing and enforcing child support orders, *inter alia*. The following excerpt from Barner's testimony is particularly relevant to understanding child support, as this term is functionally defined, as well as how her unit functions to administer its mission:

> Q. And what does the, I guess Office of Program Operations for the child support services division do?
>
> A. We're the unit that establish[es] and enforce[s] child support Orders.
>
> Q. And just so we can make the record, what is child support?
>
> A. Child support is a requirement by the Federal law that each State has to have a child support office where anybody who wants child support is eligible to come and apply for services.
>
> Q. And does the District Government receive Federal funds for child support?
>
> A. Yes, 66 percent of our funding is from the Federal Government.
>
> Q. And what exactly does your office do in that?
>
> A. Well, as the whole operations division handles the cases from

the time that they come in the building when they come for intake and establishment. Once the Order is established, it comes back down to us in enforcement and, so the only part we don't handle is the actual going to Court.

Q. Do you know Vincent Covert?

A. Yes, I do.

Q. And how do you know him?

A. He was an employee in the locate unit.

Q. And what is the locate unit?

A. The locate unit is the unit that, we have field investigators and in-house investigators. What they do, their job is to locate non-custodial parents. Field investigators do research and also go out and actually serve the parent with the summons, which we call NOHOTA.

Q. And what does NOHOTA stand for?

A. Notice of Hearing Order to Appear.

Tr. at 54 – 56.

The Agency maintains a computer database wherein the information of its activities is recorded. This database is called the D.C. Child Support Enforcement System ("DCCSES"). Every Agency employee is assigned a unique DCCSES password. Barner further testified that per Agency policy, every employee is required to maintain the confidentiality of their DCCSES password. She further related that DCCSES is periodically audited in order to make sure that the Agency is in compliance with Federal regulations relative to the Agency's mission. The Agency relies on funding from the Federal government in order to maintain its budget. The result of this audit is a major factor in determining the amount of the Federal contribution to the Agency's budget. Barner also testified that it is of paramount importance that the information logged into DCCSES is accurate because of the aforementioned link between the information logged into DCCSES and the amount of Federal funding the Agency may continue to rely upon for future budget plans.

Barner related that Agency's Exhibit No. 7 is a log sheet for the investigators. On it, the Employee is required to notate which vehicle he is using at the time, the beginning and ending mileage of said vehicle, the case number, and name of the person to whom they are serving. *See generally*, Tr. at 65. The Employee is then required to enter this same information into DCCSES. A reprint of the information logged into DCCSES, by

the Employee was introduced into evidence as Agency's Exhibit No. 8. Barner further related that over time, she noticed discrepancies between the information on the Employee's log sheets and the information found within the corresponding DCCSES file. Barner created Agency's Exhibit No. 9 which outlines several instances of these alleged discrepancies. Barner alleges that the Employee is responsible for all of the discrepancies listed in Agency's Exhibit No. 9. She also testified that Agency Exhibit Nos. 11, 12, and 13 were NOHOTA forms that contained inconsistent information when juxtaposed with the corresponding information found in either the Employee's log sheets or the DCCSES database. *See generally*, Tr. at 140 – 144. Furthermore, said discrepancies would constitute a data integrity issue, the result of which is that the District of Columbia Superior Court may issue a bench warrant for an arrest based on faulty information being inputted into DCCSES. This could potentially result in the arrest of someone who was not properly served by the investigator.

The following excerpt from the transcript provides a snippet, from Barner's perspective, of the inconsistent entries made by the Employee when comparing what the Employee has filled out on various log sheets when compared to what he entered into DCCSES:

> Q. If you could turn back to Exhibit Number, I guess it's 9.
>
> A. Okay.
>
> Q. And let's look at P034799.
>
> A. Okay, I reported from the log that the respondent was served -- on the log sheet it said the respondent was served at home, person served at home and that was on July 12th. But according to what was put in our system, the respondent was served on 7/16, not the 12th.
>
> Q. So can you turn to Exhibit Number 8 and tell me where I can find -- I guess it would be, that's the paperwork sheet?
>
> A. 034799 is on Exhibit 8, page 6.
>
> Q. And what does Exhibit 8, page 6 say?
>
> A. It has that the case was served on 7/16, but it does not have Mr. Covert's name here. It states that Carlos Thomas, who was another investigator, apparently served that.
>
> Q. Do you know Carlos Thomas?
> A. Yes, I did.
>
> Q. If Mr. Covert's log appears, shows that he served it, should it

appear in the system that Carlos Thomas served it?

A. No, it should show that Mr. Covert served it.

Q. Were there any, was there anything else in this that brings concern or represents an inaccuracy?

A. The, like I said, now I guess basically to say that on July 12th Mr. Covert said he did it but the system is reflecting otherwise.

Q. Can you turn to I guess Exhibit 9 and we're looking at July 15th and we're looking -- if you take a look at P035690.

A. You said -- on the log, said apparently it was said we issued. In the system it says it was re-locate on 7/18, not on 7/15.

Q. And can you turn to Exhibit Number 8.

A. 8.

Q. And I think it may be page 8.

A. Page 8. Yes. The second entry.

Q. And what, if any, is the inconsistency in the second entry?

A. Inconsistency is on the log that was done on 7/15, Mr. Covert recorded that it was re-issued, which means that the Court date was coming soon and he was unable to serve him at that location. In the system it says that it was a re-locate, unsuccessful home, re-locate, on 7/18. Number one, it wasn't 7/15 like he recorded and he's saying re-locate, he's saying that that address that we have on the NOHOTA is wrong but on the log he wrote re-issue, that's a good address, just re-issue.

Q. What, I guess can you tell us what the term re-locate means and then tell us what the term re-issue means?

A. Re-locate means that somebody doesn't live there, they don't live there at this time. Re-issue is that as far as the investigator knows, that's still a good address, so we just need to re-issue a new NOHOTA.

Q. And so looking at Exhibit 8, does that create any data integrity problems?

A. You said looking at 8?

Q. Exhibit 8, page 8?

A. Yes, because our system is saying one thing but the file, the affidavit is saying something else.

Tr. at 81 – 83.

This excerpt is indicative of a lengthy line of direct examination questioning in which Barner compared and contrasted a multitude of the Employee's log entries with his entries into DCCSES. Suffice it to say that, in her opinion, all of these discrepancies were deemed to constitute a data integrity issue for the Agency.

During cross examination, Barner admitted that the Employee was not confronted with these discrepancies because at the time these data integrity issues were discovered, the Employee was being investigated by the OIG on allegations of fraud. *See generally*, Tr. at 122. Barner further admitted that she did not cross check the Employee's NOHOTA's against the court jackets before opting to propose the Employee's removal.

Employee's Case

Derrick Washington

Derrick Washington ("Washington") testified in relevant part that: he is employed as a manager by Professional Tax Services ("PTS"). As a manager of PTS, some of his job related duties include bookkeeping as well as preparing the taxes of customers of PTS. Washington revealed that he created Employee's Exhibit No. 1 which is a letter dated January 8, 2003, regarding the Employee's then current state of affairs relative to his business taxes. Washington described the reason why this letter was created as follows:

Q. And what was the purpose in you generating this document?

A. Well as it -- at this time Mr. Covert was attempting to refinance the mortgage on his personal residence and he informed me that there, (*sic*) there was a, that the loan officer or, had indicated there was a lien against him for business taxes, so I, (*sic*) I wrote this letter to, to make it clear that whatever liens or taxes there were (*sic*) were from the business and not for Mr. Covert personally or any real estate taxes on his home, but only business taxes.

Tr. at 45 – 46.

Washington further revealed that he was aware of the Employee's tax situation

because he had prepared both the Employee's personal and business taxes. Washington recalled that Employee was, at one point, behind on paying his taxes. However, he was aware that the Employee had made arrangements with OTR regarding his payment of back taxes. Washington admitted to reviewing Agency Exhibit No. 1 in the course of his tax preparation duties on the Employee's behalf. Washington further revealed that it was the Employee who had provided him with this document and that he did not know who prepared Agency's Exhibit No. 1. *See generally*, Tr. at 51.

Washington remembered talking with someone regarding the Employee's tax situation in relation to Employee's pending loan request. However, he was unable to recall whether that person was from Service Link or some other company.

Vincent Covert

Vincent Covert ("the Employee") testified in relevant part that: prior to his removal from service, he had been employed by the Agency as an investigator since 1989. Further, prior to the facts that gave rise to the instant matter he had never been disciplined or sanctioned by the Agency. The Employee noted that along with being employed by the Agency he was also the owner of MLK Grocery Deli. At the heart of the instant matter, the Employee contacted Service Link in an attempt to get a loan secured by his personal residence. While going through the process of getting the loan approved, the Employee was contacted by Service Link and was initially informed by them that the loan would not go through because the Employee allegedly had a lien on his personal residence. After further questioning, the Employee believed that regardless of Service Link's belief to the contrary, there was no lien on his personal residence. He went to the D.C. Office of Tax and Revenue ("OTR") and spoke with a Ms. Bigelow in an attempt to rectify this misunderstanding. He also asserts that he did not tell a Ms. Bartley (with Service Link) that a compromise had been reached with OTR relative to the aforementioned lien. *See generally*, Tr. at 150.

Relative to Agency's Exhibit No. 1, the Employee asserted as follows:

> Q. Now I want to show you what's been marked as Agency Exhibit Number 1.
>
> A. Is it all right if I get my glasses over here.
>
> Q. I ask you to look at that document.
>
> A. Okay.
>
> Q. Now, Mr. Covert, did you have, did you prepare that document, first of all?
>
> A. Negative.

> Q. And did you have anybody prepare that document on your behalf?
>
> A. No, I did not.
>
> Q. And when was the first time that you saw that document?
>
> A. The first time I saw this document was when I was, I had a meeting downstairs with special --
>
> Q. Downstairs where?
>
> A. In the, I'm sorry, in the Inspector General's Office with Michael Carroll requested that I come down and discuss with investigator -- Agent Michael Carroll. Like I said, we talked for a little while, he pulled out this document and he said have you ever seen this before and he handed it to me. And I said to him, no, I've never seen that before. And he said, well, how do you explain having an additional 3,500 dollars in your escrow account. And I said trust me, the way I monitor my accounts, I know that I don't have an extra 3,500 dollars in my escrow account and we went back and forth with, with, you know, have I -- are you sure you haven't seen the document and that was it...
>
> Tr. at 150 – 151.

After further review, the Employee later found out that $3500 had been deposited into his escrow account. He opined that Service Link must have deposited this money but asserted that he did not authorize them to do so.

The Employee also testified that his loan through Service Link was eventually approved. He also admitted that he did at one point owe back taxes, relative to his business endeavors, to the District of Columbia government. The Employee explained that the reason for his taxes being delinquent was that his child was, at one point, gravely ill, and that all of his finances were dedicated to paying for her required medical care. Happily, the Employee's child eventually recovered. The Employee further explained that his tax debt was eventually paid in full by March 2005. *See generally*, Tr. at 154 – 156.

The Employee asserts that he was never counseled by the Agency regarding his record keeping habits. The Employee further asserted that prior job evaluations have historically always been very good, excellent or outstanding. *See generally*, Tr. at 163 – 165. Also, he has been notified by the Court that service of one of his matters was being contested. The Employee also denies ever intentionally putting false data on a NOHOTA form or into DCCSES. However, when the Employee was shown specific NOHOTA forms or DCCSES entries, he could not recall any particular one because throughout his

tenure with the Agency he had handled so many matters.

The Employee also explained that he worked in a collegial setting where one of his colleagues may finish an assignment for him and vice versa. This would potentially explain why the some of the DCCSES entries discussed at the hearing may have someone else listed as having completed the service.

The Employee admitted that it is his signature that appears on Agency Exhibit Nos. 11, 12, and 13. *See*, Tr. at 164.

Kenneth Hill

Kenneth Hill ("Hill") testified in relevant part that: he was at one point a 38 year employee of the Agency but at the time of this evidentiary hearing he was retired from service. Just prior to his retirement, Hill was the chief of the investigative unit and was also working in the dual capacities of chief of the office as well as operations division chief. Hill recalled that all of the investigators within his unit had a very high case load. While employed with the Agency, Hill was the Employee's indirect supervisor for approximately 20 years and his direct supervisor for five years. Hill had various occasions to recommend both corrective and adverse actions during his tenure with various Agency employees. Hill asserts that the Agency must follow chapter 16 of the District Personnel Manual ("DPM"). Hill remembers rating the Employee as excellent on his performance evaluations.

Findings of Fact, Analysis and Conclusion

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

According to the Final Decision letter ("FD"), the Employee's removal from service arose from a set of allegations involving bank fraud, failure to timely pay his financial obligations, and falsification of documents and/or falsification of information into the DCCSES database. These allegations were pigeonholed into the rubric of cause as that term is defined pursuant to Chapter 16 of the District Personnel Manual ("DPM").

Relative to the allegation of bank fraud, the Agency contended that the Employee presented a fictitious letter from the OTR to Service Link in an attempt to secure a loan. In support of this contention, the Agency presented testimonial evidence from both Terry and Trimble.

Terry testified that he works for the OTR. He testified that while he had no personal knowledge about the circumstances that gave rise to the instant matter he did recognize Agency's Exhibit No.4 as a release of a tax lien.

Trimble testified that he works for the Office of the Inspector General ("OIG")

and that he investigated allegations of fraud levied against the Employee. He further asserted that as part of his investigation he conducted fingerprint and handwriting analysis of what was entered as Agency's Exhibit No. 1 to see if the Employee generated this document. According to Trimble, the analysis was inconclusive. However, he did assert that he checked with OTR regarding Agency's Exhibit No. 1 and that they disavowed this document because it was not on official OTR letterhead; the person who is listed on the letter asserted to Trimble that the signature that appears on this document is not hers; and that the OTR was unaware of any agreement reached between it and the Employee relative to his delinquent taxes. *See generally*, Tr. at 30 – 32.

In rebutting the Agency's assertion, the Employee vehemently denies that he defrauded or attempted to defraud anyone. The Employee asserts that he did not create or cause to be created Agency's Exhibit No. 1. The Employee admitted that he did enter into repeated conversations with OTR officials in an attempt to get control of his tax liabilities. The Employee further admitted that at one point he was delinquent in paying his District of Columbia taxes. The Employee explained that the main reason that he was in a tax quandary to begin with centered on the medical condition of his daughter. Because of her then dire medical condition, he had to direct most of his finances to her medical care. He further explained that he settled his tax debt in full on or around March 2005.

During the evidentiary hearing, I had the opportunity to observe the poise, demeanor and credibility of the Agency's witnesses as well as the Employee in this matter. Relative to Agency's Exhibit No. 1, I must take note that a hand-writing and fingerprinting analysis failed to prove a conclusive link to the Employee. However, it stands to reason that no one else, but the Employee, could benefit from the existence of this document. I find that the Employee either created or caused this fictitious document to be created. Trimble, as part of his investigation relative to the document questioned officials with the OTR and found that this was a false document for the reasons outlined *supra*. While Trimble's testimony is textbook hearsay, it is nonetheless admissible in an administrative proceeding before the OEA[1]. Consequently, I find Trimble's testimony both credible and persuasive relative to his investigation into the inherent veracity of this document. I further find that the Agency has met its burden of proof relative to the allegations surrounding the Employee committing bank fraud and its attending charge of cause as provided for in the Employee's FD.

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[1] Regarding the admissibility of hearsay in an administrative proceeding, the District of Columbia Court of Appeals held in *Compton v. D.C. Board of Psychology*, 858 A.2d 470, 476 (D.C. 2004) "that duly admitted and reliable hearsay may constitute substantial evidence. See, e.g., *Coalition for the Homeless v. District of Columbia Dep't of Employment Services*., 653 A.2d 374, 377-78 (D.C. 1995) ("Hearsay found to be reliable and credible may constitute substantial evidence . . . ."); *Wisconsin Avenue Nursing Home v. District of Columbia Commission on Human Rights*, 527 A.2d 282, 288 (D.C. 1987) (explaining that reliable hearsay standing alone may constitute substantial evidence); *Simmons v. Police & Firefighters' Ret. & Relief Bd.*, 478 A.2d 1093, 1095 (D.C. 1984); *Jadallah v. District of Columbia Dep't of Employment Servs.*, 476 A.2d 671, 676 (D.C. 1984); see also *Richardson, 402 U.S. at 402; Hoska v. United States Dep't of the Army*, 219 U.S. App. D.C. 280, 287, 677 F.2d 131, 138 (1982). Thus, nothing in the hearsay nature of evidence inherently excludes it from the concept of "substantial" proof in administrative proceedings."

The Employee was charged with failing to timely and properly pay his financial obligations, specifically, the taxes owed in relation to his business, MLK Grocery Deli. As provided for *supra*, the Employee readily admitted that he fell behind in his obligations and that the reason why he fell behind with his obligations was because his daughter was critically ill and that he dedicated the bulk of his finances to her medical expenses.

I take note that the Employee satisfied his delinquent taxes on or around March 2005, while the Agency initiated the removal process on or around October 7, 2005. Given the length of time in which the Agency acted; the circumstances that forced the Employee to incur the tax debt; as well as the fact that the Employee had satisfied his tax debt several months before the removal process was initiated; I find that the whatever error the Employee may have made relative to his failing to timely pay his financial obligations was *de minimis*. Accordingly, I further find that with regard to this charge, the Agency has failed to meet its burden of proof.

The Employee was charged with entering false information into the DCCSES database, internal log sheets, and/or the corresponding NOHOTA form. The Agency presented testimonial evidence from Barner who credibly testified that as part of her investigation into the Employee's work product, she uncovered 50 plus instances where the information logged by the Employee into the DCCSES database did not match what was being entered into on the corresponding log sheets or the NOHOTA forms. Barner also testified that Agency Exhibit Nos. 11, 12, and 13 were NOHOTA forms that contained inconsistent information when juxtaposed with the corresponding information found in either the Employee's log sheets or the DCCSES database. *See generally*, Tr. at 140 – 144. Barner created Agency's Exhibit No. 9, which is a document that outlined a number of the Employee's aforementioned inconsistencies, which the Agency relied on, in part, in recommending and ultimately sustaining the Employee's removal. She further related that the Agency is periodically audited by the Federal government in order to make sure that the Agency is in compliance with its mission. Furthermore, a negative audit would have a significant negative impact on the amount of Federal contribution to the Agency's budget.

Barner further related that another negative result from submitting a fictitious NOHOTA form is that the District of Columbia Superior Court ("the Court") could then issue a bench warrant for the arrest of the person who was named as being served. Such arrest would be predicated on false pretenses.

The Employee denied knowingly entering false information on his log sheet, NOHOTA forms, or the DCCSES database. The Employee presented the testimony of Hill, his former supervisor, to show that he had been an exemplary employee. He further asserted that no one ever admonished him with regards to his record keeping. Nor, has he ever been notified that someone that he was responsible for serving was contesting said service before the Court. Barner explained that the reason why the Employee was not warned about his record keeping practices was because it was believed by her, along with other members within the Agency's hierarchy, that the Employee was committing fraud,

for which he was being investigated for by the OIG.

The Employee admitted that he could not comment on the veracity of any particular NOHOTA, log sheet or DCCSES entries, because he had done so many during his tenure with the Agency. He further admitted that it was his signature as process server that appears on Agency Exhibit Nos. 11, 12, and 13. *See generally*, Tr. at 164

After considering the foregoing, I find Barner's testimony to be more credible and persuasive than the Employee's and Hill's. Barner was able to document the Employee's numerous errors in record keeping in Agency's Exhibit Nos. 9, 11, 12, and 13. According to Barner, the Employee's reprehensible record keeping could have resulted in reduced Federal funding for the Agency. It could also have resulted in the issuance of a bench warrant for arrest on false pretenses. The arrest of someone because of false pretenses on a Court document is a chilling and abhorrent thought to the undersigned.

Employee's argument that he was not admonished regarding his shoddy record keeping, therefore the Agency violated Chapter 16 of the DPM, does not go unnoticed by the undersigned. However, given the instant circumstances, including that the record keeping errors cited by the Agency were 50 plus, for only a two month period; and that at the time that the record keeping errors were discovered by the Agency, the OIG was conducting a fraud investigation of the Employee; I find that the Agency acted properly, when it charged the Employee with falsification of documents and/or falsification of information into the DCCSES database. Also considering the foregoing, I further find that the Agency as met its burden relative to this charge.

In a nutshell, I find that the Agency's adverse action was taken for cause. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. *See, Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ ( ); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ ( ). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. *See Stokes*, *supra*; *Hutchinson*, *supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ ( ); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ ( ).

I CONCLUDE that, given the totality of the circumstances as enunciated in the instant decision, the Agency's action of removing the Employee from service should be

upheld.

ORDER

Based on the foregoing, it is ORDERED that the Agency's action of removing the Employee from service is hereby UPHELD.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge