

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Steve Little)	OEA Matter No. 1601-0018-11
Employee)	
)	Date of Issuance: January 23, 2014
v.)	
)	Joseph E. Lim, Esq.
Dept. of Youth Rehabilitation Services)	Senior Administrative Judge
Agency)	

Donna Rucker, Esq., Employee Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND

On November 9, 2010, Steve Little (Employee) filed a Petition for Appeal with this Office (“Office of Employee Appeals” or “OEA”) regarding his October 29, 2010, removal by the Agency (Department of Youth Rehabilitation Services or DYRS) for testing positive for a controlled substance. This matter was assigned to the undersigned on July 26, 2012. I held a November 5, 2012, Prehearing Conference after Employee asked for a postponement of the October 12, 2012, conference earlier scheduled. Employee indicated that he was seeking counsel. I held a hearing on December 12, 2012, and closed the record at its conclusion.

JURISDICTION

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

ISSUES

1. Whether Agency’s adverse action was taken for cause.
2. If so, whether the penalty was appropriate under the circumstances.

Undisputed Facts:

1. Agency's Youth Services Center houses young offenders who have committed crimes ranging in age from 10 to 21 years, these youth have been detained and are awaiting adjudication.
2. On February 4, 2008, Employee was hired as a Youth Development Representative with Agency's Youth Services Center. His responsibilities were to monitor, supervise, and ensure safety and security on the unit. Employee also had to maintain a logbook that served as an official record of activities that go on in the unit.
3. Agency Policy No. 08-3.10A, Mandatory Employee Drug and Alcohol Testing Program ("MEDAT") governs random drug testing for District employees in safety-sensitive positions. An example of a safety-sensitive position was one where the employee's duties included dealing with minor children. This includes Youth Development Representatives. A revised MEDAT policy had been issued on March 7, 2008. The policy now gave all employees until March 17, 2008, to come forward and acknowledge any substance abuse problems. Employee did not come forward.
4. On November 24, 2008, Employee signed an acknowledgement (Agency Exhibit 8) that he received a copy of the DYRS Mandatory Employee Drug and Alcohol Testing (MEDAT) policy (Agency Exhibit 1). Agency's MEDAT Policy specifies that Employee is covered by the policy and that any violation of the policy may result in termination.
5. In accordance with this policy, Employee was tested on April 23, 2010, by Lab Corp while working a full shift and his sample tested positive for two illegal drugs.
6. Prior to the release of any test results, the laboratory must determine whether the employee may have been using any prescription medication at the time of the collection of the urine sample. LabCorp ascertained from Employee that he was not on any prescribed medication.
7. The MEDAT policy states the Medical Review Officer ("MRO") is a contracted licensed physician who determines if the sample has been affected by prescription drugs, or if the specimen has been lost, contaminated, or taken under questionable circumstances. If the MRO finds such a condition exists, he or she is required to coordinate with the Agency to order a re-test. In this case, the MRO issued a report verifying the results of the laboratory analysis, which concluded that Employee's sample tested positive for controlled substances. The MRO did not include any notes in the comments section of the report regarding any concerns of chain of custody, questionable circumstances, or contamination, and he did not order a repeat test.
8. On July 30, 2010, the Agency issued a revised 15-day advance written notice of proposed removal to Employee. The proposed removal was based on the following causes: (1) Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty; (2) use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result; and (3) any other on-duty or employment-related reason for correction or adverse

action that is not arbitrary or capricious; specifically, violation of DYRS' MEDAT policy, DYRS Policy #08-3.10A (amended October 10, 2008) and violation of the D.C. Department of Human Resources E-DPM Instruction No. 39-1, dated June 10, 2008.

9. On September 20, 2010, Evette Jackson, the Hearing Officer assigned to review the evidence, issued a report and recommendation in the matter, finding sufficient evidence to warrant removal of Employee from his position. (Employee Exhibit 9). The Agency terminated Employee for cause, effective October 29, 2010.
10. Prior to his termination, Employee had received a letter of admonition for deficiency in performance pursuant to Chapter 16 of the District Personnel Regulations, § 1602.
11. Employee filed a Petition for Appeal with OEA on November 9, 2010.

SUMMARY OF RELEVANT TESTIMONY

Jeffrey McInnis (Transcript pages 8-53)

Jeffrey McInnis (“McInnis”) is a Program Manager of Real Estate and Property for the Department of Youth Rehabilitation Services (“Agency”). Prior to holding this position, McInnis was the Chief of Detained Services and Acting Superintendent of the Youth Services Center (“Center”). He has been with Agency since November of 2005. Prior to 2005, McInnis was employed by Guilford County Government for 10 years. While there, he was the Director of Court Alternatives.

Agency has two secured facilities; the Youth Services Center located at 1000 Mount Oliver Road, N.E. Washington, DC, and The New Beginnings Youth Development Center located at 8400 Rover Road, Laurel, MD. McInnis’ office is at the Youth Services Center. He knows Steve Little (“Employee”) from working as a Youth Development Representative with the Youth Services Center.

McInnis confirmed that the effective date of Agency Policy No. 08-3.10A, Mandatory Employee Drug and Alcohol Testing Program (“MEDAT”) was January 31, 2008. As MEDAT was being developed, it was distributed to the executive management for review and comment. McInnis, as Chief of Detained Services, had input in developing the policy. The policy’s purpose is to establish drug and/or alcohol testing for employees within Agency working in safety sensitive positions. The policy essentially provides that upon reasonable suspicion of an employee who may be under the influence of alcohol or drugs, the manager or person observing would report the suspicion. There would be a second opinion by another manager and they then coordinate with the human resources department to have the employee’s urine tested. This is referred to as “reasonable suspicion testing.” Agency also does random drug testing.

Managers were trained subsequent to the policy issuance. McInnis has been trained three times on the policy. When McInnis was with Guilford County Government, he played a role in implementing a drug testing policy there. The policy with regard to disciplining an employee

upon confirmation of a positive drug test can be up to and including removal. Both he and Employee worked in a safety sensitive position.

On April 23, 2010 at approximately 6:45p.m., McInnis was exiting the Youth Services Center and walking to the parking lot when he saw Employee and another employee, Rodney Blackmon (“Blackmon”), walking towards the facility. He had a brief conversation with Employee. Up close, he noticed that Employee’s eyes appeared red, his speech slurred, and he seemed disoriented. McInnis noted that Employee’s head was bobbing.

McInnis became concerned for Employee and as he approached his vehicle, he used his cell phone to call Charlotte Richardson (“Richardson”), who was the Deputy Superintendent of Operations at that time. He expressed to Richardson that Employee appeared to be under the influence of something and that Employee may have been high. Richardson explained that she was not in the facility, and that Rena Myles (“Myles”) was on duty as the Shift Commander. At that time, Richardson did a conference call with Myles.

Shift Commanders have responsibility to maintain control and order of the total facility. Shift Commanders make decisions to have a person separated from their duties. McInnis explained to Ms. Myles that he was following the MEDAT policy and that Employee appeared high and disoriented. He also stated that a second observation needed to be conducted and that human resources needed to be contacted. Thereafter, he contacted Cathy Ohler (“Ohler”), who served as Human Resource Liaison to the MEDAT policy and prepared an incident report. He subsequently prepared a proposal to remove Employee, and an affidavit (Agency Exhibit 4) which highlighted his credentials and encounter with Employee.

McInnis confirmed that his actions were based on a reasonable suspicion, as prescribed by the MEDAT policy. He confirmed that once the second observer opines that there appears to be impairment, a referral for the employee to be tested would ensue. McInnis also contacted the drug tester. McInnis socialized with Employee regularly in the course of duty.

Rena Myles (Transcript pages 53-100)

Myles, a Supervisory Youth Development Representative with Agency, received training on the MEDAT policy. She agreed that a “reasonable suspicion,” as provided in MEDAT, is a basis for requesting a drug test.

On April 23, 2010, at approximately 7:00p.m., Myles received a phone call from McInnis. On this day, Rena Myles was the Shift Commander of Operations and was working on the first floor of the Youth Services Center. On a three way conversation with Richardson, McInnis conveyed to Myles what he had observed of Employee and asked her to contact Employee once she finished with her rounds.

After her rounds, Myles went to the second floor where Employee was the Youth Development Representative. Each staff member is responsible for having a timeline of the activities of the youth, and recording it in the logbook. In her log, Myles documented that she had “no concerns.”

Myles stated that when she approached Employee, he appeared to be sleeping in a sitting position with his head down and eyes closed. She began a conversation with him and saw that he would occasionally nod off. Myles concluded that Employee was under the influence of something. According to the MEDAT policy, a urine test needed to be conducted.

Thereafter, Myles contacted McInnis and a urine collector for a urinalysis. Myles spoke with Blackmon and Blackmon stated to Myles that he was concerned about the condition of Employee. Then, Blackmon, Myles and Mr. Sean Cherry (the urine collector), asked Employee to go to the bathroom. A urine specimen for Employee was collected at approximately 8:30 p.m. Mr. Cherry was in the bathroom with Employee and he documented the urinalysis. (Agency Exhibit 13) Myles noted that Employee was very cooperative.

After the urinalysis, Employee was not relieved of his duties. Myles confirmed that at 9:00 p.m., youth at the center are locked in the rooms. Employee continued to work the remaining portion of his shift. Employee's shift ended at 11:00 p.m. Myles did not have any concerns about Employee being unable to maintain the logbook due to impairment. Myles prepared an unusual incident report of what she observed (Agency Exhibit 6) and an affidavit (Agency Exhibit 7) stating the details of what happened. According to Myles, preparing the report is in accordance with the MEDAT training and her responsibilities as a Shift Commander.

Catherine Ohler (Transcript pages 101-133)

Ohler is an Human Resources (HR) Specialist with Agency for six-and-a-half years. She is also the MEDAT Coordinator who does the drug testing for the staff. Ohler confirmed that MEDAT was effective in January of 2008 and was revised in October of 2008. When the policy was revised, HR Staff went to all of the business units and distributed it. They received a signed MEDAT acknowledgement form. HR goes over the MEDAT policy with all new hires during their orientation. Existing employees receive refresher training and were given a hard copy of the policy. HR maintains the records of the acknowledgements made by the employees. Employee signed an "Employee Notification Form" for the MEDAT policy on November 24, 2008.

On April 23, 2010, Ohler talked with McInnis regarding Employee. McInnis suspected that Employee was under the influence and asked what the procedure was for reasonable suspicion testing. McInnis then asked for the urine collector's telephone number. Later, McInnis called Ohler to tell her that Myles was going to conduct a second reasonable suspicion observation. The urine test was conducted and a Medical Review Officer reported the results. Employee's urine tested positive for Methadone and Alprazolam. The date of the result of the urine test was May 4, 2010.

Upon receiving the results, Ohler prepared a letter which informed Employee that he had a right to an independent test of the second sample. (Agency Exhibit 10) Employee had three days to make the request. Employee told her that he was going to get an independent test. Employee would have had to request the independent test and send it along with a check to Drug Testing USA. The fee for the test is \$250.00 in the form of a cashier's check or a certified check.

Although Employee claimed to have made the request and sent a personal check, Ohler did not receive any documentation associated with a request for the independent testing.

After the first test, Employee was placed on administrative leave. Ohler received the results from the second test. The second test reconfirmed the positive result of Methadone and Alprazolam.¹ Methadone is a treatment for heroin. According to the MEDAT policy, an employee who tests positive will be removed from their position. Ohler prepared an affidavit of the incident.

Thurman Earl Cherry (Transcript pages 133-149)

Thurman Earl Cherry (“Mr. Cherry”) testified regarding the general procedure followed in the collection of a urine sample. A normal procedure is when a urine sample is collected on a regular schedule. However, when there is a reasonable suspicion of illegal drug use, then a urine sample is collected at any time of the year.

Mr. Cherry is the father of Sean Cherry, the urine sample collector, and owns a company which collects urine specimens. In a normal procedure, the person to be tested is identified and their pockets are emptied. Thereafter the person tested is observed while in the bathroom. After receiving the urine, it is packaged and secured, and delivered to FedEx for shipment to the lab in Raleigh, North Carolina. During the time that Employee’s urine was collected, Mr. Cherry was in North Carolina.

Employee (Transcript pages 149-233)

Employee has been with Agency for three years. He began with Agency through a program called “Project Empowerment.” Project Empowerment is a program that helps re-establish people in society. At the time of his termination, he was a GSE-8, Step 2 making \$49,000-50,000 per year. Prior to the current action, Employee had no disciplinary actions taken against him during his time with Agency.

On April 23, 2010, Employee arrived to work at the Youth Services Center around 1:30 p.m. After clocking in, he went to D.C. Superior Court to pick up six detained youth and bring them back to the facility. Ms. Pulley, a Shift Commander, requested this pick up. Employee used a government vehicle for the pick-up. Ms. Pulley did not express any concerns with Employee’s disposition.

After the pick-up, Employee drove back to the center and deposited the youth to ‘Intake’ for processing. Employee logged in the pick-up details and turn over the court information to Agency. After Employee returned to the facility, he went to his car to get his book bag and pens and saw McInnis while he was on his way back to the facility. He spoke to McInnis and continued on to the facility. Employee did not come in contact with McInnis daily, and it was his second time encountering McInnis. He then proceeded to go into the building and to his post. He

¹ Agency Exhibits 9 and 11 showed that the tests were performed by two different laboratories, LabCorp in North Carolina and Clinical Reference Lab in Kansas.

encountered Blackmon and Blackmon entered the facility with him. Blackmon did not make any comments relating to Employee's disposition and they had a conversation about a basketball game. He also encountered Beverley Gillis, Rena Myles, and Ms. Pulley (the Shift Supervisor). Neither Ms. Myles nor Ms. Gillis commented on Employee's disposition.

Ms. Gillis gave Employee his duties for the day. Employee was training another officer. One of his duties was to lead a men's group. Leading the men's group involves having an open discussion with the youth about life and respecting their parents. He tries to be a role model for them. He logged in his work in the logbook.

Employee started making entries in this logbook at 5:15p.m. Employee stated that Myles also made entries in the logbook at 7:05 p.m. She asked Employee how his day was going and how the kids were acting. After Employee answered, she signed the logbook and left. Employees are required to log all movement in the unit.

Employee did not see Myles again until he was exiting the building to take a smoke break. Myles was with Mr. Blackmon, and stopped Employee to ask if he could take a urine test. He took a urine test in the supervisor's bathroom next to the supervisor's desk. The urine collector was present in the bathroom with him while he was delivering the urine test. Employee gave the collector the bottle of urine. The collector did not seal the bottle. After the urine test, Employee proceeded to go outside for his smoke break. On his way back in, Myles stopped him and asked if he could sign a form. He signed and went up to his post. He did not date the form.

Afterward, Employee provided showers to the youth with the assistance of Mr. Welch, the officer he was training. When employees control the showers, the youth are let in two at a time. There needs to be two officers on the unit at all times. After the showers, Employee had to make sure the youth were back in their units, do security rounds, and clean up the unit. Employee did not experience any difficulty while doing his duties nor was he relieved of his duties. He ended his tour of duty at 11:00p.m. He also reported back to work the next day.

When Employee was informed that the urine test came back positive for drugs, he asked for a retest and requested the second opinion in writing. Employee had to pay a fee to MetroLab, the alternative drug testing lab, for the second opinion. He paid the fee using a certified check from his credit union and sent it via certified mail.² However, MetroLab never received the urine sample. He kept calling MetroLab to see if they had received it, but they told him they didn't. He then contacted the company in Florida, LabCorp, and they could not find the specimen. They told him it would be sent over to MetroLab. However, it was never sent to MetroLab. Employee later learned from Ohler that the specimen was retested by LabCorp. He also learned from McInnis that his urine had been compromised.

Employee later received a notice which indicated that the Hearing Officer for the Agency hearing considered the case and ruled to uphold the decision to remove him. The Hearing Officer indicated to him that he did not have a right to use an alternative drug screening

² See Employee Exhibit 7. However, there is no proof of receipt indicated in the exhibit from MetroLab. In addition, the exhibit showed it was mailed to Florida Drug Screening, not MetroLab.

corporation. However, Ms. Cathy Ohler provided Employee with a statement which indicated that he did have a right to have an independent lab test.

Employee believes that McInnis lied when he testified that he talked with him occasionally. He also believes Myles lied when she testified that she had a conversation with him on April 23, 2010. Prior to working with Agency, Employee was incarcerated. During the time that the incident occurred, he was required to provide urine specimens to the U.S. Parole Commission.

Employee asserted that he was not given any training on the MEDAT policy. He was only provided a booklet and was told to sign for it. Employee's understanding of a 'safety sensitive position' is that it is very delicate and that one cannot be under the influence of drugs or alcohol. He does not know what Methadone or Alprazolam is. He was not under doctor's care or taking medication during the time of the incident.

Employee's relationship with Myles is cordial but he disputes Myles' testimony regarding her observation of him on April 23, 2010. He denies that he was nodding off and had a slurred speech. He believed that Agency was upset with Project Empowerment and states that he was "the last one left." He came out of the program in 2007. He became a permanent employee with Agency in February of 2008. He had to reapply in July of 2008. Employee has a degree in Criminal Justice. He has never been a drug user. He feels that he has been unfairly accused.

Beverly Gillis (Transcript pages 233-252)

Beverly Gillis ("Gillis"), a Supervisory Youth Correctional Officer, was Employee's immediate supervisor. She was employed with Agency for thirteen and a half years. She left Agency on January 17, 2013. Gillis opines that Employee is an asset to Agency. On April 23, 2010, Gillis saw Employee and thought that his behavior did not appear unusual to her. She understands the MEDAT procedure with regard to when an employee appears to be under the influence. She did a roll call with Employee and let him know what was going on at the unit. If an employee is not present for roll call, Gillis would call a Shift Commander to find out whether the employee contacted them.

Gillis was not present when Employee's urine was taken because her hours were 10:00 a.m. to 6:30 p.m. that day. No one approached Gillis concerning Employee's behavior. Gillis was later informed by Ohler that the Florida lab needed to reach Employee. When Gillis contacted the lab, Employee was present in her office. She spoke with Ursula from the lab and was told that the lab needed Employee's social security number and his ID number. She gave Employee the phone so that he could provide his social security number while she got on her office computer to get his ID number.

It is proper policy to relieve an employee of his duties if there is suspicion of his using drugs. Whatever is observed on the unit is written down in the logbook. On the evening that the urine test was conducted, Gillis or HR would have been the only people that could have provided the ID number.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Whether Agency's adverse action was taken for cause.

Agency's witnesses all testified credibly and in a forthright manner. Both McInnis and Myles testified credibly about their reasonable suspicion that Employee appeared to be under the influence on that day. Although Employee's sole witness, Ms. Gillis, stated that she did not notice anything suspicious, she admitted that she was not around during the time the other witnesses observed Employee's suspicious behavior as she had left for the day.

Employee presents a dramatically different story in his testimony. He begins by denying that he was ever impaired in any way at work that day, and accused McInnis and Myles of lying with regards to their account of his condition. Employee does not explain why these two employees would fabricate a tale of him appearing under the influence. I therefore find that Agency had reasonable suspicion that warranted its collecting a urine sample from Employee.

Next Employee attacks the collection procedure in his drug test by claiming that his urine sample was not sealed when it was removed from his sight, and that his social security number or his ID was not affixed to the urine sample. In short, Employee claims that the urine sample was not his. However, Employee's self-serving attack on the integrity of the drug test is contradicted by his admission that he signed the drug test form attesting that his urine sample were sealed with tamper-proof seals in his presence. (See Agency Exhibit 13.) In addition, his testimony was directly contradicted by Myles who testified that she was present at the urine collection and that all protocols were observed. Therman Cherry testified as to how his company follows an established drug testing protocol in collecting Employee's urine sample and how they safeguarded its integrity. Apart from Employee's own testimony, no credible testimonial or documentary evidence was ever introduced that would cast suspicion on the integrity of the drug test's chain of custody regarding the accompanying documentation, seals on the vials, and the signatures on the delivered samples.

Employee also claims that there was conflicting evidence with regards to the time the drug test was undertaken. I have reviewed the evidence and do not find any material discrepancy. Myles's account that she had no concerns about Employee finishing his tour of duty that day is not inconsistent with the evidence that Employee tested positive for illegal drugs. It simply showed that Employee's impairment was not so great that he could not complete his tasks.

Next, Employee claims that his urine sample was not retested by MetroLab as per his request. While it is undisputed that MetroLab did not conduct any test of his urine, I find several problems with his argument that MetroLab is a proper choice to conduct his drug test. First, he never produced any evidence that MetroLab, the laboratory of his choice, was qualified and authorized by the Federal and District government to perform a drug test. Second, Employee produced no credible evidence that he actually sent a check to MetroLab, as even his Exhibit 7 does not prove his claim. There is no cancelled check to indicate that the check that he claims to have mailed had ever been cashed by a drug testing company. In addition, the evidence that he

submitted indicates that his certified letter was mailed to Florida Drug Screening, not MetroLab. (Employee Exhibit 5 and 6.) Employee's own testimony indicates that he was told by MetroLab that they had not received anything from him.

Lastly, Employee's claim that the retest of his urine sample was not performed by a different independent laboratory is contradicted by Agency Exhibits 9 and 11, which showed that the tests were performed by two different laboratories, LabCorp in North Carolina and Clinical Reference Lab in Kansas. Employee could not explain how his drug sample would test twice for two illegal substances by two different qualified drug laboratories. Apart from his bald assertion that the drug test procedure in his case was not followed, he offers no independent proof. Neither does he present any motive or reason why the witnesses who testified regarding the drug test would commit perjury in this instance. In short, Employee indicates that all the testifying witnesses had fabricated their stories, presumably in a conspiracy against him.

None of the credible evidence submitted disproves the integrity of his initial or second drug test. Based on his courtroom demeanor, I do not find Employee credible and therefore I find for the integrity of his urine sample and its results.

OEA Rule 628.1 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 the 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." See 59 DCR 2129 (March 16, 2012). I find Agency's witnesses to be much more credible than Employee. Indeed, I do not find Employee to be credible at all with regards to the drug test. Based on my credibility assessment of the evidence, I therefore find that Agency has met its burden of proof by a preponderance of the evidence that Employee did indeed test positive for the two illegal substances of methadone and alprazolam. I also find that Agency met its burden of proving the chain of custody of Employee's drug sample.

A positive test for a controlled substance is cause for adverse action under the District Personnel Manual (DPM) Ch. 16, Pt. 1 §1603.3 (i) Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result. The evidence clearly showed that Employee was aware of Agency's MEDAT policy against the use of illegal drugs, and that he willingly and knowingly ingested them in direct violation of Agency's anti-drug policy. I therefore find that Agency had cause to take adverse action against him.

If so, whether the penalty was appropriate under the circumstances.

Employee contends that Agency's penalty should be overturned and that he should be returned to work. Employee casts doubt on his drug test result by insisting that the test results was not his and not collected according to Agency's drug testing procedures.

The only remaining issue is whether the discipline imposed by the agency was an abuse of discretion. Any review by this Office of the agency decision 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. 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). 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."³ 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."⁴

Here, Agency's MEDAT Policy specifies that Employee is covered by the policy and that any violation of the policy may result in termination. I also note that Employee was on notice that the ingestion of illegal drugs violated the law and Agency's regulations.

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 Agency's action removing Employee is UPHELD.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge

³ *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

⁴ *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).