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

In the Matter of:	)	
	)	
DERRICK JONES	)	OEA Matter No. 1601-0192-09
Employee	)	
	)	Date of Issuance: November 16, 2010
v.	)	
	)	Lois Hochhauser, Esq.
D.C. DEPARTMENT OF TRANSPORTATION	)	Administrative Judge
Agency	)	

Clifford Lowery, Employee Representative  
Melissa Williams, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND STATEMENT OF FACTS

Derrick Jones, (“Employee” herein), filed a petition with the Office of Employee Appeals (OEA) on August 6, 2009, appealing the final decision of the D.C. Department of Transportation, (“Agency” herein) to remove him from his position as Parking and Traffic Enforcement Officer, effective August 7, 2009. At the time of the adverse action, Employee was in permanent career status.

The matter was assigned to this Administrative Judge<sup>1</sup> on June 2, 2010. A prehearing conference was held on June 22, 2010. The evidentiary hearing took place on July 22, 2010. At the proceedings, the parties were given full opportunity to, and did in fact, present testimonial and documentary evidence as well as argument to support their positions in this matter.<sup>2</sup> Melissa Williams, Esq., represented Agency; and Clifford Lowery, American Federation of Government

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<sup>1</sup> The Court Reporter erroneously identified the Administrative Judge as an “Arbitrator” in the transcript. She advised him that it would not be necessary to issue a new transcript since the parties were aware that she served as the Administrative Judge in this matter.

<sup>2</sup> Testimony was presented under oath. The transcript is cited as “Tr”, followed by the page number. Exhibits submitted jointly are cited as “J”; those submitted by Agency are cited as “A” ; and those submitted by Employee are cited as “E”; followed by the exhibit number.

Employees, Local 1975, represented Employee. Written closing arguments were due on September 20, 2010 and the record closed on that date.

### JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (2001).

### ISSUES

Did Agency meet its burden of proof in this matter? If not, what relief should be awarded?

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Employee had worked as a Parking and Traffic Enforcement Officer (TCO)<sup>3</sup> for more than one year at the time of his removal. In that position, Employee was responsible, among other things, for controlling traffic at intersections and writing citations. (Tr, 20).

Agency removed Employee based on its contention that he engaged in “on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law” in violation of Section 1603.3(e) of the District Personnel Manual. Specifically, in its Advanced Written Notice of Proposed Removal, dated May 22, 2009, Agency charged Employee with the following:

**Specification:** Motorist Stephanie Murphy states that on April 22, 2009 at approximately 5:30 pm at the intersection of 17<sup>th</sup> & K Streets, as she passed the crosswalk and approached a green light, you told her to stop. She states that she complied and that you then stood in front of her car and obstructed her forward movement. Ms. Murphy states that she asked you to move, but you stated in an inappropriate manner that she could not go through you and that she should back up. Ms. Murphy observed pedestrians in her rearview mirror walking through the crosswalk and therefore did not comply due to safety concerns. As she remained stationary, a bicyclist rode up to the car and began to shout at her to move, behavior in which you joined. The bicyclist removed his bike lock and threatened to hit the car. Ms. Murphy reports that the bicyclist sought approval from you by asking should he do it. You stated “do it, do it, do it”. The bicyclist rode to the back of Ms. Murphy’s car, struck her vehicle with the bike lock and rode away.

You then moved out of Ms. Murphy’s path and she made a right turn. Ms. Murphy subsequently contacted the D.C. Metropolitan Police Department, who referred her to the District government. She provided her statements to Program Manager James Strange on April 24, 2009, including your name and badge number. Our records indicate that it was at your intersection and

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<sup>3</sup> These employees are known as Traffic Control Officers or “TCO”s.

during your tour-of-duty that the incident occurred. Ms. Murphy also provided photograph record of the damage to her vehicle.

**Specification:** On April 23, 2009, you were observed by several co-workers and a supervisor as the sole antagonist in a verbal confrontation with coworker Melvin Ray. At approximately 7:35 pm, co-workers Valerie Sanders and Kevin Edwards observed you enter the parking lot in your personal vehicle. Ms. Sanders reports that you threatened Mr. Ray and used profanity in addressing him. Mr. Edwards reports how you jumped out of your car and approached Mr. Ray, who was compelled to back up from you. The witness's statements indicate that you were the aggressor throughout the encounter with Mr. Ray. Supervisor Shawn Miller reported the incident, during which you stated to Mr. Ray that you were "not a punk" and you promised you "won't be disrespected again." Mr. Miller reported that Mr. Ray remained silent and did not respond. Mr. Miller attempted to calm you down because your behavior was attracting the attention of individuals from another agency. When calmed down, you left the premises.

On May 4, 2009 you served a suspension of nine (9) days for discourteous treatment of the public at your previously allocated intersection. That disciplinary action and your subsequent relocation were intended to correct your behavior. However, less than three weeks after your suspension another report of discourteous treatment has been levied against you. Your decision to incite a person to cause damage to the property of another is an act you knew or should have known is a violation of law.

You have repeatedly demonstrated confrontational behavior with colleagues and members of the public, whose interests you serve as an employee of the District government. In each incident you have been the central figure. Your behavior has been noted as that of a bully. (Ex A-1).

The final Agency notice was issued on July 29, 2009 and the effective date of removal was August 7, 2009. (Ex J-1).

#### Positions of the Parties and Summary of Evidence

Agency's position is that Employee exhibited "aggressive and intimidating behavior" during these incidents and argues that it took the appropriate action by removing Employee from his position with Agency.

James Strange, supervisory engineering technician, manages Agency's traffic control officer program and was at the head of Employee's chain-of-command. He was the proposing official in this matter. He testified that Ms. Murphy, a motorist, contacted him about the April 22<sup>nd</sup> incident, claiming that Employee "had coerced a bicyclist to strike her car with a lock". He said she sent photographs of the damage to her vehicle (Tr, 23, Ex A-2). Mr. Strange said he

communicated with Ms. Murphy by e-mail and never met with her. (Tr, 83). He said he did not know, and did not try to find out from either Ms. Murphy or Employee, why Ms. Murphy was in the intersection or why the bicyclist was upset with her. (Tr, 85). He said he later spoke with Employee and that Employee told him he was aware the bicyclist hit the vehicle with his lock, but that “he didn’t encourage it to happen”. (Tr, 27, 86). Mr. Strange testified that since Employee knew about the incident, he was responsible for reporting it to his supervisor or MPD. (Tr, 52). The witness stated that he could not recall why he found Ms. Murphy more credible than Employee, but that he “leaned more to Ms. Murphy’s statement” because as a TCO, Employee should have assisted the motorist when the bicyclist hit the car and because of the “due diligence that she put in trying to track down...who this employee was responsible to”. (Tr, 86-87).

With regard to the April 23<sup>rd</sup> incident, Mr. Strange stated that he did not witness it, but was told that Employee drove into the parking lot at a “high rate of speed” and that he appeared to reach “under his seat or under his shirt, trying to – as though [he was] brandishing some type of weapon”. The witness said Mr. Miller, the supervisor who was called to the incident, informed him that Employee was the aggressor, although Employee named Melvin Ray, a co-worker, as the aggressor. Mr. Strange said Employee and Mr. Ray continued to work together after the incident. (Tr, 70).

Mr. Strange stated the earlier incident that resulted in the nine day suspension was based on telephone calls from a motorist and her passengers, who complained that when the motorist stopped to pick up the passengers in the slug line, Employee asked her “to move on”. He said the motorist did not move because she had “drop-down seats” and that Employee continued to ask her to move on. Mr. Strange said the motorist accused Employee of threatening to call the police to have her arrested. She said that when she was ready to leave, she could not do so because Employee was standing in front of her vehicle issuing a citation. Mr. Strange said he never met with the motorist, but relied on her statement as well as those of the witnesses and, Employee. (Exs A-3, A-4). Mr. Strange stated that although a TCO can issue a citation if a motorist holds up the slug line and refuses to move, TCOs should try to work with the public. He said he voided the citation although Employee told him that the motorist “wouldn’t move on, that she was waiting on specific people”. (Tr, 80-81). Mr. Strange said he accepted the motorist’s version because he had more “substantiating information from the motorist and the passengers” as well as a photograph of Employee “standing in front of the vehicle, executing that citation, which he said impeded the motorist from moving”. (Tr, 82).

Mr. Strange was Employee’s manager during the April 07-March 08 rating period during which Employee received a rating of “excellent” and several letters of commendations. He stated that he was not certain if he considered the rating or commendations when he proposed the removal. (Tr, 76-78, Exs E-1, E-2, E-3).

Shawn Miller, Employee’s immediate supervisor, testified he had a good working relationship with Employee. He testified that on April 23<sup>rd</sup>, an employee called and asked him to go to the parking lot where an incident was taking place. He said that when he arrived, he saw people, but only caught the “tail end”. He said Employee was upset and Mr. Miller heard him

say that he was not going to be “disrespected” or be “nobody’s punk”. He said he waited until Employee calmed down and then they both left. He said Mr. Ray “wasn’t saying anything at the moment”. (Tr, 94). He testified that when he spoke with Employee about the matter, Employee told him that Mr. Ray “was messing with him”.

Mr. Miller described Employee at being “one of the best in all traffic, period. He’s one of the top at producing or enforcing public space”. (Tr, 102). He said he was aware of the complaint by Ms. Murphy, and that other motorists have complained that Employee “may put his foot on the person’s car” while he writes citations. (Tr, 103). He said he also received complaints about other officers during this time. (Tr, 108). He said he was not involved in the decision to remove Employee.

Valerie Sanders, TCO, testified that after clocking out on April 23<sup>rd</sup>, all the officers except Employee returned to the building to complete paperwork. She said when they finished were going to the parking lot, Employee drove into the lot at a high speed, got out of his vehicle and approached Mr. Ray using profanity, and acting “like he wanted to fight”. She said Employee told Mr. Ray to “stop playing” with him or he would “f [him] up”. She thought Employee had something in his back pocket, but she did not see anything. She said Mr. Ray was “backing up” and another employee stepped between Employee and Mr. Ray. She then contacted Mr. Miller. (Tr, 112-115). She said that when Mr. Miller arrived he told Employee and everyone else to go home, and Employee left. She said she did not observe any conflict between Employee and Mr. Ray prior to the incident and did not know what caused the incident to take place. Ms. Sanders stated that there was no violence and no threats of violence throughout the incident. (Tr, 119). She said that in the five years she worked with Employee, she had never witnessed any other incident involving him.

Ms. Sanders testified that in performing her duties of controlling traffic and issuing citations, it is common for motorists to yell, curse or write letters when they get citations. She said she often has to raise her voice when she is controlling traffic because she cannot be heard using a regular conversation tone.

Kevin Edwards, TCO said on April 23<sup>rd</sup> he saw Employee drive into the yard, jump out of his car and approach Mr. Ray in an “aggressive”, manner, saying things like “You’re going to stop threatening me” and “You keep threatening me”. He said Employee’s hand was in his back pocket, which led him to think that Employee could have a weapon. (Tr., 127-128, 136-138). He said that Mr. Ray backed up as Employee approached him. He said a few minutes later, the supervisor came out and told everyone to leave and Employee left. The witness did not know what caused the incident. He said he has only a working relationship with Employee and “hangs out” with Mr. Ray. He said Mr. Ray has never discussed the incident with him. Mr. Edwards testified that Employee did not use any violence or threats used and did not have a weapon. He said he did not feel threatened by the events.

Mr. Edwards testified that citizens have been “irate” at him when he has written tickets and when he has controlled traffic. (Tr, 133-134). The witness said he had never been counseled as a result of a citizen’s complaint.

Melvin Ray, Jr. a Traffic Control Officer, testified that during roll call on April 23<sup>rd</sup>, he noticed Employee looking at him. He said he and Employee had never had any problems. He said "As a matter of fact, when everybody does their little teasing and stuff, that just was something I didn't participate in". (Tr, 142). He saw Employee after work and asked him what was going on and Employee indicated that someone had told him that Mr. Ray had said something about him. Mr. Ray said he reminded Employee how helpful Employee had been when Mr. Ray started the job. (Tr, 144). He said later that evening, Employee sped into the parking lot and reached under the seat and had his hands behind him. He said Employee said things like "I ain't scared of you". (Tr, 144). The witness said he was worried that Employee could have a weapon. (Tr, 146). He said he reminded Employee that he had tried to talk with him earlier that day to find out if there was a problem. He said when Mr. Miller came out, Employee was still talking, and "making little threats". Mr. Ray said he exclaimed: "Derrick, why are you still in here, why are you still doing that? This is our supervisor. What are you trying, to get us fired or something". (Tr, 147). He said that Employee then left.

Employee's position is that he did not engage in the charged conduct and should not have been removed from his position.

Renee Snowden, Employee's prior supervisor, said she always had a good working relationship with Employee and that he was a good employee. She said she never saw him act like a bully. She said when she exited the building on April 23<sup>rd</sup> she saw Employee standing with his hand on his back pocket while Mr. Ray was talking to him. She told them both to "stop this" and left. She did not witness any violence, see a weapon or hear any threats.

The witness said that citizens have gotten upset with her, cursed at her and yelled at her when she issued tickets and when she has controlled traffic. She said she has had to raise her voice while controlling traffic.

Dena Thweatt, lead TCO, said that during the six months she supervised Employee, he performed all of his duties and had no problems. She said that he was not a bully. Ms. Thweatt testified that citizens get upset, and yell and curse at her "all the time" when she writes tickets. She said it was "common" for citizens to write letters against TCOs who have issued tickets to them. She said she has had to raise her voice when controlling traffic, and that motorists have gotten angry with her while she was performing her duties. She noted that she had received verbal complaints from motorists that Employee had stepped in front of their vehicles or tried to make them back up. She said she took no action because nothing was in writing, but that she did speak with Employee who explained what happened from his perspective. She stated;

I understood what he was trying to do because I did that job, so I know when you're trying to get them to stop and they don't stop, you have to be aggressive to let them know you're out there, you know. (Tr, 173).

Employee worked as a TCO for over a year at the time of termination, and had worked at Parking Services for the previous five years. He described his responsibilities as directing

traffic “from the four corners of the intersection” and ensuring that intersections and crosswalks are not blocked so that pedestrians can cross safely. He also issues tickets if automobiles are parked in a prohibited space.

Employee described the incident on April 22<sup>nd</sup> as follows:

I was directing the traffic at the location of 17<sup>th</sup> and K Streets, Northwest. A car came into the intersection of the crosswalk at 17<sup>th</sup> and K...I had traffic stopped from the other direction...The people were walking across the crosswalks and...one particular car what was in the crosswalk and the bicyclist...had rolled up in the crosswalk. And before I noticed it, he just hit this lady’s car that was in the crosswalk and a lot of the other people that was walking in the crosswalk were saying “Why don’t you back up? And he took his U lock and hit her car, and she drove behind him, going after the person that struck her car. (Tr, 177-178).

Employee said Ms. Murphy was attempting to enter the crosswalk while pedestrians were crossing, and he “made her stop before she came all the way into the crosswalk”. He said he had a stop sign on his glove. (Tr, 198-199). He said the bicyclist was crossing the crosswalk with the pedestrians. He said he thought the bicyclist was upset with Ms. Murphy because she was easing her way into the crosswalk trying to make a right turn contrary to his instructions for her to stop, and he thought the bicyclist did not want to wait. (Tr, 201) . He said the incident occurred because the bicyclist was going across K Street and she made a right turn onto K Street. (Tr, 202). He denied telling Ms. Murphy to back up or telling the bicyclist to hit the car stating “No, I didn’t, I would never do that”. (Tr, 178). He said he didn’t assist Ms. Murphy because it “happened so fast” and the bicyclist drove off really fast with Ms. Murphy following him. He said there was nothing he could do. (Tr, 196).

With regard to the April 23<sup>rd</sup>, Employee said that he had driven his car from off-site parking to the parking lot next to the building so he could clock out. He said he was trying to enter the building when Mr. Ray had approached him, telling him that he heard Employee had been talking about him. Employee said he denied it, saying that if he had anything to say to Mr. Ray, he would tell him. He said Mr. Ray was standing in front of him so as to prevent him from entering the building. He said he may have had his hands in the back of his pants because his pants were baggy and he had to pull them up. (Tr, 182). He said Mr. Miller soon came out. He said there was no violence or threats of violence, and that he did not have a weapon or threaten to use a weapon. He said he continued to work with Mr. Ray on the same tour-of-duty. Employee denied acting as a bully.

Employee testified that he has been yelled and cursed at for writing tickets, and that it common for citizens to write letters against ticket writers or TCOs who issue them tickets. He said he often has to raise his voice to get the attention of citizens when controlling traffic.

Testifying about the 2009 incident, Employee stated that the motorist was in an area with a “no standing or parking any time” during rush hour sign. He said it was rush hour, so he asked her to move her car and drive around the block until the person she was waiting for

arrived. He said she refused, so he issued her a ticket. (Tr, 185). He said neither Mr. Strange nor any other Agency official asked him what happened prior to suspending him. (Tr, 187).

Employee noted the commendations from the public as well as commendations he had received for his achievements and job performance. (Exs E-3 - Ex E-6).

### Analysis, Findings of Fact, and Conclusions

D.C. Official Code § 1616.51 (2001) (Code herein) provides that the Mayor “issue rules and regulations to establish a disciplinary system that includes...1) a provision that disciplinary actions may be taken for cause... [and]... 2) A definition of the causes for which a disciplinary action may be taken” for those employees of agencies for whom the Mayor is the personnel authority. Agency is under the Mayor’s personnel authority.

Agency is required to prove its case by a preponderance of evidence. Preponderance is defined as “that degree of relevant evidence which the reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue”. OEA Rule 629.1, 46 D.C. Reg. 9317 (1999). Agency has the burden of presenting enough evidence to convince the fact finder that a disputed fact was more likely to be true than untrue.

This is a case where pertinent facts are in dispute. If Agency can meet its burden of proving that the facts are sufficient to establish that Employee engaged in the charged conduct, then his removal will be sustained. However, the relevant “facts” that Agency relied upon are the ones at issue. With regard to the April 22<sup>nd</sup> incident, Agency did not present any witness who was present during the incident. At the prehearing conference, the Administrative Judge expressed her concern to Agency when she was told Agency did not intend to bring a witness with first-hand knowledge of the April 22<sup>nd</sup> incident. Agency’s position was that Mr. Strange had personal knowledge and that his testimony would be sufficient. (Tr, 33). Agency’s contention is incorrect, because Mr. Strange did not have personal knowledge of any of the incidents that resulted in Employee’s suspension or his removal.

Where there are conflicting versions of the same event, the Administrative Judge must make credibility determinations. She must consider the demeanor and character of the witness, the inherent improbability of the witness’s version, inconsistent statements of the witness and the witness’s opportunity and capacity to observe the event or act at issue. *Hillen v. Department of the Army*, 35 M.S.P.R. 453 (1987). The demeanor of a witness can only be observed. It cannot be captured easily by telephone or in a transcript<sup>4</sup> and is completely absent in an e-mail. See, e.g., *Universal Camera Corp. v. National Labor Relations Board*, 340 U.S. 474, 496 (1951). The District of Columbia Court of Appeals emphasized the importance of credibility evaluations by the individual who sees the witness “first hand”. *Stevens Chevrolet Inc. v. Commission on Human Rights*, 498 A.2d at 440-450 (D.C. 1985). The Administrative Judge

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<sup>4</sup> Perhaps some credibility assessments may be made regarding a witness’s tone or phrasing when testimony is presented by telephone. And at times, a transcript may include descriptions of a witness’s actions. But in-person testimony provides the best opportunity to assess credibility.



was able to make credibility determinations regarding Employee and the other witnesses who testified in this matter. If she did not find Employee to be a credible witness, it is possible she could sustain the charge even without Agency presenting a witness with first-hand knowledge. But, in fact, the Administrative Judge found Employee to be a credible witness. This does not mean that Mr. Strange was not credible, it simply means that Mr. Strange could offer no first-hand testimony about the events, and thus his testimony about the events was not reliable. While it is admirable that Agency takes complaints of citizens seriously, it is troubling that an employee can be disciplined, and perhaps terminated, based on an e-mail from a citizen. Employee is losing his livelihood based on an accusation of one individual. The TCOs offered consistent testimony that citizens often get angry when they disagree with a TCO or are given a citation. This anger can cause vindictiveness. If a citizen believes strongly that an employee engaged in serious misconduct which results in the loss of an employee's livelihood, the citizen, as the sole observer of that incident, should be willing to attend the proceeding, provide sworn testimony by telephone, meet with Agency personnel, or at least submit a notarized statement. None of that took place in this matter. The Administrative Judge found Employee's testimony regarding the April 22<sup>nd</sup> incident to be logical and reasonable. According to Employee, Ms. Murphy was beginning to turn right, against his instructions, while pedestrians and the bicyclist, were still in the intersection. Employee was assigned to that location to ensure the safety of pedestrians, bicyclists and motorists. It was 5:30 p.m., the heart of evening rush hour and it is likely there was a lot of activity. But even if the intersection was not busy, and even if it was not rush hour, motorists and pedestrians are supposed to follow the directions of the TCO who is there to manage traffic and ensure safety. Employee instructed Ms. Murphy to stop while pedestrians were still in the cross-walk, but according to Employee, she did not, and she incurred the wrath of the bicyclist. There is no evidence, other than Ms. Murphy's unsworn e-mail, that Employee encouraged the bicyclist or that Employee engaged in any unprofessional conduct. While Agency suggests that Employee could have followed the bicyclist and Ms. Murphy, Agency does not explain why it would have been reasonable for Employee to leave his post and duties to chase the car and bicycle. Agency also contends that Employee should have reported the incident. While it might have been prudent to report the incident at some point, Employee's failure to do so was not a basis for his termination.

With regard to the second incident, Employee was charged with being an antagonist and aggressor during the April 23<sup>rd</sup> incident, and that his conduct was alleged to be that of a "bully". The accusation of being a "bully" was made on the basis of alleged earlier unreported complaints. However, neither the witnesses called by Agency nor the ones called by Employee testified that Employee had a reputation of being a bully. In fact, the testimony from even Mr. Ray was that Employee had been helpful to him in the past, and that the incident was an unusual occurrence. The phrases Employee is charged with making, i.e., he was "not a punk" and he would not be "be disrespected again" are not threatening phrases. Co-workers may have seen Employee's hand near his back pocket and assumed he had a weapon, but the witnesses were consistent in their testimony that they did not see a weapon. It is equally plausible that as Employee stated, he was pulling up his pants. Employee's conduct was certainly not mature. He was upset, and making statements, perhaps using profanity, in a loud voice. Although this was not during work hours, it was in the parking lot of his work site. While the incident merited counseling and perhaps intervention to determine the underlying reasons, Agency did not meet

its burden of proving that Employee engaged in the charged misconduct. It did not meet its burden of proving that the conduct was threatening, bullying or anything more than the reaction of someone who is frustrated because of an alleged insult by another individual.

The Administrative Judge, as stated before, found Mr. Strange to be a credible witness. For that reason, she found it troubling that he could not recall the reasons he relied on Ms. Murphy's description of the events other than she had taken the time to identify Employee and to email the complaint to him. The Administrative Judge also found it of concern that Mr. Strange could not recall whether he considered Employee's commendations and performance appraisals when he considered the penalty of removal. While Agency is not required to adhere to a particular checklist, it appears that Mr. Strange relied only on negative information or innuendo about Employee. Although the Administrative Judge cannot look behind the nine day suspension, she finds it suspect for the same reason she found the April 22<sup>nd</sup> accusation suspect. The complaints are coming from citizens who were upset that Employee urged them to move and when they did not, issued a citation to the driver. It does not make the accusation more credible that there were multiple accusers because they consisted of the passengers as well as the driver. In addition, Agency did not present any evidence to support Agency's charge that Employee was a bully.

In sum, based on a careful review of the record in this matter, the Administrative Judge concludes that Agency did not meet its burden of proving the allegations of misconduct on April 22<sup>nd</sup> or April 23<sup>rd</sup>, that Agency used as its basis for terminating Employee from his position. Therefore, the removal must be reversed.

### ORDER

Based on the foregoing, it is hereby

ORDERED:

1. Agency's action removing Employee from service is reversed.
2. Agency is directed to reinstate Employee to his last position of record, issue him the back pay that he is owed and restore any benefits he lost as a result of its action within thirty calendar days from the date of issuance of this decision.
3. Agency is directed to file documents with this Office, within forty (40) calendar days from the date this decision is issued, that establish that it has complied with the terms of this Order.

FOR THE OFFICE:

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LOIS HOCHHAUSER, ESQ.  
Administrative Judge