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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
MICHAEL SMALLWOOD)	OEA Matter No. 1601-0068-06
Employee)	
)	Date of Issuance: February 25, 2008
v.)	
)	Sheryl Sears, Esq.
DEPARTMENT OF PUBLIC)	Administrative Judge
WORKS)	
Agency)	
_____)	

Michael Smallwood, Employee, *Pro Se*
Pamela Smith, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 15, 2006, Employee, a Motor Vehicle Operator, filed a Petition for Appeal with the D.C. Office of Employee Appeals (“the Office” or “OEA”). Employee seeks an order for Agency to reverse the thirty day suspension imposed upon him and restore the pay and benefits that he lost.

This matter arose from the following events. On the morning of January 20, 2006, Employee and his partner, Kenneth Pickard, a Sanitation Worker, were assigned to sanitation truck D.C. #36-3381. Their responsibility was to remove trash from designated public spaces. A complaint from a member of the public prompted an inquiry by Agency officials. They concluded that Employee and his partner used their truck to remove debris from a private home in contravention of agency policy.

By letter dated February 17, 2006, Thomas M. Henderson, Administrator, notified Employee of a proposal to suspend him for forty-five days. Agency charged Employee with “misuse of District government property; use of or authorizing use of a government vehicle for other than official business” and “inexcusable neglect of duty; deliberate failure to perform assigned duties.”

By letter dated April 24, 2006, William O. Howland, Jr., the deciding official, notified Employee that, in consideration of his prior work record, the penalty would be reduced to thirty days. Employee served the suspension from May 1, 2006, through May 30, 2006. Then, he filed an appeal with the Office of Employee Appeals (“the Office” or “OEA”).

Agency also suspended Employee’s partner, Kenneth Pickard, a Sanitation Worker, for thirty days. Initially, the two appeals were joined for adjudication. This Judge convened an evidentiary hearing in the joined matters on December 13, 2006. Employee and his partner both testified. On the second day of the hearing, January 24, 2007, Mr. Pickard announced his decision to withdraw his appeal. On that date, this Judge closed the record in Pickard’s appeal (OEA Matter No. 1601-0069-06) and issued a decision dismissing it.

This decision on the appeal of Michael Smallwood is based upon the record of testimonial and documentary evidence adduced at the hearing along with the written and oral legal arguments of the parties. The record is closed.

JURISDICTION

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

ISSUES

The issues presented by this appeal are as follows:

- I. Whether Employee committed the acts with which he was charged.
- II. Whether the acts constitute cause for adverse action.
- III. Whether the penalty was reasonable.

BURDEN OF PROOF

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” Accordingly, the agency has the burden of proof in this matter. Pursuant to OEA Rule 629.1, *id.*, the applicable standard of proof is a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat 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.” Agency must prove, by a preponderance of the evidence, that Employee committed the acts with which he was charged, that the adverse action effected against him was founded upon legal cause and that a thirty day suspension was a reasonable penalty.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Summary of Agency's Testimonial Evidence

Testimony of Michael Smallwood, Motor Vehicle Operator, Employee

Employee testified that his job was to drive the bulk truck, take care of it, drive the sanitation worker assigned to work with him to the point of collection to pick up the bulk trash and assist him, if needed. A "bulk collection checklist" is presented to each team every day. The checklist specifies the route the truck is to follow and what items will be there for pickup. Items such as "2 box springs, 1 toilet, 1 mattress" are marked by the workers as "collected," or "not collected." Pickups are made from the public space in front or in the rear of the address indicated. Workers are prohibited from picking up certain items and construction debris and any item on private property.

On January 20, 2006, Employee and his partner, Mr. Pickard, were assigned to Route 17. Employee submitted a copy of their list for that day into evidence (Employee's Exhibit 1). It indicates 38 collections. When an item is not collected, the worker notes a reason in the comments section. For example, at item 18 of the list for that day, a "waterheater [and] door" are listed for pickup but according to the comments, were "not out." Employee urges that he did not neglect his duties on the day in question because he completed all of the pickups assigned. He pointed out that he "filled out the whole 38 stops." He said, "I completed my checklist, which is my assigned duties for that day."

Employee denies that he and his partner put construction debris on the truck. Employee recounted that Cassandra Boyd, General Foreman for Bulk Trash Collection; Kelvin Deadwyler, Senior Sanitation Worker and Richard Bowe, Bulk Collection Supervisor, all came to meet him in the truck while he was driving the route. When Ms. Boyd asked him to open the doors of the truck, he did not, explaining, "That's not my job. It is Mr. Pickard's job to open the doors." He saw Ms. Boyd again when he went to the dump at the end of his route.

Employee presented, as evidence of what was collected, a set of photos taken by John Carter, Transfer Operations Foreman, a supervisor at the trash dump. The photos were taken in the presence of Ms. Boyd. In Employee Exhibits 2A and 2B and 3 and 4, Employee pointed out how the items documented reflect the notations on the bulk checklist. For example, the photos show rolls of carpet. Item 2 on the checklist is "rolls of carpet." Listed at Item 7 are a door and a bike wheel that Employee pointed out in the photo.

Employee also presented, as Exhibit 6, a photo taken by Mr. Deadwyler that shows wood piles that appear to be construction debris. However, according to Employee, they did not come off of the truck he was driving that day. Employee also presented the "weight sheet" that shows the dumping time and tonage from truck number 363881 at Fort Totten station (Employee Exhibit 5). It indicates a drop off time of 10:09:34 a.m. on January 20, 2006 and notes that the weight of items disposed was 1.92.

Employee Exhibit 7 shows a second drop off from the same truck at 1:47:32 p.m. of 1.93 tons. There was no dispute in the testimony that the amounts shown were reasonable. The witnesses who worked at the dump, indicated that weights vary daily based on what is picked up.

Testimony of Kenneth Pickard, Sanitation Worker

Mr. Pickard further detailed the restrictions on pickups. He said that sanitation workers are prohibited from picking up items from “apartment buildings, four unit buildings, stores [and] businesses.” He said that they are not supposed to pick up construction debris at all but acknowledged that, sometimes, if the item is presented in bulk, they do.

Mr. Pickard testified that, when he and Smallwood were confronted by the supervisors from Agency, they were making a u-turn to exit an alley into which they had made a wrong turn. He said that, from that point, no one could have seen them exiting 1213 Fairmont Street, the address from which it is alleged that they picked up the construction debris. When Cassandra Boyd asked them to open the truck, Pickard recalled, Employee responded that they could not because all of the items they had collected to that point would fall out. Pickard explained that he was putting collected refuse in the truck by tossing it in rather than opening it. He threw the carpet over the top of the truck and put the doors in while standing on the tailgate.

Boyd directed them to go to the dump. Once there, John Carter photographed the contents of the truck. Then, Pickard and Employee dumped the truck and left. Pickard testified that he believed that, after he and Employee left, Kevin Deadwyler took photos of construction debris already in the landfill.

Testimony of Linda Ritchards, Customer Service Business Partner

Ms. Ritchards takes consumer complaints by phone and in writing. On January 20, 2006, she took an anonymous call through the clearinghouse center from a citizen who complained that “there were two of our employees removing construction and renovation material from inside of the residence on Fairmont Street.” The caller gave her the address from which the debris was being moved and the number of the truck into which it was loaded.

Ritchards called the Fleet Management department and talked to Johanna Tuckson. Tuckson identified the truck as one assigned to Tom Liddell, the general foreman of the W Street trash yard in Brentwood. She immediately called Mr. Liddell and reported the truck number. He told her that the truck worked out of the bulk collection area of the yard under the supervision of Cassandra Boyd, the Foreman. Ms. Ritchards then contacted Ms. Boyd.

On Monday, January 23, 2006, Ms. Ritchards send a memorandum to Cassandra Boyd. That memo is Agency’s Exhibit I. In it, Ms. Richards recounted the same version

of events to which she testified. At the hearing, Employee challenged her version of events. Employee noted that, according to Ms. Ritchard's written statement, the caller "indicated that Employee and Pickard were not collecting bulk from public space, rather straight from the rear of the home." Employee argued that they could not have been "in" the home if they were at the "rear of the home."

Testimony of Thomas Liddell, General Foreman, Solid Waste Collection Division

Mr. Liddell is the supervisor of residential trash collection and recycling for the Brentwood-W Street yard. All of the trucks for Wards 2, 3, 4 and 5 operate from there. Liddell identified the truck that was the subject of the complaint to Ms. Ritchards as belonging to the bulk collection division next door in the same yard. He reported to Cassandra Boyd, the supervisor, that one of the bulk trucks was doing contract work for a private citizen.

In response to questioning by Employee, Mr. Liddell acknowledged that he could only tell which truck a pile of trash came from by seeing it dumped. He conceded that he did not see Employee's truck dump its contents.

John Carter, Transfer Operations Foreman

Mr. Carter's job is to monitor the flow of trash in and out of the yard and oversee its removal by contractors with tractor trailers. Carter identified Agency's Exhibits 2A through 2F as the photos that he took at the request of Cassandra Boyd. Carter also identified the photos marked as Employee's Exhibits 3 and 4 as taken by him. For those, he climbed onto the back of the truck and looked into it. He identified the items in the photos as "carpet, doors, sinks, you know, bulk pick up." Those are "bulk pick up" items that the regular trash carriers don't pick up. He did not take the photo marked as Employee's Exhibit 5 showing the piles of lumber that look like construction debris.

Kelvin Carl Deadwyler, Senior Sanitation Foreman

Mr. Deadwyler monitors the streets of D.C. for bulk trash and gives out collection assignments at the beginning of each day. When Ms. Boyd first asked him and Mr. Bowe to ride with her on January 20, 2006, he did not know where they were going. Boyd gave Mr. Bowe, who was driving, the address. Deadwyler recalled it as "1213, 12 something, Fairmont -- Fairmont Street, I think, Fairmont Place, something." When they neared the address, Ms. Boyd asked Mr. Deadwyler if he knew who was driving truck number 3381. He told her that it was Employee. She then explained, "That truck's supposed to be up in the alley contracting." He understood her to be saying that Employee was involved in the "misuse of a government vehicle."

They encountered the truck at the end of an alley at 11th Street between Girard and Fairmont. He could see "debris" in the truck that looked to him "like wood chips or something of that nature." Agency's Exhibit 3 is a form that Sanitation Workers present to members of the public when they leave prohibited materials. Among the items listed

under the heading “What We Won’t Pick Up,” is “renovation or demolition debris.” Deadwyler said that he could not tell, at the time, if what he saw was prohibited material. However, he did not see any of the items listed as collected among those at the dump when he took photos.

Deadwyler had no opinion on whether the weights of the loads dumped by the truck were within normal range. Nor did he have an opinion on whether it was reasonable to believe that Employee and his partner were on their route when they were encountered at 11th Street based on the proximity of the locations on the checklist and their record of collections for the day.

At 10:09:34 a.m., the time noted on the early dump slip for truck 363381, he met Mr. Smallwood and Mr. Pickard at the Fort Totten dump station. After they dumped the truck, Deadwyler had another employee, Reginald Stocks, the Acting Supervisor, to bring him a camera. He then went to the pile of trash and took the photo that is Agency’s Exhibit 6.

Mr. Deadwyler acknowledged that he did not see the truck emptied. Instead, he was directed to a spot at the bottom of the hill where he was told the truck had just dumped. The pile that he saw looked like a “fresh dump” because when a truck first drops its load, it goes “on a flat, and then you have a loader that takes it and put it up to the big pile. And this was the only pile down there besides the big pile.” He pointed out that the photo shows prohibited materials such as “bags of stuff and wood [that] should be tied cut in 4-foot lengths.”

Employee questioned Deadwyler about the break practices of the drivers. He said that he had never taken a truck off of its route for an errand such as going to the bathroom. Deadwyler did acknowledge that the list is not necessarily completed in the order in which it is presented and that some items are picked up that are not on the list. Employee also asked Deadwyler to confirm that he completed his duties according to the checklist for that day. Deadwyler responded, “I’m just seeing a checklist. It’s showing you completed it, but whether you completed it or not, I wouldn’t know.”

Richard Bowe, Solid Waste Management, District Government, Bulk Collection, Supervisor

Mr. Bowe supervises the operations of four trucks that travel “throughout the city, all eight wards, pick up bulk trash, which consists of stoves, refrigerators, sinks, chairs, couches, things of that nature.” Sometimes, he calls drivers and assigns them stops that are not on the checklist. This can happen when a stop was missed or, if an item is too heavy for one truck, another can pick it up. When Cassandra Boyd said to him, “Come on, we’re going somewhere,” he and Mr. Deadwyler rode to check out a report that truck number 3381 was “in someone’s yard, taking something out of their house, putting it on a truck.” They encountered the truck at “11th Street, between Fairmont and Girard,” coming out of an alley. Based upon a review of the bulk collection checklist, Bowe estimated that 421 Shepherd and the 4100 block, New Hampshire,” numbered 11 and 12,

were the closest stops to that one. He estimated that those locations are each, "about a mile" from the alley at Fairmont. An online search using the mapping device "Mapquest" search shows that the Sheperd St. address is 1.58 miles away. The New Hampshire St. location is 1.36 miles away. Bowe recalled that the alley was not big enough for the truck to turn around in.

He could see wood in the truck They all went to the Fort Totten dumping station where he saw the truck go to the bottom. The next time he saw the contents of the truck, they had been dumped. At the time, there were no other trucks there. He said that the photo marked as Agency's Exhibit 6 reflects his recollection of the items including "demolition and renovation debris" which are contraband. Bowe acknowledged that, at the same time the bulk truck was there, there was a trash truck on the scale. But he saw the bulk truck go to the bottom and did not see the trash truck do so. He acknowledged, in response to questions from Employee, that it can vary whether a truck is directed to dump at the top or bottom of the dump. He also affirmed that items that are tied, such as carpet and wood, can come undone once tossed onto the truck.

When asked if there is a "grace period" during which a driver could go to find a clean bathroom to use, he said that, while there is none officially designated, a driver could use his discretion in choosing to do so.

Cassandra Boyd, General Foreman for Bulk Trash Collection

Ms. Boyd testified that her duties are to oversee bulk trash collection and ensure that collections are made in a timely fashion. On, January 20, 2006, Mr. Liddell passed on a complaint from Ms. Ritchards that one of the trucks from her unit was doing a contract job on Fairmont Street in N.W. D.C. Boyd called Ms. Ritchards. Ritchards told her that a woman was "very upset that some guys were out in the alley collecting bulk from -- from Fairmont Street in northwest." She said that they had been there for a long time "going in and out of the house, bringing the bulk out of the house and putting it on to the trucks." The woman who reported was upset, in part, because when "she had had bulk and stuff to pick up; they wouldn't pick up her stuff."

When her supervisors, Deadwyler and Bowe came into the yard shortly thereafter, Boyd took them on a run. She recalled, "Richard Bowe was driving, Kevin Deadwyler was sitting on the passenger side, I was sitting in the back." They arrived 15 – 20 minutes later and parked directly in front of the truck. She got out, approached Employee and questioned him, asking "What are you all doing?" She went on to say, "Here we go again." "What is all this stuff? Where did you all get all this stuff from on the back of the truck, because you know somebody had called in about you?"

According to Boyd, Mr. Pickard never said anything . . . during that whole conversation, during that whole time." When she told him to "Open the back of the truck," he said that he could not because "If I open the gate, things will fall out." So she directed them to go to the dump and followed them. In the interim, she called John

Carter to arrange for photographs. Once there, she ordered Employee and his partner to park the truck so that Carter could photograph it before it was dumped.

While they were inside, "Mr. Pickard came in," saying "Ms. Boyd, come on, Ms. Boyd. Can't you give us a break this time?" He said, "I was just doing a favor for a friend." She responded, "I can't do it." "This is bigger than me. I can't do it." "Ya'll have done this before. You've gotten away with it too many times. It's bigger than me." "Because the call went to the director's office, it's nothing that I can do." Pickard said "Okay" and went outside to help Mr. Carter as he shifted items about to photograph them. After they dumped the truck at the bottom of the hill, Mr. Deadwyler took photos.

She explained that the material looked like renovation debris because the wood was not bundled up. She said that she did not believe that it was tied and came undone. The truck was dumped at the bottom because "The trash trucks dump at the top. Bulk trash is dumped at the bottom." No other trucks came through while they were there. She watched the truck very carefully as it made its way down the hill:

Oh, yeah. We were -- we were looking to make sure because we've had this done in the past, and we know what can happen if you don't keep your eye on every little move that they make. So, therefore, you have to be very careful about -- I mean, if this were the first time that it had happened, we probably wouldn't have paid any attention, but we've had this to happen, you know, by him . . . picking up renovation materials from people . . . in exchange for money; in exchange for money . . . Like I said, we know what renovation materials are.

She then informed her "supervisor, which at the time it was Mr. James Bullock, who has since retired." He directed her to write them up and propose removal. She told him that she thought a 45 day suspension would be enough to deter such behavior in the future.

On cross examination, the witness described an earlier report of the same misconduct against Employee. A report was filed that Employee and another partner, no longer with Agency, accepted money from a private citizen to "pick renovation and demolition debris from a house." By the time, she, Bowe and Deadwyler and Mr. Bowe got to the house that was the site of that alleged transaction, it was done. She said they could not accuse him because they did not see it.

Employee questioned her about the language Pickard used when trying to explain their actions. She said that, when Pickard said, "We were doing a favor for a friend," she believed that he was speaking of himself and Employee.

Betty Guerra, Special Assistant for Labor Relations

Ms. Guerra testified that her “main duties include negotiating labor contracts on behalf of the government.” She said, “I also serve as a reviewer in corrective -- in all adverse action cases, really, where the director is the deciding official.” She attested that consideration was given, in fashioning the adverse action, to the nature of the offense and Employee’s previous record. She checked for consistency in this matter. Generally, the penalty for such an offense among similarly situated employees is 30 days. Employee had no prior record. For that reason, the proposed 45 day suspension was reduced to 30 days.

Whether Employee committed the acts with which he was charged

Employee and his partner denied that they removed construction debris from a private home. However, their explanations for their presence at the location where the supervisors met them are weak, at best. Employee, nitpicking at the language of the caller who reported their activities, argued that, because the caller said they were at the “rear of the home,” they could not have been *in* the home. They had to enter the home from either the front or the rear. And, according to Agency’s regulations, neither the rear nor the front of a private home are permissible locations from which to make a pickup.

Employee’s partner, Mr. Pickard, testified that the supervisors “could not have seen them” leaving the home on Fairmont street from which it is alleged they removed the construction debris. He suggests, by this statement, that if the supervisors did not see them at the location, they were not there. The presence of Employee and his partner so near the home is, while circumstantial, evidence that they were there. When considered in light of the other evidence of their activities, it is even more convincing.

Employee and his partner were over a mile from either of the nearest destinations on their checklist. They offered no credible explanation for being so far off of their assigned path. While they said that they in the alley to make a u-turn, Mr. Bowe testified that there was not enough room for that.

Employee suggested, by his line of questioning about the break practices of Sanitation Workers, that he and his partner might have diverted the truck from its assigned route to reach a clean bathroom or other comfort. However, neither he nor Mr. Pickard ever stated directly that that is what they did. And the testimony of their co-workers did not establish clearly that this is an established and permissible practice.

Cassandra Boyd testified that, when she confronted them, Employee’s partner asked her to “give them a break.” That plea in the face of the allegation of improper activity speaks of guilt.

The most convincing evidence is the presence of contraband in the truck. The supervisors, Bowe, Deadwyler and Boyd, all saw the loose wood in the truck and testified that the truck dumped those items. Employee sought to claim that, because they were not

standing directly in front of their truck when it was dumped, they could not know for sure that the photographed contents came from there. However, based on their descriptions of the process for unloading at the facility and the presence of the items recovered at the time of the event at the exact site where the truck was sent to dump, this Judge is convinced that the construction debris identified by the witnesses came from Employee's truck.

The evidence proves that Employee assisted his partner in using a government vehicle to pick up construction debris from a private home.

Whether the acts constitute cause for adverse action.

“Cause” is defined in DC Government Personnel Regulations, Section 1603.3 (Chapter 16, Part I), as follows:

For the purpose of this chapter, “cause” means a conviction (including a plea of *nolo contendere*) of a felony at any time following submission of an employee's job application; a conviction (including a plea of *nolo contendere*) of another crime (regardless of punishment) at any time following submission of an employee's job application when the crime is relevant to the employee's position, job duties, or job activities; any knowing or negligent material misrepresentation on an employment application or other document given to a government agency; any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary and capricious. This definition includes, without limitation, unauthorized absence, negligence, incompetence, insubordination, misfeasance, malfeasance, the unreasonable failure to assist a fellow government employee in performing his or her official duties, or the unreasonable failure to give assistance to a member of the public seeking services or information from the government.

Agency charged Employee with “misuse of District government property; use of or authorizing use of a government vehicle for other than official business” and “inexcusable neglect of duty; deliberate failure to perform assigned duties.” The completed checklist presented by Employee along with his credible testimony evidence his completion of his duties for that day. It is the conclusion of this Judge that Employee neither neglected his duties nor failed to perform them. However, he did, by picking up prohibited materials from the home of a private citizen, use the government vehicle assigned to him for other than official business and, in so doing, misused District government property.

Moving construction debris from private property during work hours while using a government vehicle was, indeed, an on-duty or employment-related act or omission that the employee knew or should reasonably have known was a violation of the law. Even though Employee managed to complete his assigned duties that day, using the truck for other than an official purpose surely interfered with the efficiency and integrity of government operations. If he had been needed for an extra run, Employee would have been otherwise occupied and off the path of his route.

Agency's decision to pursue adverse action was neither arbitrary nor capricious. While it may seem like a minor matter to "do a favor for a friend" during work hours, it is a theft of government resources. While on duty and assigned the care of a government vehicle, Employee was bound to do only official work with his time and the truck. Employee's actions did, indeed, constitute legal cause for adverse action.

Whether the penalty was reasonable

The role of this Office, when reviewing the penalty imposed by an agency is to ensure that "managerial authority has been legitimately invoked and properly exercised." See *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (DC 1985), and *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915 (1985). Only in the case of an abuse of that discretion would modification or reversal of an agency imposed penalty be warranted. The penalty must be based upon a consideration of relevant factors. See *Employee v. Agency*, OEA Matter No. 1601-0012-82, 30 D.C. Reg. 352 (1983). This Office will leave an 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." *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).

D.C. Office of Personnel (DCOP) Rule 1603.5, 47 D.C. Reg. 7094, provides as follows, "No employee may be subject to a corrective or adverse action under this chapter for a *de minimus* violation of the cause standard contained in this section. Black's Law Dictionary defines a *de minimus* matter as a small or as a trifling or small matter. This was, however, no minor matter.

By undertaking to move materials not authorized, Employee committed acts, in the presence of the public, that compromised his position and negatively colored the reputation of the agency. Not only was the one for whom he did the favor aware of it, others could see as well. It came to the attention of another citizen who reported it.

The legal standard for the appropriateness of a penalty was established by the Merit Systems Protection Board in *Douglas v. Veterans Administration*, 5 MSPB 313 (1981). In *Douglas* the MSPB set forth a list of factors to be considered when assessing the appropriateness of a penalty. *Douglas*, at 331-332. The reasoning and factors established in *Douglas* have been adopted by the District of Columbia Court of Appeals in *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). The Court in *Stokes* stated:

Review of an Agency imposed penalty is to assure that the Agency has considered the relevant factors and has acted reasonably. Only if the Agency failed to weigh the relevant factors or the Agency's judgment clearly exceeded the limits of reasonableness, is it appropriate . . . to specify how the Agency's penalty should be amended. *Stokes*, at 1010.

Agency considered every relevant factor in determining the penalty. Employee was even favored with leniency in the penalty in view of his prior record. The decision to impose a 30-day suspension was neither arbitrary nor capricious and therefore, should not be disturbed.

ORDER

It is hereby ORDERED that Employee's suspension is UPHELD.

FOR THE OFFICE:

SHERYL SEARS, ESQ.
ADMINISTRATIVE JUDGE