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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
NAVELLE THOMPSON,)	OEA Matter No. 1601-0249-12
Employee)	
)	Date of Issuance: October 20, 2015
)	
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Navelle Thompson (“Employee”) worked as a Custodian with the D.C. Public Schools (“Agency”). On July 27, 2012, Agency issued a notice to Employee informing him that he would be terminated because he received a final rating of “Minimally Effective” under IMPACT, Agency’s performance assessment system. The effective date of the termination was August 10, 2012.¹

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on September 10, 2012. He disagreed with the termination and requested that OEA reinstate him with back-pay.² Agency explained in its Answer to the Petition for Appeal that Employee’s IMPACT assessments were properly performed during the 2010-11 and 2011-12 school years. It

¹ *Petition for Appeal*, p. 5 (September 10, 2012).

² *Id.* at 2.

explained that Employee was in Group 19 of the IMPACT evaluation process, and was assessed during Cycles 1 and 3. Agency noted that Employee's final rating was "Minimally Effective." Therefore, it believed that its termination action was proper.³

The matter was assigned to an OEA Administrative Judge ("AJ"), who scheduled a Status Conference and subsequently issued a Post Status Conference Order.⁴ In the Post Status Conference Order, the AJ directed the parties to submit briefs addressing whether Agency's action was taken for cause in accordance with the District's laws; the IMPACT process as it relates to Employee; whether or not Employee was union member; and to submit supporting documentation for its position. In its brief, Agency reiterated its position and provided that after each IMPACT assessment, Employee received post assessment conferences. Moreover, Agency provided that Employee had an opportunity to voice his concerns with his IMPACT ratings.⁵

Employee provided in his brief that he completed his assignments in an efficient and effective manner. He asserted that Agency's ratings were based on his medical condition. He explained that due to him being a diabetic, he was often forced to use his leave and the principal moved him to another floor. As a result, Employee believed that his termination was not for cause and requested an evidentiary hearing.⁶

The Initial Decision was issued on April 2, 2014. The AJ found that during the 2010-11 and 2011-12 school years, Employee was a Custodian and received a rating of "Minimally Effective" on his IMPACT assessments. Moreover, the AJ found that Employee did not challenge Agency's assertion that it complied with the IMPACT process. As a result, she

³ *District of Columbia Public Schools' Answer to Employee's Petition for Appeal*, p. 2-4 (October 12, 2012).

⁴ *Order Convening a Status Conference* (December 31, 2013) and *Post Status Conference Order* (January 30, 2014).

⁵ *District of Columbia Public Schools' Brief* (February 20, 2014).

⁶ *Employee's Brief* (March 12, 2014).

concluded that Agency's conduct during the IMPACT process was proper.⁷ Accordingly, the AJ found that there was cause to terminate Employee and upheld Agency's removal action.⁸

On April 11, 2014, Employee filed a Petition for Review with the OEA Board. He believes that the AJ should not have upheld Agency's decision to terminate him. Employee states that he has documentation of “. . . staff members saying how well [he] performed his job. . . .”⁹ Employee believes that the Principal's comments “. . . are her own personal opinions [and] not facts.”¹⁰ He asserts that his performance was satisfactory. Therefore, he requests that the Board reinstate his position.¹¹

Agency filed a Motion for Leave to File a Response to the Petition for Review and its Response to the Petition for Review on April 21, 2015.¹² Agency argues that Employee failed to state permissible grounds for review by the Board. Additionally, Agency provides that the information submitted to the Board was available when the record closed and “[a] second review of the same information does not conform to the standard necessary for a Petition for Review to be granted.”¹³ Agency asserts that the Initial Decision was based on the evidence submitted and a thorough review of the IMPACT process. Therefore, Agency requests that the Board dismiss the Petition for Review and uphold the AJ's decision.¹⁴

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

⁷ The AJ noted that Employee did not provide any evidence that contradicted the Principal's comments provided in his IMPACT evaluation. With regard to Employee's assertion that his ratings were based on his medical condition, the AJ provided that Employee failed to submit evidence to show that he informed Agency of his condition. *Initial Decision*, p. 5-6 (April 2, 2014).

⁸ *Id.* at 7.

⁹ *Petition for Review*, p. 1 (April 11, 2014).

¹⁰ Employee provides that the Principal was aware of his medical condition. *Id.*, 1-2.

¹¹ *Id.* at 2.

¹² In Agency's motion, it explains that Employee failed to file a certificate of service and it did not become aware that there was a Petition for Review filed until it conducted an audit and contacted OEA. *District of Columbia Public Schools' Motion for Leave to File a Response to Employee's Petition for Review* (April 21, 2015).

¹³ *District of Columbia Public Schools' Response to Employee's Petition for Review*, p. 3 (April 21, 2015).

¹⁴ *Id.* at 4.

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee's Petition for Review fails to raise any of the four objections listed above. There was no evidence accompanying Employee's Petition for Review. Therefore, subsection (a) above is not applicable. Employee does not present any statutes, regulations, or policies in his Petition for Review to trigger subsection (b) of the rule. Similarly, Employee makes no substantial evidence arguments, nor does he take a position that the AJ failed to address any material issues of law and fact as contemplated by subsections (c) and (d) respectively.

Instead, Employee continues to argue in his Petition for Review that he served in his position "faithfully and [to] the fullest of [his] ability"; that he has letters from teachers who are praising him for the work he has done; that he "had no write-ups from [his] supervisor"; that the principal's statements are her "own personal opinions [and] not facts"; and that his illness prevented him from "serv[ing his] position." As the AJ found, none of Employee's claims deny the truth of the statements made within his evaluation nor do they directly contradict the factual findings contained therein. Moreover, while we are not unsympathetic to the way in which Employee's illness may have affected his ability to adequately perform his custodial duties, such does not, nevertheless, provide a basis upon which to grant a petition for review under these circumstances. For the foregoing reasons, we must deny Employee's Petition for Review.

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

William Persina, Chair

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.