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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0048-24
	)	
v.	)	Date of Issuance: October 29, 2026
	)	
DISTRICT DEPARTMENT OF	)	
TRANSPORTATION,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
	)	
Joseph Davis and Roxanne Neloms, Union Representatives		
Nana Bailey-Thomas, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Employee was terminated from his position with the District Department of Transportation (“DDOT” or the “Agency”) as a Civil Engineering Technician and Special Events Coordinator (DS-0802-11), effective May 3, 2024. Employee was removed for the following causes of action:

Conduct prejudicial to the District government: Unethical and improper use of official authority and credentials, pursuant to DPM § 1605.4(a) and § 1607.2(a)(9); and

False statements/Records: Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations, pursuant to of DPM § 1605.4(b) and § 1607.2(b)(2)

On May 7, 2024, Employee filed his Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting DDOT’s adverse action. Later that day, the OEA, under the direction of its Executive Director, sent a letter to DDOT requiring it to submit an Answer to Employee’s appeal by June 6, 2024. DDOT timely submitted its Answer. On June 7, 2024, the

matter was assigned to the Undersigned. On June 10, 2024, the Undersigned issued an Order Convening a Prehearing/Status Conference that was set for July 16, 2024. After this conference, this matter was referred to the OEA Mediation Department for settlement negotiations. Regrettably, the negotiation was unsuccessful. After multiple Status conferences were scheduled, an Evidentiary hearing was scheduled for and held on February 26, 2026. Thereafter, the parties were tasked with and timely submitted their written closing arguments. After reviewing the record, the Undersigned has determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

ISSUE

Whether the Agency's adverse action was taken for cause. And, if so, whether the penalty was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 id. States:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

SUMMARY OF RELEVANT TESTIMONY

Agency Case in Chief

Courtney Williams ("Williams") Tr. pgs. 16 – 35

Williams works for DDOT as a Citywide Program Support Supervisor. In this role, he works with the special events permitting team, public space committee team, and the commercial vehicles permitting team. He has held this position for roughly four years and during this time he was Employee's supervisor. In or around August 16, 2023, he fielded a complaint from Leon Paul

(“Paul”) who informed him that his password and login information for TOPS¹ had been changed without his consent. It was also discovered that with this change, a renewal application had been processed and approved, without his knowledge or consent.² Initially, Paul fielded his concern through e-mail correspondence. Williams telephoned Paul for further inquiry into his situation. As part of DDOT’s investigation in this matter, Employee was questioned during a Weingarten Meeting.³ During Employee’s interview, Paul asserted that Employee said that he did not change Paul’s password and he had not processed Paul’s permit.⁴ After the meeting, Williams created an affidavit that he then provided to DDOT’s Human Resource department for further review and consideration by Agency’s upper management.⁵ During cross examination, Williams noted that he was the proposing official for the removal action. However, he noted that he did not personally conduct the forensic analysis into the TOPS program but rather relied on other personnel for that critical information.⁶ He elaborated that he did not have access in TOPS in order to conduct a forensic analysis. Turning back to the Weingarten meeting, at the time it was conducted, Williams had only had the complaint from Paul to rely on. It was revealed later on that Paul worked for Harvey Yancey (“Yancey”) as a permit expediter (a person that does all of the leg work in order to procure permits for their clients). During Paul’s investigation into Employee’s conduct, there was no evidence that Employee received a financial benefit when he processed this permit. Moreover, according to Williams, the only person that benefited from this transaction was Yancey, who was the permit holder that Paul worked for in order to expedite his permit processing with DDOT.

Paul noted that his process for reporting his action did not involve standard steps of progressive discipline including verbal warning, retraining, or written warnings. When he was provided with the complaint from Paul, he took the gathered intel to DDOT’s Human Resources department (“HR”) and asked for guidance on next steps. According to Williams, HR recommended the termination over less severe options for this matter. Williams could not point to any specific rule or regulation in written form that would prohibit Employee from assisting a customer directly with a password change. Williams did clarify that it is an unwritten policy since patrons generally can do a password change without assistance.⁷ Williams further clarified that the Proposed Notice was drafted by HR and contained information that they had gathered that he was not privy to, including prior discipline from 2021.⁸

¹ Transportation Online Permitting System (“TOPS”) is an online public space permit application and renewal platform used by DDOT in order to track catalog, and process permits.

² Tr. pgs. 17 – 18.

³ A Weingarten meeting is an investigatory interview conducted by an Agency in order to question an employee. The result of this meeting may or may not result in Agency administering corrective or adverse action. Generally, an employee subjected to a Weingarten meeting may choose to have a representative (union or legal) present to assist him or her through this process.

⁴ Tr. pgs. 19 – 20.

⁵ *Id.*

⁶ Tr. pgs. 22 – 23.

⁷ Tr. pgs. 29 – 32.

⁸ *Id.*

Harvey Yancey (“Yancey”) Tr. pgs. 35 – 47.⁹

Yancey testified in relevant part that he is a registered licensed General Contractor working for H2 Design Build (“H2”) as a managing member.¹⁰ This company generally does real estate renovations, commercial projects and other construction endeavors. Yancey indicated that he would have multiple projects occurring at the same time. Yancey recalled that in 2023 he hired Paul to be a building permit expeditor tasked with ensuring that permits requested for H2 would be filed and approved as efficiently as possible. Yancey further elaborated that a singular project usually has multiple permits that are required for completion and that the issuance of those permits is time sensitive in that more time, contractor resources, and monies will be lost if the permitting process is not done in a quick and efficient manner.¹¹ In August 2023, Yancey was made aware that one of H2’s permits was expiring and so he personally went to DDOT in order to get an extension on his permit. Employee assisted him when he came to the office and helped him get the permit renewed.¹² During this office visit he tried to contact Paul inquiring why this permit was about to expire without Paul’s intervention to extend the time. While at DDOT, he requested that Employee assist him in resetting the password for his permit so that he could process the time extension for his permit.¹³ Yancey testified that at the moment he asked for the password reset that he believed he had the authority to authorize the password reset for his (H2) permit.¹⁴ Yancey testified as follows:

Q: Were you able to renew the permit as a result of that action?

A: Yes... that was my main focus at the time.

Q: Do you have any reason or basis to misrepresent the interaction you had on that day with [Employee]?

A: No.

Q: Did anything about your interaction on that day appear to be improper or unethical?

A: No. He was just trying to be helpful...¹⁵

During cross examination, he denied that he had any other relationship or business dealing with Employee. He did note that he tried contacting Paul and was able to reach him. Yancey testified that Paul was aware that he was at DDOT and that “he was fine” with

⁹ Yancey was called out of turn as part of Employee’s case-in-chief.

¹⁰ Tr. pgs. 35 – 36.

¹¹ Tr. pgs. 37 – 42.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Tr. pgs. 42 – 43.

the password change.¹⁶ He also noted that the account that was being changed was Paul's account - LLP Consulting.

Leon Paul ("Paul") Tr. pgs. 47 – 69

Paul testified in relevant part that he is the owner of LLP Consulting Services ("LLP") and his company focuses on permit expediting, which involves assisting clients with processing various permits through different District of Columbia government entities. H2 was one of his clients and on August 16, 2023, he started receiving e-mails from DDOT indicating that his permit(s) were ready for issuance. Paul tried to go into his account to investigate because he did not remember filing for these permits.¹⁷ He then found out he was unable to access his account because his password had been changed. Paul then emailed Williams inquiring about his account lock-out. He further asserted that he did not (at that time) authorize a password change, and he did not recall having a conversation (at that time) with Yancey regarding this permit and the password change.¹⁸

During cross examination, he acknowledged that if the permit in question had expired his client H2 would have suffered lost time, monies, and resources reapplying for a new permit.¹⁹ Paul clarified that in or around that time he had multiple clients with multiple permits and he could not specifically recall whether he communicated with Yancey on the date in question regarding this permit extension.²⁰ Paul did acknowledge that the true owner of the permit in question was H2.²¹ Paul also noted that in or around December 2023, he was contacted by Williams with DDOT regarding his complaint and he informed them that he no longer wished to pursue his complaint.²²

Mostafa Tanim ("Tanim") Tr. pgs. 69 – 87

Tanim testified in relevant part that he is a Technical Manager working for Prime Source. This company developed and now maintains the TOPS database system for its client, DDOT. He is tasked by Prime Source to support DDOT in this administration and maintenance effort. He has what would ostensibly be described as administrative level clearance within the TOPS system and is familiar with most facets of this database including, *inter alia*, researching password changes and who authorized those changes.²³ On December 8, 2023, he was asked by DDOT to research the history of LLP Consulting Services. As part of this research, he discovered that Employee updated this account. Tanim is only able to investigate the system itself. Tanim had no knowledge of who actually inputted the information only that Employee's username and credentials were used to affect a password change.²⁴

¹⁶ Tr. pgs. 45 – 46.

¹⁷ Tr. pg. 50.

¹⁸ Tr. pgs. 51 – 52.

¹⁹ Tr. pgs. 59 – 61.

²⁰ *Id.*

²¹ *Id.*

²² Tr. pgs. 62 – 65.

²³ Tr. pgs. 70 – 72.

²⁴ Tr. pgs. 79 – 86.

Elliott Maurice Garrett (“Garrett”) Tr. pgs. 87 – 126

Garrett testified in relevant part that he was a former employee of DDOT and that his last position of record with DDOT was Associate Director of the Public Space Regulation Division. His job-related duties included overseeing “the operations of the public. That’s the issuance of permits and the regulations of the utilities and private use of public space that ask for permission to do work in public space.”²⁵ Garrett was the final decision maker over Employee’s adverse action. In carrying out Employee’s removal, Garrett reviewed all of the gathered evidence. Garrett’s *Douglas* factor analysis of this matter found eight of those factors aggravating. Garrett admitted that he was not present for the incident in question, nor did he personally attend Employee’s Weingarten meeting.²⁶ Curiously, Garrett indicated that there was a written policy prohibiting employees from changing passwords, however, when questioned about that policy he was unable to acknowledge why that policy was not included in Employee’s adverse action. When questioned as to why the TOPS system allowed Employee, as a user, to change passwords despite this alleged directive preventing this action, Garrett explained that it was a shortcoming of the aging TOPS database.²⁷ Garrett also acknowledged that the information provided to him only indicated that Employee’s credentials were used to change the password in the system, there was no definitive proof that Employee was the one physically entering the command to change the password in TOPS.

Employee Case-In-ChiefZayd Idris Jafar Williamson (“Williamson”) Tr. pgs. 126 – 137

Williamson testified in relevant part that he is a permit expeditor and that he is acquainted with both Employee and Yancey. Williamson was in the vicinity (within a few feet) of Employee and Yancey on the date in question during which it seemed that Yancey was inquiring about a permit. Williamson acknowledged that he was not actively trying to listen in on the conversation but due to his proximity, overhearing portions of their interaction was unavoidable. Williamson opined that the interaction seemed routine.

Charlene Dickens (“Dickens”) Tr. pgs. 137 – 154

Dickens testified in relevant part that she is a former employee of DDOT and that her last position of record was Transportation Engineer. Dickens left DDOT’s employ in 2020. In this role, Dickens interacted with permit holders that would come to DDOT’s offices in order to facilitate the permitting process.²⁸ Dickens noted that DDOT management did not prohibit employees from assisting permit holders with password related issues. She further noted that given her former position, Dickens did not have the ability, within TOPS, to effect password changes. Dickens did recall that DDOT prioritized customer service. Dickens further noted that DDOT did not provide

²⁵ Tr. pgs. 88 – 89.

²⁶ Tr. pgs. 104 – 106.

²⁷ Tr. pgs. 110 – 114.

²⁸ Tr. pg. 140.

written standard operating procedures that would dictate how employees may interact with the public (permit holders).²⁹

Employee Tr. pgs. 155 – 215

Employee testified in relevant part that his last position of record with DDOT was Civil Engineering Technician and Special Event Coordinator. In this role, Employee was “responsible for plan review, processing public space permits, assisting customers with the TOPS permitting system, and ensuring regulatory compliance and coordinating special events inter-agency within the District of Columbia.”³⁰ Regarding his on-the-job training, Employee noted that Williams provided hands-on training in the beginning, which was supplemented over the years in an informal manner. Employee further asserted that DDOT never provided him with written standard operating procedures for using TOPS.³¹ He further elaborated that he was never authorized to access all of the functions in TOPS and that management decided what access each employee had in this system.³² Prior to the instant action, Employee had filed a few Equal Employment Opportunity (“EEO”) complaints citing alleged deleterious conduct within his office. According to Employee, as of the date of the Evidentiary Hearing, those complaints were still pending.³³

Employee’s former position had a customer service component that would be exercised daily. Many patrons had issues accessing or utilizing TOPS and would come to DDOT’s office for assistance with their permits. Employee testified that he had always been authorized to assist patrons with password access and until the instant action he had never been counseled to do otherwise.³⁴ The issuance and maintenance of a permit was important due to possible lost monies through fines, work site safety issues, or delay in proceeding with the project.

On August 4, 2023, Employee recalled assisting Yancey with a permit that was set to expire very soon. Employee ascertained that Yancey (H2) was the permit owner. He had worked with both Paul and Yancey and knew them as a permit expeditor and permit owner respectively.³⁵ During this visit, he recalled hearing Yancey had a telephone conversation with Paul. Employee also testified during this visit, he turned over his computer and keyboard to Yancey which allowed him to directly make entries into TOPS under Employee’s login. Employee did not check or verify anything that Yancey did when he ceded control of his computer.³⁶ He was not aware of any discrepancies with this interaction until he was called into the Weingarten meeting. Employee confirmed that during the Weingarten meeting, he told the assembled managers that he did not make any changes to Paul’s account.³⁷ Employee also recounted how he routinely assisted patrons with login and password concerns. Employee related that customer service was a major component

²⁹ Tr. pgs. 142 – 144.

³⁰ Tr. pg. 156.

³¹ Tr. pg. 158.

³² *Id.*

³³ Tr. pgs. 160 – 163.

³⁴ Tr. pg. 166.

³⁵ Tr. pg. 170.

³⁶ Tr. pgs. 171 – 177.

³⁷ *Id.*

of his job and that his interaction with Yancey was his earnest attempt at providing good customer service. The following excerpt is relevant to this matter:

Q: Why did you believe helping Mr. Yancy that day was the correct course of action to take?

A: Well, helping Mr. Yancy was the correct course of action, as he provided documentation and proof that he was the property owner. The second thing was that when I reviewed the actual permit that he received, he paid for dates that had already began before he paid for the permit. So I was very surprised that someone issued him a permit for days that had already passed, because these permits, you know, they have costs associated, and it was only three days left. He was very perturbed himself and very upset. And I was just trying to assist him in making sure that he renewed his permit so he could stay in compliance and have a secure permit on site for any inspections or to ensure that that site remained safe during the continuation of the construction that was already ongoing.³⁸

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The following findings of fact, analysis, and conclusions of law are based on the testimonial and documentary evidence presented by the parties during the course of Employee's appeal process with OEA. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue. (*Emphasis added*).

Conduct prejudicial to the District government: Unethical and improper use of official authority and credentials, pursuant to DPM § 1605.4(a)

Though not exhaustive, the following classes of conduct and performance deficits constitute cause and warrant corrective or adverse action:

- a. Conduct prejudicial to the District of Columbia government, including:

³⁸ Tr. pg. 180.

1. Conviction of any felony;
2. Conviction of any criminal offense that is related to the employee's duties or his or her agency's mission;
3. Conduct that an employee should reasonably know is a violation of law or regulation; and
4. Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects the employing agency's mission or has an otherwise identifiable nexus to the employee's position.

DPM § 1607.2(a)(9)

(9) Unethical or improper use of official authority or credentials.³⁹

The Agency has alleged that Employee engaged in Conduct Prejudicial to the District government, more specifically, DDOT faults Employee for violating its protocols when he changed the password for Paul's TOPS account. Employee explains that the permit associated with that change was owned by H2 and that its managing partner, Yancey, needed the permit renewed in an expedited fashion so that he could avoid having lost time, money, and human capital associated with the permit lapsing. The tapestry formed by the collective testimony adduced in this matter shows that the following occurred in the instant matter. Yancey and H2 had a permit in the TOPS system that was close to expiring and this same permit had erroneous dates for which it had been filed. This discrepancy would reasonably cause Yancey and H2 to incur lost time and money if it had been allowed to fester and expire. Employee assisted Yancey when he came to DDOT to inquire about and cure any defects associated with this permit. The following is not subject to genuine dispute:

- H2 and Yancey owned the permit in question.
- Yancey has his own TOPS account that he has used in order to conduct business with DDOT.
- Paul is the owner of LLP and this company was employed by H2/Yancey as a "Permit Expediter." In this role, Paul would assist his clients with procuring and maintaining permits with various District government entities, including DDOT.
- Paul had his own TOPS account that he used to acquire and maintain permits for his various clients.
- H2 was not LLP's only client.
- On the date in question, Yancey appeared at DDOT in order to get clarity regarding a permit that was set to expire in the very near future.
- Employee assisted Yancey while he was at DDOT. During this visit, Yancey called Paul in order to get clarity regarding the permit. Yancey was unsuccessful at reaching Paul while he was at DDOT.

³⁹ For the first occurrence, the penalty ranges from counseling to removal. For a subsequent sustained charge the penalty is removal from service.

- At the time of the incident, “Williams confirmed that there is no written regulation prohibiting employees from assisting customers with a password change...”⁴⁰

Employee testified that he did not personally change Paul’s password. What is peculiar in this matter is the lack of any codified regulation that would prohibit this conduct. All the collective witnesses that were employed by DDOT confirm that there is a customer service component to DDOT’s mission that all DDOT employees should strive to provide. Employee’s testimony appeared earnest when he noted that during Yancey’s DDOT visit, he could see where the permitting problem Yancey had could balloon into something more onerous without immediate intervention. Employee, Yancey, and Paul all confirmed that H2/Yancey owned the permit in question. The rub is that the permit was in Paul’s/LLP TOPS account. The Undersigned is befuddled that Agency did not have explicit codified regulations that would govern situations such as this. From what was made blatantly apparent is that the business relationship and ownership of permits are routinely held in the same way that H2 and LLP held the permit in question. But for an express codified regulation (either directly or tacitly) addressing this scenario, the decision that follows would tangibly differ from what will follow below. I am guided by the fact that at the heart of this matter, Yancey/H2 owned the permit. I am also guided that under this fact pattern, LLP/Paul were for all intent, employed by and subordinate to Yancey/H2. Regardless of where that permit was located, it was owned by Yancey/H2. Further, after being unable to contact his subordinate Paul, Yancey required direct and immediate access to his property. Employee provided this access and allowed H2/Yancey to avoid a disruption in permitted work. While it is reasonable to assume that Paul was initially concerned about what transpired with LLP’s account, his concerns were allayed after getting full details of the scenario that Yancey was trying to fix. This is corroborated by Paul’s testimony that he no longer wanted to pursue his complaint any further.⁴¹

Considering the matter at hand, I find that, inexplicably, DDOT did not have a codified policy in place that directly addressed Employee’s conduct in this matter. In and of itself, for an employee to be removed from service without directly violating any written policy, regulation or law (civil or criminal) is not in keeping with a fair and equitable review of a removal action. In a setting such as this, removal from service is an action that should be reserved for the most egregious conduct. Given that lack of quantifiable written guidance, the conduct herein cannot be considered egregious. That is not to say that it is advisable that other employees engage in similar conduct, but rather the guidance prohibiting this conduct should have been codified and shared with DDOT personnel. With hindsight being 20/20, Employee should have escalated Yancey’s concerns to a supervisor and allowed him/her to handle the situation. However, I am still plagued with the reality that DDOT did not have a written directive in place that addressed this situation juxtaposed with Employee’s earnest testimony that he was only trying to provide good customer service to a client in need. Accordingly, I find that DDOT did not meet its burden of proof under this charge.

⁴⁰ Agency Written Closing Arguments pg. 3 (June 22, 2026).

⁴¹ See, footnote 22 above.

False statements/Records: Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations

DPM § 1605.4(b) provides as follows:

False Statements, including:

1. Deliberate falsification of an application for employment or other personal history record by omission of a material fact or by making a false entry;
2. Misrepresentation, falsification, or concealment of material facts or records in connection with an official matter;
3. Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record; and
4. Knowingly and willfully reporting false or misleading information or purposely omitting material facts, to any supervisor.

DPM § 1607.2(b)(2) provides as follows:

The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from the penalties outlined in the table.

(b) False Statements / Records

(2) Misrepresentation, falsification or concealment of material facts or records

in connection with an official matter, including investigations.⁴²

Reprimand to Removal.

During the incident in question, Employee acknowledged that he left his computer terminal open and allowed Yancey to access it while his TOPS login credentials were unlocked and in use. Regarding Employee's use of his TOPS account access, I find that Employee indirectly facilitated the changing of Paul's account by allowing Yancey access to the TOPS system using his credentials. During the *Weingarten* meeting, DDOT failed to ask clear questions that could have uncovered the truth (for DDOT's information and benefit) that was at the heart of this matter. More specifically, DDOT asked, *inter alia*, did he change Paul's account? Employee interpreted this line of question in a direct way. Employee did not enter the commands that changed the password but rather allowed Yancey to have free rein over his login and computer station so that he could do this for himself in the TOPS database. I find that Employee answered the question as presented. Employee was under no duty to volunteer information or provide clarification. DDOT's line of questioning should have been more artful in order to deduce the scenario. At the time of the

⁴² For the first occurrence, the penalty can span from a reprimand to a removal from service.

meeting with Yancey, Employee did not view or review what Yancey did in order to get access to his permit. It was not until this situation was thoroughly vetted and researched that the finer details of what occurred could be readily ascertained. DDOT failed to ask the right questions and now seeks to utilize the ultimate sanction of removal to alleviate its failure to fully deduce what transpired when it had the opportunity to question Employee during the *Weingarten* meeting. Accordingly, I find that DDOT did not establish cause for a violation of DPM § 1605.(4)(b) and DPM § 1607.2(b)(2).

It is apparent from the collective testimony of Tanim, Dickens, and Employee that DDOT controls and designates what access every employee has to the TOPS system. Some employees have more access than others. DDOT's thought process on assessing what TOPS access any particular employee should have is a managerial concern that I will not attempt to disturb. What the Undersigned has determined is that if a DDOT employee has access to a component of TOPS, then this access was willingly provided by DDOT.⁴³ Examining the record, I incorporate by reference my reasoning from above, and I again take note that the sanction of removal should be utilized only in situations of deleterious conduct that has been clearly communicated to all personnel. In the instant action, Employee was removed for conduct that for some reason, Agency did not clearly codify as a prohibited act. I also take note, that Employee credibly testified that he was only trying to provide good customer service for what was a precarious predicament faced by Yancey. I also take into account the inartful questioning of Employee by DDOT management that allowed him to answer in a way that he did.

In its Closing Argument, Agency admitted that there was no written policy that prohibited the act of changing an account password.⁴⁴ To DDOT's detriment, the guidance prohibiting this conduct should have been codified and shared with DDOT personnel. DDOT is also cautioned that for the future, it should detail, for all its personnel, what conduct is permissible and impermissible when or if a scenario like this occurs. If a policy or procedure is important enough to form the basis for an adverse action, it should be codified and disseminated to agency personnel so that they have proper guidance regarding appropriate workplace conduct.⁴⁵ Mentioning otherwise lawful conduct during a staff meeting does not pass muster given the instant circumstances. But for DDOT's failure to codify and share its mandate regarding account management, I would have found in its favor.

CONCLUSION

As noted above, I CONCLUDE that DDOT did not fully meet its burden of proof. Considering as much, I further CONCLUDE that Employee was improperly removed from service.⁴⁶

⁴³ See, footnotes 31 and 32 above.

⁴⁴ Agency Closing Argument pp. 17 - 18 (June 22, 2026).

⁴⁵ For instance, had DDOT codified the circumstances for a permit owner to access his/her permit when it is in a separate account, this decision would have had a different analysis and outcome. From what was gleaned during the EH, it is routine for a permit expeditor to have separate accounts from the permit owner in the normal course of business. The procedure that dictates how to respond under this scenario should have been clearly outlined for all personnel.

⁴⁶ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of removing Employee from service is hereby REVERSED; and,
2. Agency shall reinstate Employee to his last position of record; or a comparable position; and,
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of his separation; and,
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ *Eric T. Robinson*

ERIC T. ROBINSON, Esq.
Senior Administrative Judge

Clifton v. Chater, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").