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

In the Matter of:)	
)	
ADJELEY OSEKRE)	
Employee)	OEA Matter 1601-0022-02
)	
v.)	Date of Issuance: October 18, 2005
)	
DEPARTMENT OF HUMAN)	Rohulamin Quander, Esq.
SERVICES, YOUTH SERVICES)	Senior Administrative Judge
ADMINISTRATION)	
Agency)	

William Howard, Esq., Employee Representative
Ross Buchholz, Esq., Agency Representative

**INITIAL DECISION
INTRODUCTION**

On December 5, 2001, Employee, a Social Worker, DS-11, Step 7, with the D.C. Department of Human Services, Youth Services Administration, Bureau of Court and Community Services (the "Agency"), filed a timely Petition for Appeal. Employee appeals from Agency's final decision, effective November 13, 2001, removing her from her position for failing to discharge her duties and failure to follow work instructions to address deficiencies in her work performance. An evidentiary hearing was held on January 5, 6, and February 11, 2005. The record closed on June 10, 2005, upon submission of Employee's proposed final order and brief. This decision is based upon the evidence presented at the hearing and all the documents of record.

JURISDICTION

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

ISSUES

1. Whether Agency's action was taken for cause.
2. If Agency's action was taken for cause, whether Employee's violation of the cause standard was "*de minimus*".
3. If Employee's violation of the cause standard was not *de minimus*, whether the penalty Agency imposed was appropriate.

UNDISPUTED FACTS

- Employee had worked as a Social Worker with the Agency for over 15 years, and at the time of her termination was a DS-185-11.
- On October 12, 2001, Employee received a 30 day advance notice of a proposal to remove her from her position, pursuant to § 1608 of the D.C. Personnel Regulations, based upon allegations of neglect of duty, unsatisfactory job performance, and a failure to follow supervisory instructions.
- Employee submitted a timely response to the advance notice on October 22, 2001, denying all allegations that she violated her job-related duties and obligations, or that she neglected her duties.
- Employee's performance for the rating period of April 1, 2000 - March 31, 2001, was "Unsatisfactory", based upon Agency's supervisory staff conducting the performance rating of Employee, using both the established performance standards and position description that were in effect for the position at that time.
- According to the terms of her position description, issued February 18, 1992, Employee's duties included a responsibility to provide professional social work services to detained or committed youth and their families, including representing the Agency before D.C. Superior Court judges to report on educational needs, placement needs, substance abuse issues and social adjustment of the youth in her caseload.
- The relevant court reports were to be prepared in a typed format, contain a previously established body of information, submitted to the supervisor for review and signature approval, and then forwarded to the court at least five days in advance of the scheduled court date.
- Agency staff issued a number of directives and memoranda to Employee, providing specific guidelines for helping her improve her case management, court reporting and representation, securing services for clients, placement issues, and the completion of a child fatality report. Further, Employee's supervisor held or attempted to hold supervisory conferences with her to outline or address specific problems or deficiencies.
- Agency referred the Employee to the D.C. Employee Assistance Program, COPE, Incorporated, to address the possibility of factors that might be contributing to the quality of her performance, but she elected not to pursue this opportunity.
- Prior to the termination notification, Agency suspended Employee without pay for misconduct and insubordination from January 24-30, 2000, and again for insubordination and negligence from October 23-November 21, 2000.

- On numerous occasions Employee's supervisor, Marilyn Riley, met with Employee to address a corrective action plan to assist her with meeting time frames and deadlines in order to complete her work assignments.

SUMMARY OF TESTIMONY

Agency's Witnesses

Andrew Zirpoli – Andrew Zirpoli (“Zirpoli”), Assistant Attorney General, D.C. government, and formerly an Assistant Corporation Counsel, worked on Youth Services Administration (the “Agency”) cases, representing the Agency in juvenile matters, from approximately November 1998, until December 2000. (Tr. I, P. 54¹) During that time he and Employee worked together on at least 50 cases when they appeared in D.C. Superior Court. (Tr. I, Pp 39-41; 76) Although the social worker was required to provide court reports to the government, defense counsel, the court, and to him at least five business days before the hearing, he could not recall ever getting one from Employee within that time frame, and frequently Employee submitted no reports at all. (Tr. I, Pp. 44-45)

As part of his job-related duties, and in response to a request from the Agency, he instructed Agency's social workers on courtroom practice and how to prepare a proper court report, including the expected specific content of the reports, to maximize their effectiveness. (Tr. I, Pp. 45-46) On those few occasions when Employee did have a written report, he sometimes critiqued her court reports, or questioned the accuracy of some content. He also explained to her that certain relevant information was missing. Despite the counseling efforts, Employee did not learn from his suggestions and continued to make the same mistakes. (Tr. I, Pp.47-49)

There were changes in the governing juvenile laws over time, with the authority of the court sometimes lessened, as expanded authority was vested in the Agency. Despite the periodic changes, Employee often erroneously asked the court to issue orders that it was no longer empowered to issue, causing this witness to have to object. Although initially he did not wish to report her lack of knowledge to her supervisors, he later elected to do so because he had counseled her frequently on the changes in the law, and likewise she should have known about the changes, due to her position as a social worker. (Tr. I, Pp. 50-51)

Employee generally did not perform the necessary work on her cases, i.e., her work evidenced minimal contact, including inadequate aftercare plans and follow-up, vague treatment plans, failure to implement services, and late referrals, despite there generally having been from three and six months between court appearances. (Tr. I, P. 56) On at least one occasion, Employee, in the presence of the relevant school official who knew otherwise, misrepresented to the court that the juvenile, E.M., had not been attending school, despite Agency having confirmed that E.M. was enrolled. Further, there

¹ “Tr. I”, “Tr. II”, and “Tr. III”, indicates transcripts I, II, and III, respectively.

was a personal dislike between Employee and Kenneth King, the director of the school where the question about E.M.'s enrollment had been raised. (Tr. I, Pp. 63-66)

Although he did not witness the incident in question, on one occasion Judge Puig-Lugo called the witness to the bench in another matter, and told him that Employee had lied to him, that she needed to be closely monitored, and that she was not to come into his courtroom representing her juvenile clients without a government attorney also being present.² (Tr. I, Pp. 65-66)

From approximately the summer of 2000 through at least January 2001, when the witness left the Agency assignment, on at least three occasions when Employee came to court, she presented the court with a note from her attorney, stating that she could not make any comments or provide any information to the court, upon the advice of her attorney, due to an employment status matter that she was grieving with the Agency. (Tr. I, Pp. 70-71) In response to Judge Puig-Lugo's complaint, the witness was requested by the Agency to review the prior four to five months (May to September 2000) of court case files of those matters assigned to Employee, and to document what cases he had with her in that time frame, and further to determine whether she provided a court report. Upon completing the review, he wrote a letter dated September 26, 2000, to Marilyn Riley, an Agency administrator, listing the matters for which the Employee had failed to file court reports. (Tr. I, Pp. 72; 78-79; 88-91) (Agency Exhibit #1)³

On cross examination, the witness indicated that he was testifying based upon his memory, and that the only document he used to refresh his recollection prior to the evidentiary hearing was the same Exhibit #1. Further, he and Mary Phillips, another Agency witness, only spoke briefly incidental to this case, as they did the same Agency work, but handled different cases. (Tr. I, Pp. 75-76) Based upon his recollection, none of the hearing dates for the juveniles included in Agency Exhibit #1 were for emergency proceedings. As such, written reports should have been made available for each juvenile's court appearance. Still, he never received a single court report from the Employee for any of the juveniles referenced in Agency Exhibit #1, for their respective court appearances during the measured period, which began on May 26, 2000, through the September 2000, period in question. (Tr. I, Pp. 83-84; 88-89) To say that no reports were created between May and September 2000, does not mean, however, that Employee

² At the time there were only two government attorneys assigned to the YSA case docket, Mr. Zirpoli, this witness, and Mary Phillips, who also testified in this matter.

³ The document addresses court appearances for five juveniles, with multiple appearances for some of them. In total, there were 11 listed court dates, although it could not be determined from the exhibit whether any of the court appearances were emergency appearances, in which event a written report might not be necessary. The witness concluded his letter with the following statement, "With the exception of the report that upset Judge Campbell filed in Antonio J [last name redacted] case, I do not recall ever getting a report from her."

did not create such reports and likewise file them on occasions prior to May 2000. (Tr. I, P. 93).

Mary Phillips - Mary Phillips ("Phillips"), Director of the Assessment Center for D.C. Department of Mental Health, was formerly an Assistant Corporation Counsel, assigned to represent Agency from 1991 to 2003, during a portion of which time she worked with Employee, and formed an opinion that she was generally unprepared for her cases, i.e., she had minimal contact with the children or their families, was uninformed about the cases, and had a hostile and often negative attitude towards the children, often threatening to lock them up at Oak Hill, or to keep them locked up there. (Tr. I, Pp. 119-121)

Sometimes Employee submitted court reports, but she failed to follow instructions to have her supervisors review and approve the reports before they were issued. Further, she frequently declined to share the reports with this witness, rendering it difficult for the witness to represent the government's case before the court and to perform her own job properly, which included being fully aware of what was occurring in a particular child's life at the time. The nature of Employee's refusal to follow supervisory instructions was significant, as some of her open court representations were in contravention of the Agency's position, or what Employee's supervisors' positions were with regard to a particular matter. (Tr. I, Pp. 122-123) Consequently, some of the reports' contents were often thrown together at the last minute and were inaccurate, indicative of Employee not having maintained involvement with the child in question. (Tr. I, P. 124)

In one particular juvenile matter before Judge Puig-Lugo, Employee misrepresented to the court the dates upon which she had made referrals for psychological and psychiatric evaluations necessary for the court to make the appropriate placement of a minor who, as a result of the late referrals, remained incarcerated for about six months without any referral or evaluative action being taken. Then, a few days before the scheduled court date, she rushed and scurried to get information, which was sometimes inaccurate and resulted in her making misrepresentations to the court. (Tr. I, Pp. 127-128)

On a number of occasions, Employee refused to give the witness copies of court reports. On one occasion, Employee pushed and shoved her when she asked for the report, causing the witness to protest, saying, "You struck me!" Although the witness was generally aware of what was occurring in the child's life, based upon her own prior instructions from the government, it was imperative that the witness have pre-hearing access to the report, so that she would know in advance what Employee was going to say was occurring in the child's life at that moment. On that same occasion, when Employee subsequently appeared before the court, she made material misrepresentations to the court that the young girl's family was uncooperative when, to the contrary, the girl's mother had been very involved. From the nature of the proceeding, it was clear to the witness that Employee had not been communicating with the mother, who spoke Spanish. (Tr. I, Pp. 130-131)

Based upon the witness's long experience dating back to the early 1990s, the quality of Employee's court reports was of poor caliber and not the comprehensive thorough report which was preferred. Her reports tended to be sketchy, sometimes factually inaccurate, not very in depth, often pulled together at the last minute, and not reviewed and signed off by supervisors, which was contrary to the regulations. Often the reports tended to be negative towards the child and family when, in many cases, she had had little or no contact with the child. Generally, the courts were quite dissatisfied. (Tr. I, Pp. 135-136) Once prepared, the reports were supposed to be submitted to the court five to 10 days in advance, with copies faxed to the witness at the Office of the Corporation Counsel (now called the Office of the Attorney General), so that the assigned attorney would be able to review the reports prior to the court appearance. However, Employee almost never faxed her court reports in advance as required. (Tr. I, P. 208)

On September 7, 2001, in another matter, she appeared with Employee in front of Judge Ramsey Johnson on the Matter of A.M., at which time Employee misrepresented material facts about the case, i.e., that the youth was not attending school and not doing well, when in fact she was a model resident who was adored by the people in the facility. Further, Employee's negative assessment of the youth was both disturbing and inaccurate. (Tr. I, Pp.142-144) In a matter conducted on October 11, 2001, before Judge Thomas J. Motley, Employee made misrepresentations about a youth, R.O., and her family, but due to Employee's failure to communicate and provide accurate information, prior incidents of sexual abuse suffered by the minor were not brought to the attention of the court in a timely manner. The witness filed a written e-mail complaint (Agency Exhibit #4, Attachment #3) with Employee's office about the manner in which she conducted herself in court on that day, and on October 12, 2001, Agency issued a detailed 30-day advance notice of intent to remove Employee from her position, citing several reasons, the most recent of which was the incident complained of on October 11th. (Agency Exhibit #4) (Tr. I, Pp. 146-148)

On September 7, 2001, Employee shared an internal agency memorandum of deficiencies of a provider, ESA⁴, with Judge Shellie Bowers and recommended closing a case based upon outdated misinformation. Employee harbored ill feelings against the provider's CEO⁵, who had been her prior supervisor before leaving his government job, and who had disciplined the Employee during his D.C. government employment days. Whenever a child was placed there by the Agency, she would recommend that the child be removed from the facility, routinely criticizing the facility before the court. Agency was aware that there were some internal deficiencies which the facility needed to address and correct.

⁴ Some testimony interchangeably referred to the facility as "ESA", or "Redirect, Inc., Transitional Learning Program", due to an apparent operational name change of the service provider.

⁵ This is a reference to Kenneth King, who had been the Employee's supervisor when he worked for the Agency.

However, since the facility had addressed and corrected the deficiencies, and the matter was supposed to remain internal and not be exposed by publication or sharing with a judge in open court, Employee's conduct was contrary to Agency's having already addressed the issues with the facility. Employee's conduct was an apparent attempt to get the courts to not place children in the approved program. Further, her representations were outdated and inaccurate and did not reflect the corrective measures that likewise were a part of the total situation. (Tr. I, Pp. 154-157)

On cross examination, the witness stated that she had no dislike or ill will against the Employee and did not necessarily want to see her get fired, despite having been allegedly shoved by her on one occasion. However, the witness's focus and concern was on the needs of the children. (Tr. I, P. 201) There seemed to be one incident right after another, and things were snowballing and disintegrating and, from the witness's perspective, she believed that the children were being hurt by Employee's performance, including her efforts to close cases prematurely, thus reducing her personal caseload. Further, as a result, some children were being incarcerated instead of receiving readily available services or were unfairly maligned. (Tr. I, Pp. 205-206)

In the last few months prior to termination, Employee's already substandard work performance deteriorated further. She appeared disheveled and carried loose bags of papers. She had an increase in the lack of client contacts, had many unsigned and unreviewed reports, lacked systematic programming and placement options, and displayed hostility towards clients. Overall, there was a general lack of productivity. (Tr. I, Pp. 214-217) During this same time period, the witness received complaints about Employee from parents, children and other case workers, some emphasizing that there had been no contact with Employee outside of the court appearances. (Tr. I, Pp. 217-219)

Marilynn W. Riley – Marilynn W. Riley ("Riley" and the "supervisor"), presently Deputy Administrator, Mental Retardation Developmental Disabilities Administration, was previously employed as Agency's Division Chief of Social Services from 1996 to 2001, where she was Employee's supervisor during the latter part of that time. In that capacity, she oversaw the social work activities for those children who were adjudicated and detained at Oak Hill, a juvenile detention facility, and for those children placed in the community. (Tr. I, Pp. 224-225) As well, she is the author of Agency's Exhibit #4, the Thirty-Day Notice of a Proposal to Remove letter, dated October 12, 2001, and oversaw the assembling of the 10 supplemental attachments that were served with the notice. (Tr. I, P. 226)

She identified the Employee as a Social Worker, DS-185-11 within Agency, and noted some of the job duties incidental to the position, including: responsibility to attend administrative reviews and court hearings, where the social worker is to provide status information on the juvenile's psycho-social condition, compliance with the case plan, and to determine the appropriateness of the established goals, services, and/or foster care placement; to prepare written court reports and to make verbal presentations in court. (Tr. I, Pp. 234-235)

The above noted job duties are to be accomplished in a manner consistent with established case management performance standards (noted as Attachment #2, in Agency Exhibit #4), which standards she personally knew were issued to Employee, as well as all of the other social workers in the division, following the standard procedure of placing the document in each social worker's individual mail box. The standards enumerated the primary duties of the social workers, and required that the Employee submit court reports that were complete, accurate, and reflected agency policy, at least five days prior to the court hearings and with supervisory approval. (Tr. I, Pp. 235-237; 239)

As well, a directive was also issued reiterating the necessity of reviewing and signatory approval of the social workers' reports by their immediate supervisors before the reports were presented to the court, as a component of exercising supervisory control and to ensure that the information was presented appropriately. (Agency Exhibit #5) Further, in the report document, there was a place for both the social worker and the supervisor to sign the report. (Tr. I, Pp. 237-239) In addition to placing the directive in each social worker's individually assigned mail box, the procedure and policy was discussed at the division meetings on a frequent basis. (Tr. I, P. 239)

On both September 4, and 17, 2001, and on several occasions prior to then, sometimes even weekly, during the course of more than a year that she was Employee's supervisor, the witness told Employee that she was required to submit court reports in time for revisions to be done so that the five day rule could be adhered to. Although Employee did on occasion get her reports in on time, properly typed, there were many occasions when Employee failed to submit timely, accurate reports, i.e., they were only drafts, rarely typed, not ready for signature, the corrections were still not sufficient, and sometimes the information contained in the reports was inaccurate. (Tr. I, Pp. 242-243; 246)

This was not a problem with any of the other social workers, who all typed their reports and presented them to their supervisors as finished products. (Tr. I, P. 244) Consequently, Employee's failure to submit timely and accurate court reports had several negative impacts, affecting the Employee-Supervisor relationship, the Agency's goal of being more efficient, and particularly adversely impacting the court, as the judges needed to have the reports in advance of the affected child's court appearance. (Tr. I, P. 247) Except when emergency hearings were scheduled the same day, social workers were always required to prepare and submit court reports. (Tr. I. P. 260)

In addition to receiving complaints about Employee from Ms. Phillips and Mr. Zirpoli, several D.C. Superior Court judges called her to complain about Employee's failure to submit court reports, including Judge Puig-Lugo, Judge Mitchell-Rankin, Judge Ramsey Johnson, and others, some asking that Employee not be assigned to cases that are scheduled to come into their courtrooms, due to her lack of preparation. These contacts caused embarrassment to the Agency since court officials found it necessary to become involved with the Agency's administration on a regular basis due to the lack of those mandated reports. (Tr. I, Pp. 250-252)

There was a detailed discussion of the contents and incidents referenced in the October 12, 2001-issued, 30-day advance notice of termination letter. (Agency Exhibit #4) The witness testified that on September 7, 2001, Employee misrepresented to Judge Ramsey Johnson that a youth was not doing well and not attending school, based upon Employee's reliance upon inaccurate information contained in a two-month old letter, while current information available to her at the time of the misrepresentation showed that the youth was doing very well in her setting and likewise was attending school. (Tr. II, Pp. 22-24)

Further, Employee failed to follow Riley's instructions to revise a court report on a case before Judge Thomas Motley, demonstrating unpreparedness and a lack of contact with the involved parent, once again causing embarrassment to the Agency. (Tr. II, Pp. 25-26) Additionally, Employee failed to complete several court reports on her assigned cases before going on vacation from August 16-31, 2001, and following her previously established pattern, also failed to return repeated cell phone calls from the witness prior to the start of the vacation, regarding the completion of these matters. This refusal to answer her assigned government-issued cell phone was contrary to repeated prior directives to Employee from the supervisor to answer when called. Consequently, and in order to avoid further embarrassment to the Agency, the witness had to prepare more than three of Employee's reports herself. (Tr. II, Pp. 27-29)

Because the social workers have many cases and do a lot of field work, the Agency issued them cell phones to enable them to stay in contact with the Agency and to likewise make the necessary business contacts incidental to providing relevant services to the juveniles and their involved families. (Tr. II, Pp. 28-29) In addition to cell phone-related problems, there were also many occasions when she would telephone Employee at her desk and, although other employees verified that she was sitting there, the Employee simply would not answer the calls, clearly knowing who was calling, due to caller ID. (Tr. II, P. 105)

In another matter held before Judge Shellie Bowers on September 7, 2001, Employee misrepresented that there was a continuing problem with sanitation and health issues of a supervised facility where a youth was placed, failing likewise to advise the court that the responsible vendor, Redirect Incorporated, Transitional Living Program, had taken the necessary measures to correct the problem. Based upon standard operating procedure, Employee previously received a memorandum advising of the corrective action plan which eliminated the problem.⁶ (Tr. II, Pp. 33-34)

⁶ See Employee Exhibit #1, the August 9, 2001, report addressing the deficiencies of the facilities for the Redirect residential program, and Agency Exhibit #7, dated August 20, 2001, the memorandum noting the plan of action which corrected the deficiencies. Both documents were provided to Employee and the other social workers, to update the facility in question's approved status, which document would likewise have been placed in Employee's in box. (Tr. II, Pp. 132-134; 138)

Riley corroborated Mary Phillips' prior testimony that Employee may have had ill will towards her former supervisor, Kenneth King, who had previously taken adverse action against Employee and who was associated with the vendor. (Tr. II, Pp. 35-36) In addition, Employee verbally recommended that the court close the case, which recommendation was in direct contravention of this witness's express prior instructions to her to continue the youth's commitment to the Agency, so that additional much needed services could be provided to the youth. Employee's attempted act was considered by the Agency as a neglectful act of duty. (Tr. II, P. 39-40)

Although visiting with her assigned children was an integral component of her job duties, Employee steadfastly refused to visit A.M., who resided in Baltimore, using every excuse she could to not do it. The distance to Baltimore was miniscule, in comparison with other social workers' state visits, some as far away as Minnesota. As well, Employee had the option of using a government vehicle, provided she obtained the requisite driver's license, so that she would not have to drive her own vehicle. She refused to obtain the license. If she took the bus, the service provider in Baltimore stated a willingness to meet her at the station, to transport her to the facility where A.M., her juvenile client, resided. Still she refused and was trying to manage the case by telephone without actually seeing the young lady, observing her surroundings, and inspecting and assessing the quality of the facility. (Tr. II, Pp. 68-72)

She directed Employee to complete a Child Fatality Review Report and other assignments by September 7, 2001. Because she was uncertain whether Employee had ever prepared such a report previously, the witness extensively discussed with the Employee how to prepare the report, including reviewing with her an outline of what the report should contain. (Tr. II, Pp. 186-188) When she failed to prepare the report, the witness sent her an e-mail on September 10, 2001, extending the deadline to September 11, 2001. (Tr. II, Pp. 40-41) When Employee submitted an incomplete report on September 17, 2001, the witness instructed her to make revisions, consistent with her job requirement's specific duties, and pre-established format, as outlined in the Manual, and directed that she submit a finished report by September 18th. (Tr. II, Pp. 41-44) The Employee ignored the witness's instructions, never submitting a revised report, and likewise failing to attend the Child Fatality Review meeting held on September 20, 2001. (Tr. II, Pp. 46-47)

The Employee, who was a DS-11, as were the other social workers, required much more corrective action in comparison with the other social workers that Riley supervised. In addition to the court reports requirement, she did not work well independently in routine matters, which the social workers were all required to do. Specifically, she had record documentation problems, disarray in her records, issues dealing with her assigned youth clients, issues concerning decisions about placements in facilities, and choices of appropriate vendors to provide needed child-related services. (Tr. II, P. 53)

To facilitate the efficient operation of Agency, and consistency in the handling of juvenile cases, Agency created a *Youth Services Administration Case Management Operations Manual* (the "Manual") in September 2000. At the time of the Manual's issuance, extensive training was provided. In subsequent supervisory conferences with Employee, the witness often referred Employee to relevant sections of the Manual as the best means for discharging a job-related duty. Further, it was the expectation that all case carrying staff social workers would read the Manual and practice it.⁷ (Tr. II., Pp. 65-67; Tr. III, Pp. 49-51) As well, Ms. Boykin told the witness that she had personally given a copy of the Manual to Employee in September 2000, shortly after the staff received training on the document, putting to rest any question of whether Employee timely received a copy of the Manual. (Tr. II, Pp. 66-67) Despite Employee's denial of having received a copy of the Manual in her Petition for Appeal, the witness specifically recalled seeing a copy of the September 2000 Manual on Employee's desk prior to the disciplinary action which led to her termination. (Tr. III, Pp. 33-36) (Agency Exhibit #6A)

When the witness convened an increased number of supervisory conferences in an attempt to assist the Employee to improve her performance, the Employee said virtually nothing, generally remaining mute, merely taking notes. There being no improvement, the witness sought to refer Employee for counseling to the Employee Assistance Program (the "EAP"), but the Employee returned the referral form to her, having whited out her own name and address and inserted the supervisor's name and address in its place. (Tr. II, Pp. 54-56; 96-97) (Agency Exhib. #8) As a consequence of the above-referenced overall job performance, Employee's performance rating for the period April 1, 2000, to March 31, 2001, was unsatisfactory. (Tr. II, P. 125)

When this witness referenced Employee's two prior suspensions as a component of progressive discipline, Employee, through counsel, stipulated to the seven-day suspension, from January 24-30, 2000, for job-related Misconduct and Insubordination. However, the Initial Decision from this Office in the second suspension, from October

⁷ During her testimony on January 5, 2005, the witness made references to the Case Management Manual, issued in September 2000, noting as well that she had referred to it in her 30-day advance notice of proposed removal. However, the only manual available at the hearing at that time was dated August 2001 (Agency Exhibit #6), an updated manual. The witness further testified that the manual is a rolling document and is periodically updated, but the sections relating to the social workers duties, including establishing and maintaining contacts with the juveniles, their families, preparing court reports, and making court appearances, had not changed between those two dates. A copy of the September 2000 Case Management Manual (Agency Exhibit #6-A) was located, and presented the following day, January 6, 2005, recognized by the witness as the then most recent manual at the time that Employee was in the process of being terminated. (Tr. I, Pp. 254-270; Tr. II, P. 15)

23-November 23, 2000, for job-related Insubordination and Negligence, is currently on appeal before the Office of Employee Appeals Board.⁸ (Tr. II, Pp. 57-59)

Despite being repeatedly counseled to cooperate, and that the designated attorneys were legal counsel for the Agency, Employee was in the habit of not sharing with Attorneys Zirpoli and Phillips, Assistant Corporation Counsels, the necessary information that would be contained in her court reports. (Tr. II, Pp. 72-73) In addition, during an appearance in one of Employee's cases, at which time the witness happened to be personally present in the courtroom to represent an absent social worker in a different scheduled case, the witness personally observed Employee's refusal to respond to Judge Puig-Lugo. Instead, Employee elected to attempt to exit the courtroom without permission in the middle of the judge's questioning. The witness likewise observed the judge directing his marshal to escort Employee back to the courtroom after she walked away. (Tr. II, Pp. 74-75)

Several judges expressed their concerns to the Agency about Employee's perceived lack of involvement with the families and her relationship with the youths, which issue some of the youths had likewise directly raised with the judges. Some judges requested that another social worker be assigned to the cases in question, noting that, in their estimation, the Employee had not followed through on her responsibilities as a social worker in getting certain services in place within an appropriate time frame; had not presented to them information to help them to understand why putting services in place were taking an inordinate amount of time; and the lack of court reports. (Tr. II, Pp. 77-79)

The terms "social worker", "case worker", and "case manager" were used interchangeably. Although the official job title and position description referred to the Agency personnel as "social workers", since their job function was to manage the assigned cases, they were colloquially and interchangeably also called "case managers", despite that term not appearing in the personnel records as the official title during any time that the Employee was working for the Agency. (Tr. III, Pp. 31-32; 47-48)

The witness discussed the problems that she was having with the Employee with Valerie Boykin, Deputy Administrator of the Agency, and Gayle Turner, Director of the Agency, reviewing with them the extraordinary measures that had already been taken. After all of these consultations, coupled with the efforts to work with Employee, yet still with no improvement, the witness then made the recommendation that Employee should be terminated. (Tr. II, Pp. 65-66) Both Boykin and Turner concurred with the recommendation. (Tr. II, P. 80) The decision to ultimately terminate Employee was not reached lightly, but only for the best interest of the Agency and its clients. Consequently, on November 13, 2001, the notice of final Agency action termination letter was issued by Turner. (Tr. II, Pp. 106-108)

⁸ This is a reference to the Initial Decision in OEA Matter No. 1601-0003-01, rendered by AJ Joseph Lim of this Office on March 12, 2004, which upheld the 30-day suspension.

Employee's Testimony

Adjeley Osekre, Employee - Adjeley Osekre, Employee (the "Employee"), was the sole witness to testify in her component of the evidentiary hearing. Having earned a masters degree in social work from Howard University in 1986, she had been employed at the Agency from that time. Initially licensed by the state of Maryland shortly after earning her advance degree, she likewise obtained a social work license from the District of Columbia in about 1997, when the licensure requirement was mandated. (Tr. III, Pp. 68-69)

Initially working at Oak Hill in the capacity of group leader, she was formally upgraded to social service representative, because social workers at that time also had supervisory responsibility. Later she was elevated to the position of social worker, but had no supervisory duties. She denied that she ever served in any capacity identified as "case manager" or "case worker", noting that the latter term was an out of date and an inaccurate title for "social worker". Further, she asserted that where the term is still used, it is intended to denote a person who neither had a social work degree nor a license in the field, as the term, "social worker", by law, is limited to a person who has both a degree in social work and a license. During her tenure with the Agency, there was no recognized position known as "case manager". At the time of her termination she was a DS-11. (Tr. III, Pp. 73-74; 81)

She described her duties for the 24 months prior to her removal from the Agency essentially as follows: receive messages from juvenile clients and their families; return all calls; conduct treatment team meetings where necessary; create a service plan every 90 days, as such activity was both the right thing to do and a requirement of maintaining her licensure status in good order; interview clients; meeting with client families; referring clients for service; preparing court reports; attending court hearings; and meeting with the staff at various schools and group homes, some of which meetings were emergencies, as the facilities did not always want to retain the children in their placements. The key to remember is that the client always comes first. (Tr. III, Pp. 77-79)

Identifying Employee's Exhibit #5 as her last personnel action, dated May 13, 1993, she asserted that, other than the removal action, there were also no changes made by the Agency in her work status since that date. As well, she identified Employee Exhibit #6, issued on February 18, 1992, as an attachment to Employee's Exhibit #5 (Employee's Social Worker Form 1, dated May 13, 1993), noting that the attachment was a job description of her major duties for Social Worker DS-185-11. (Tr. III, P. 82) She maintained that she was always working under a different job description with different supervisory controls from all the other social workers at Agency because, unlike the other social workers, she had not received any updated personnel action after 1993. (Tr. III, Pp. 89-91; 179)

Because she was never provided with the 1997-issued updated social worker job description which was issued when promotions to DS-12 were given to other social workers and new personnel actions adopted, she likewise was the only social worker at

the Agency who did not have to comply with the dictates of the document. (Agency Exhibit #4, Attachment #1) Instead, she continued to operate under the prior 1993 position description.⁹ (Tr. III, Pp. 90-92; 174-175) (Employee Exhibit #6)

Having joined the Agency in 1986, she considered herself as only bound by the social worker job described duties that were adopted in 1993, and the requirements of an older case manual (which was never identified on the record as an exhibit or by year, but simply referred to as “the original DHS manual” by the Employee). That manual considered any juvenile hearing scheduled with less than 30 days of the notice date to be an “emergency” proceeding, and an exception to the five-day rule requiring a written report from the social worker. As a result, and part of the widely accepted common practice, although not specifically spelled out in writing in the old manual, the social workers’ appearances before the judge were frequently complemented by a combination of written and oral reports. (Tr. III, Pp. 176-177)

Relying upon her position that she was not bound by the new job description, Employee likewise admitted that she also elected not to consistently comply with her supervisor’s directive, as contained in Agency Exhibit #5, which mandated that all reports were to be approved by supervisors before being forwarded to the court, and that all reports were likewise to be filed with the court at least five days before the court hearing. (Tr. III, Pp. 177-178)

Employee admitted that she did not always comply with her supervisor’s directives to prepare a court report for consideration at juvenile hearings, citing several reasons, including the emergency nature in the scheduling of the court appearances, which sometimes made compliance with the five-day rule impossible. Included reasons were: the abscondence of the juvenile in a number of cases; Agency clerical errors in asserting that there were court dates, when in fact no hearings were scheduled for those dates; and refusal of her supervisor to sign off approval on the prepared court reports, which made it not possible to present them to the court as a component of the court appearance. (Tr. III, Pp. 147; 176)

Although Employee had staked out a position different from the rest of the staff in her office, she admitted that she never queried her supervisor, either verbally or in writing, in an effort to obtain a clarification or to resolve any possible conflict or misunderstanding with regard to her job duties, job description, or the five day court reports rule. Instead, she continued to operate under what she characterized as her understanding of the extant custom and practice, and how the office operated prior to the most recent supervisor (Ms. Riley) being assigned to the office. (Tr. III, Pp. 177-178)

⁹ Although Employee continued to refer to the position description as having been issued in 1993, the record reflects that it was issued on February 18, 1992. Further, while Employee refers to the other social workers as being promoted to DS-12 in 1997, the only position descriptions which are a part of this record are the two for the DS-11 positions, i.e., Agency Exhibit #4, Attachment #1, issued September 16, 1997, and Employee’s Exhibit #6, issued on February 18, 1992. Both are for the DS-185-11 positions.

Further, when all of the other social workers received new position descriptions from the D.C. Office of Personnel in 1996 or 1997, but Employee did not, she never questioned this action or sought clarification about whether her job description or duties had changed in the same manner as had everyone else's in the office. (Tr. III, P. 179)

Although Employee made copious notes concerning several aspects of her discharging her job-related duties, she did not document for the record or her possible future needs to refresh her recollection, the pattern of activity and communications between the supervisor and herself related to her job performance, including the non preparation of the court reports and filing them at least within five days prior to court appearances. (Tr. III, Pp. 201-202)

Employee asserted that Marilyn Riley, her supervisor (the "supervisor"), lacked a clear standard on how court reports were to be submitted and distributed, and often would not approve a draft report for typing by the secretaries. Her refusal delayed the process, impeding the witness in getting her reports in on time, or causing them to not meet the five-day requirement. (Tr. III, Pp. 95-97)

She steadfastly denied the factual allegations regarding her misleading and making verbally inaccurate misrepresentations to judges. (Tr. III, Pp 105-127)

Although she was assigned a cell phone and admitted to receiving a number of calls with messages left by her supervisor and others for return calls, Employee asserted that at times, and especially when she was at Oak Hill, the cell phone did not work. Further, she initially lacked an understanding of how to extract the messages from the cell phone, having lost benefit of cell phone training due to her work schedule, the crowded nature of the conference room when the cell phone use training was being offered, and the necessity on cell phone training day of having to answer her own regular office telephone, which was located just outside the conference room, so as not to disrupt the training session. She did not master the use of the cell phone until later, by which time she had already been terminated. (Tr. III, Pp.117-120) Employee acknowledged that even though she was aware that there was a problem in retrieving messages from her cell phone, she did nothing about it. (Tr. III, P. 221)

Employee contradicted the testimony of her supervisor, testifying that she did submit the Child Fatality Report for K.B., a juvenile who was on her case load, and who was killed in August 2001, while Employee was on vacation. (Tr. III, Pp. 136-137)

On cross examination, Employee verified that she received the September 2000-issued Manual, but was initially unable to adequately explain the contradiction between her testimony at the hearing that she received the Manual, and her executed statement in her Petition for Appeal that she had not received the Manual, despite requests. Later in her testimony, Employee asserted that she had indeed received a copy of the Manual, but the real issue was exactly when she received it. (Tr. III, Pp. 166-170; 182) Employee admitted that her supervisor probably told her to follow the instructions in the Manual,

and that although she essentially ignored the Manual after she received it, she glanced through, not actually reading it, but saw nothing different in it that she really needed to do, other than to continue serving her clients. (Tr. III; Pp. 211-213)

Employee denied that she had hearings scheduled for August 17, or 30, 2001, and therefore did not have to prepare court reports. (Tr. III, P. 121) However, she admitted to telling Judge Bowers on September 7, 2001, that the child should not be sent to the Redirect facility because it was unlicensed, uninsured, the site of killings of children, and because the drug counselors were using drugs themselves. (Tr. III; Pp. 122-124) She denied knowing about information that the problems at the facility had been corrected. (Tr. III, P. 125) On cross examination, she admitted nothing to verify if her information was current, before giving it to the judge. (Tr. III; P. 225)

Prior to the death of K.B., she had never prepared a Child Fatality Report. In this case, when she was directed to prepare one, she was delayed being able to do so, because she did not have access to the incident report regarding the death, a component of following Agency's 1998-issued Child Fatality Protocol. (Employee Exhib. #4) As well, on prior occasions when a child in the Agency's system died, the procedure was for the social worker to prepare only an incident report, and submit it to the supervisor. The need to actually prepare a far more comprehensive Child Fatality Report was a new process, with which the witness was not familiar. (Tr. III, Pp. 131-133)

The witness contradicted her supervisor's testimony that the Employee never prepared the fatality report in the matter of K.B., asserting that she did file the report. As well, she again contradicted her supervisor's prior testimony that Employee did not attend the Child Fatality Review meeting, asserting that the supervisor directed her not to attend the meeting. (Tr. III, Pp. 138-139; 196)¹⁰

After receiving her supervisor's referral to the Employee Assistance Program (known in the D.C. government as COPE, Inc.), she called the program office and was informed that there was no policy in place for an employee to refer a supervisor to the program. Nonetheless, she took the document her supervisor had given to her, copied it

¹⁰ On cross examination a long and convoluted discussion ensued between the Employee and Assistant Attorney General Buchholz, over uncertainties about whether the Employee attended the meeting. Before the matter was ultimately cleared up, from Employee's personal perspective, at least four different positions were staked out: a) That the meeting was never held; b) That the meeting was rescheduled from September 17th, to September 20th; c) That the meeting was held, but the Employee was told that the meeting was canceled; and d) That the meeting was held on September 20, 2001, as rescheduled, but the term "cancelled" only meant that the Employee's presence at the meeting was cancelled, because K.B. died in August 2001, while Employee was off duty (on vacation), and there was no need for her to attend. The supervisor's testimony is at variance with Employee's assertion that Employee did not attend the meeting, despite being expected to be present.

and whited it out, to create a blank form, and filled it out to refer her supervisor to the program, and then placed the completed form in her supervisor's box. (Tr. III, P. 140)

Employee accused her supervisor of testifying falsely when she stated that she was present in the courtroom when Judge Puig-Lugo became irritated with the Employee when she declined to respond to his inquiries on a case. (Tr. III, Pp. 141-142) Employee testified that Ms. Riley was jealous of her. (Tr. III 144)

From the time that she became the Employee's supervisor, Riley began setting her up for failure, by making false allegations related to an alleged dereliction of duty and negligence. The supervisor intentionally sabotaged the Employee's work product and efforts, all in an attempt to make the Employee look bad in front of the judges, and before her peers and clients. As part of this effort, the supervisor also tried to get other people involved, by registering complaints with them, some of whom advised the Employee what was transpiring. However, none of the individuals who supposedly were aware of the supervisor's alleged pattern of sabotage, were called as witnesses to testify on Employee's behalf. (Tr. III, Pp. 207-209) Despite her supervisor's allegedly falsely accusing her of dereliction of duty and negligence, Employee never documented her complaints by keeping a set of notes of the alleged incidents. Nor did she file any written grievances against either the supervisor or the Agency. (Tr. III, Pp. 209-210)

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Having evaluated all the testimony of all four witnesses, and examined the documentary evidence submitted by each party, I find that Agency has established, by a preponderance of the credible evidence that Employee consistently: a) Failed to file timely and accurate court reports prior to court hearings as required by her supervisor's directives and Agency's policies; b) Failed to comply with her supervisor's directives to adhere to the guidelines of the *Youth Services Administration Case Management Operations Manual*, issued in September 2000; c) Made misrepresentations to Superior Court Judges Ramsey Johnson, Thomas Motley, and Shellie Bowers;¹¹ d) Failed to follow instructions regarding the creation of a Child Fatality Report, and adhering to the guidelines and procedure for the Child Fatality Protocol; and e) Made no improvement in her conduct and work performance despite prior progressive discipline and attempts by her supervisor and others to assist her.

Zirpoli, Phillips, and Riley each credibly testified that Employee repeatedly failed to file court reports prior to hearings, notwithstanding their requests that she do so. Riley testified that, in addition to receiving complaints about Employee from Phillips and Zirpoli, Judges Puig-Lugo, Mitchell-Rankin, Ramsey Johnson, specifically complained about Employee's failure to submit court reports. Conversely, Employee's assertions that

¹¹ The judges who complained about the Employee's misrepresentations to the court are not necessarily the same judges who complained about Employee's general lack of preparedness when she presented herself before them to update the court on the status of the particular youth in question.

she timely filed court reports, except in extraordinary circumstances when they were not required, are uncorroborated by any documentary or other testimonial evidence. Both Zirpoli and Phillips corroborated Riley's testimony regarding Employee's misrepresentations to the aforementioned named judges.

Although Employee generally denied all of the allegations, I do not find her to be a credible witness. While Employee testified at the hearing that she received the Manual, she was unable to satisfactorily explain the contradiction between her testimony that she received the Manual and her earlier executed statement in her Petition for Appeal that she had not received it after requesting it.

Regarding her failure to attend the Child Fatality Review meeting for K.B., Employee gave the following inconsistent testimony:

Hearing:

Q. Did you attend a child fatality meeting on the 20th of September, 01?

A. No.

Q. Why not?

A. Because Ms. Riley was the person that should have attended. And when she attended, when she asked me to attend, now this is what she told me. The child fatality team told them that they did not want me there because I was not on duty, I was on vacation at the time of the child's death. And she was the one that had to be there.

Thus, Employee clearly testified that she was aware of the meeting but did not attend because her supervisor told her not to.

However, Employee testified at her deposition that there was no meeting on September 20, 2001.

Deposition, P. 102:

Q. Did you in fact attend the meeting on September 20, or are you saying there was no meeting?

A. Apparently the meeting was canceled. They never had the meeting, and I was in the office and my recollection is correct. I was in the office all day.

Q. On September 20?

A. Yes.

I find that Employee's bare assertion that she was not governed by the position description (the "P.D.") and performance standards set forth in Agency Exhibit #4, Attachments #1 (issued on September 16, 1997), and #2 (issued in 2000), respectively, but rather by the earlier issued position description set forth in Employee Exhibit #6, (issued on February 18, 1992), is not supported by the weight of evidence. Logic does not sustain Employee's assertion that she was not covered by a revised P.D. that was used for all the other DS-185-11 social workers, and thereby she was allowed to work under a different set of guidelines. Even assuming arguendo that Employee's Exhibit #6 was applicable, the P.D. states on page 2: "Performs other related duties as assigned." Employee was, therefore, required to perform the reasonable duties assigned to her by her supervisor, including but not limited to adhering to Agency protocol for submission of timely and accurate court reports, using the Manual, attending the child fatality meeting, etc.

This AJ did a side-by-side comparison of the two PDs, to assess what the real difference was in the job duties between the 1992 and 1997 documents, since Employee has steadfastly insisted that she was governed by and operated pursuant to the earlier issued document. The 1992-issued P.D. listed 12 specific job duties, while the 1997-issued P.D. listed 14 job duties. Job duty #7 is identical in each P.D., and states: "... Incumbent represents the agency and serves as an expert witness at required court proceedings. ... " The language of job duty #11 in the older P.D. is identical to job duty #13 in the new P.D. What then is the difference?

Agency expanded existing job duty #7, by creating a newly inserted job duty #11, to clarify the social workers' duty to attend court proceedings, stating as follows:

Prepares requests for neglect or conservatorship petitions, pre-disposition reports, adoption reports, custody orders and other required court reports. Attends administrative reviews and court hearings to provide status/information on client's psycho-social condition, compliance with recommendations contained in the case plan and to determine the appropriateness of the established goals, services and/or foster care placement.

Based upon this comparison, I find that there was no material difference between the two P.D.s with reference to the mandate to prepare court reports and to present those reports in both administrative and judicial proceedings. The creation of new job duty #11, simply clarified what the social workers had been doing all along with regard to psycho-social condition of their clients, assessing compliance with case plans, determining the appropriateness of existing placements, and mentoring their young clients, all of which activities Employee testified she pursued, without complaining that such was not an inherent component of what being a social worker meant and required. For her to now belatedly claim that she only operated within the parameters of the 1992 P.D., and not the 1997 P.D. is not only disingenuous, but inconsistent with the essence of her testimony as to how she sought to perform her job-related duties overall.

Further, Agency expanded existing and current job duty #10, which directs current staff to help educate and train fellow staff workers, by creating new job duty #12, that specifically provides as follows: "Participates in the process of orienting new social workers to the work environment, policies and procedures, field work and general methods of meeting the responsibilities of the position by serving as a mentor and/or advisor." I specifically find that this particular job duty has no bearing upon the matter before me at this time.

With regard to the other components of the two P.D.s, I find that the 1997 document mainly clarified and adopted the existing job-related policies that the Agency had been operating under for the prior several years, components which the social workers were already charged to incorporate into the daily discharge of their duties. The 1997 P.D. simply incorporated the prior 1992 P.D. and subsequent office practices and protocols into a singular document, which activities Employee, in the course of her testimony, already claimed to be doing, despite her likewise inconsistent disclaimer that she was not bound by the 1997 document.

I find that Employee's misconduct was not "*de minimus*", but rather were repeated instances of her dereliction of duty. Her job entailed timely and comprehensive representation of vulnerable children, some of whom had sustained mistreatment, including prior incidents of sexual abuse. Some of these incidents were not brought to the attention of the court in a timely manner. In at least one case, Employee's late referral for psychological and psychiatric evaluations necessary for the court to make the appropriate placement of a minor, resulted in a child remaining incarcerated for about six months without any programmatic action being taken.

Viewed in the larger context, I find that Employee's job performance did not benefit several of her clients, and may have even caused some of them to endure harm, or further harm. One typical example was Employee's attempts to manage one of her cases without seeing the young lady, because she resided in Baltimore, Maryland. Another example was Employee's habit of not sharing critically significant information with Agency attorneys Zirpoli and Phillips.

Employee would frequently not respond to her Agency's cell phone calls or return her messages. She required much more corrective action in comparison with the other social workers, and likewise had to be subjected to two episodes of progressive discipline for negligent misconduct and insubordination, all as a component of Agency's attempt to assist Employee to improve her job performance.¹² As well, Employee required an increased number of supervisory conferences with her supervisor, which was contrary to being expected to work independently, an element which was clearly anticipated for all DS-11 social workers, as enumerated in both P.D.s.

¹² The Initial Decision rendered in OEA Matter No. 1601-0003-01, a 30 day suspension, is currently on appeal.

When there was no improvement, Employee was referred for counseling to the Employee Assistance Program, but declined to attend. Instead, she had the temerity to white out the referral form given to her, and then to use the newly created form to "refer" her supervisor for counseling. I find that Employee's action in this regard was insubordinate and particularly galling, an entirely inappropriate response to her own counseling referral. She displayed a lack of respect for her supervisor and demonstrated a disdain for the supervisory chain of authority necessary for the efficient operation of a government agency.

Based upon the foregoing, I find that Employee's claim of disparate treatment is not supported by the evidence, as her own conduct is what generated the ultimate decision to terminate her from her position.

I gave consideration to the question of whether the penalty Agency imposed was based upon a consideration of relevant facts, consistent with the mandate of *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-306 (1981), which I used as a guide in reviewing Agency's actions. In that matter, the Merit Systems Protection Board, this Office's federal counterpart, set forth a number of factors that are relevant for consideration in determining the appropriateness of a penalty. Without itemizing the list here, I find that the penalty of removal was appropriate under the circumstances within the context of the *Douglas* factors, and I find that the cumulative effects of Employee's misconduct were all aggravating factors which warranted removal. The sole mitigating factor is Employee's longevity since 1986. However, longevity is not a strong basis for retention in these circumstances.

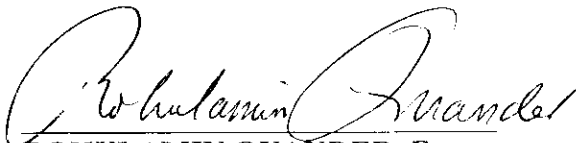
Removal was within the range of penalties available to the Agency, and it is not the job of this Office, as a reviewing authority, to substitute its judgment for Agency's. However, this Office is entrusted with the duty to assure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

I conclude, therefore, that Agency's action removing Employee from her position for neglect of duty, insubordination, and unsatisfactory job performance was reasonable and appropriate, and should be upheld.

ORDER

The foregoing matter having been fully considered and the record viewed as a whole, it is hereby ORDERED that Agency's action removing Employee is **UPHELD**.

FOR THE OFFICE:


ROHULAMIN QUANDER, Esq.
Senior Administrative Judge