THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
Vastha Coehins	)	OEA Matter No. 1601-0018-16
Employee	)	
	)	Date of Issuance: March 22, 2017
v.	)	
	)	Joseph E. Lim, Esq.
Office of the State Superintendent of Education	)	Senior Administrative Judge
Agency	)	

Hillary Hoffman-Peak, Esq., Agency Representative
Vastha Coehins, Employee *pro se*

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

Vastha Coehins ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on December 29, 2015, challenging the Office of the State Superintendent of Education's ("Agency" or "OSSE") decision to suspend her for ten (10) days. Agency filed its Answer on January 29, 2016. I was assigned this matter on March 16, 2016.

A Prehearing Conference was convened on April 25, 2016. Subsequently, a Post Status Conference Order was issued which gave the parties the opportunity to submit briefs addressing the issues. The briefs have been submitted. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action against Employee for any on-duty employment related act or omission that interferes with the efficiency and integrity of government operations, specifically: Absence without Official Leave (AWOL); and

2. If so, whether the penalty of a ten (10) day suspension was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.[1] "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.

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.[2]

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Whether Agency's adverse action was taken for cause

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.

Chapter 16, Section 1603.3 of the District Personnel Manual ("DPM") sets forth the definitions of cause for which disciplinary actions may be taken against Career Service employees of the District of Columbia government. Here, Employee was a Career Service employee and her ten (10) day suspension was based on "any on-duty employment related act or omission that interferes with the efficiency and integrity of government operations, specifically: Absence without Official Leave ("AWOL")."

The undisputed facts here establish that Employee was absent without leave on August 26, 2015, September 1, 2015, September 4, 2015, September 16, 2015, September 22, 2015, and October 13, 2015. At the prehearing conference, Employee concedes that she was indeed AWOL on those days. Employee complained that she was charged AWOL for three days in October 2, October 9, and October 12, 2015. However, when it was pointed out that she was never charged AWOL for those dates and that her pay was never docked for those dates, Employee was

[1] 59 DCR 2129 (March 16, 2012).
[2] OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

mollified. Nonetheless, in her brief, Employee still asked for compensation for those days without providing any rationale or justification. Thus, her request cannot be considered.

Absence without Official Leave (“AWOL”)

6-B DCMR § 1268.1[3], provides that an absence from duty that was not authorized or approved, or for which leave request has been denied, shall be charged on the leave record as “absence without leave (AWOL).” The AWOL action may be taken whether or not the employee has leave to his or her credit. If it is later determined that the absence was excusable, or that the employee was ill, the charge to AWOL may be changed to a charge against annual leave, compensatory time, sick leave, or leave without pay, as appropriate.[4]

Here, Employee does not deny that she was AWOL for six days in 2015. Neither does Employee deny that she was previously suspended for AWOL in May 2015, or that she had received a letter of admonition and was placed on leave restriction on March 18, 2015. Thus, this was not Employee’s first or even second offense.

I find the Employee’s actions fall within the definition of AWOL. 6-B DCMR § 1268.4 provides that if it is later determined that an employee’s absence was excusable, the AWOL charge *may* be changed to a charge against annual leave, compensatory time, sick leave, or leave without pay. 6-B DCMR § 1268 makes it clear that an employee may be charged with AWOL despite there being annual leave hours in an employee’s leave bank. Here, Employee did not offer any excuse or justification for her AWOL.

Accordingly, I find that Agency had cause to take adverse action against Employee for absence without leave.

Appropriateness of penalty

In determining the appropriateness of an agency’s penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors, and whether there is a clear error of judgment by agency. Here, I have found that Agency had cause to take adverse action against Employee for AWOL. The Table of Appropriate Penalties, as set forth in Chapter 16 § 1619.1(6), of the District Personnel Manual, provides that the appropriate penalty for a first time offense of AWOL ranges from a reprimand to removal. Here, the ten (10) day suspension imposed by Agency falls within this range.

Agency has the primary discretion in selecting an appropriate penalty for Employee’s conduct, not the Administrative Judge.[5] The undersigned may only amend Agency’s penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of

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[3] 6-B DCMR § 1268.1.
[4] 6-B DCMR § 1268.4.
[5] *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

reasonableness.[6] When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.[7] Based on the foregoing, I find that Agency's ten (10) day suspension was appropriate under the circumstances.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's decision to suspend Employee for ten (10) work days is **UPHELD**.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge

[6] *See Id.*
[7] *Id.*