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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	OEA Matter No.: 1601-0008-11-R15
LISA RANDOLPH,	)	
Employee	)	
	)	Date of Issuance: December 4, 2015
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF MOTOR VEHICLES,	)	
Agency	)	Sommer J. Murphy, Esq.
_____	)	Administrative Judge
A.P. Pischevar, Esq., Employee Representative		
Milena Mikailova, Esq., Agency Representative		

**INITIAL DECISION ON D.C. SUPERIOR COURT’S REMAND**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 12, 2010, Lisa Randolph (“Employee”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “the Office”) contesting the D.C. Department of Motor Vehicle’s (“Agency” or “DMV”) action of terminating her employment. Employee was charged with “any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of the law” and “any other on-duty or employment-related reason for corrective action or adverse action that is not arbitrary or capricious.” Specifically, Employee was charged with fighting while on duty during an April 22, 2006 altercation. Employee was working as a Motor Vehicle Inspector at the time she was terminated. The effective date of her termination was September 30, 2010.

I was assigned this matter in July of 2012. On November 19, 2012, a Status Conference (“SC”) was held for the purpose of assessing the parties’ arguments. During the SC, it was determined that there were no material facts in dispute that would otherwise warrant an evidentiary hearing. The parties were therefore ordered to submit written briefs addressing the issues discussed during the SC. On July 29, 2013, the Undersigned issued an Initial Decision, upholding Employee’s termination.

Employee subsequently filed a Petition for Review with OEA’s Board. On October 28, 2014, the Board issued an Opinion and Order on Petition for Review (“O&O”), affirming the

Undersigned's July 29, 2013 Initial Decision. On December 3, 2014, Employee filed an appeal of the O&O in D.C. Superior Court, arguing that OEA's Board impermissibly relied on statements contained in police reports in rendering its decision.<sup>1</sup> On September 3, 2014, the Honorable Judge Herbert Dixon, Jr., issued an Order, remanding the matter back to OEA so that it may be remanded back to Agency. The Order instructed Agency to determine whether Employee's self-defense claim is supported by the record.

Agency then filed a Motion for Reconsideration because it believed that Employee was given a sufficient opportunity to be heard on her claim of self-defense. On November 9, 2015, Judge Herbert issued an Order Denying Respondent's Motion for Reconsideration.<sup>2</sup>

### JURISDICTION

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

### ISSUE

Whether this matter should be remanded to Agency to consider whether Employee's claim of self-defense is supported by the record.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

In accordance with the D.C. Superior Court's September 3, 2015 Order, and its subsequent November 9, 2015 Order Denying Respondent's Motion for Reconsideration, this matter is hereby remanded to Agency for the purpose of assessing whether Employee's self-

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<sup>1</sup> Case No. 2014 CA 007688 P(MPA).

<sup>2</sup> *Id.*

defense claim is supported by the record and whether any applicable mitigating circumstances exist.

**ORDER**

It is hereby **ORDERED** that the matter is **REMANDED** back to Agency.

FOR THE OFFICE:

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SOMMER J. MURPHY, ESQ.  
ADMINISTRATIVE JUDGE