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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0009-24
EMPLOYEE, ¹	)	
Employee	)	
	)	Date of Issuance: September 2, 2026
v.	)	
	)	
DC PUBLIC SCHOOLS,	)	NATIYA CURTIS, Esq.
Agency	)	Administrative Judge
	)	

Employee, *pro se*
Gehrrie Bellamy, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On November 20, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Public Schools’ (“Agency” or “DCPS”) decision to terminate him from his position as a Custodian, effective October 27, 2023. OEA issued a letter dated November 20, 2023, requesting that Agency file an Answer on or before December 20, 2023. Agency filed its Answer to Employee’s Petition for Appeal on December 20, 2023. This matter was initially assigned to Administrative Judge (“AJ”) Lois Hochhauser on December 20, 2023.

On January 11, 2024, AJ Hochhauser issued an Order and determined that additional information was needed and required the parties to submit briefs. Employee’s brief was due by February 14, 2024, and Agency’s response was due by March 13, 2024. Employee submitted his brief on February 14, 2024. Agency submitted a response on March 14, 2024, and on April 15, 2024. Employee submitted an amended brief on June 20, 2024. On July 30, 2024, AJ Hochhauser issued an Order scheduling a Prehearing Conference for September 13, 2024. On August 6, 2024, Agency

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

submitted an additional response. On September 20, 2024, AJ Hochhauser issued a Summary and Order² and rescheduled the Prehearing Conference for October 25, 2024.³

Both parties were present for the October 25, 2024, Prehearing Conference. On October 30, 2024, AJ Hochhauser issued an Order which outlined what was discussed during the Prehearing Conference and ordered Agency to submit additional information by December 12, 2024.⁴ Agency submitted the Collective Bargaining Agreement (“CBA”) between Agency and Employee’s union on November 12, 2024. On December 10, 2024, Agency submitted a Motion requesting a new due date for Agency’s remaining submission. Agency filed an Amended Court Ordered Submission on January 9, 2025, and provided information regarding Employee’s Worker’s Compensation Claim. On January 10, 2025, Agency filed a Motion for Protective Order, requesting that all documentation and discussion of a previous settlement between Agency and Employee be limited due to the confidentiality clause in the settlement statement.⁵

On April 7, 2025, AJ Hochhauser issued an Order to Employee to show cause as to why his appeal should not be dismissed for failure to comply with all Orders issued in this matter.⁶ Employee submitted his statement on April 25, 2025.

This matter was reassigned to the undersigned AJ on June 11, 2025. On June 17, 2025, I issued an Order Scheduling a Status Conference for July 15, 2025. The Status Conference was held as scheduled. On July 17, 2025, I issued an Order for Briefs on Jurisdiction, requiring the parties to submit briefs in this matter. Employee’s brief was due by August 12, 2025, Agency’s brief was due by September 9, 2025. Employee submitted his brief on August 12, 2025, and Agency’s submitted its response on September 9, 2025.

On February 12, 2026, I issued an Order Scheduling a Status Conference for February 26, 2026. On February 27, 2026, the undersigned issued a Post Status Conference Order and required the parties to provide additional briefs. Employee’s brief was due by March 18, 2026, and Agency’s response was due by April 1, 2026. Employee submitted his brief on March 17, 2026. On March 31, 2026, Agency filed a Motion to request a new due date for its response, citing that Employee did not include the AWOL policy he cited to during the Status Conference held on February 26, 2026. On April 1, 2026, Employee filed a Motion to Strike, requesting that this Office dismiss this matter and deny Agency’s request for extension. On April 21, 2026, the undersigned issued an Order Regarding Agency’s Motion for New Due Date and granted the Motion in part. Agency’s response was due by May 7, 2026.⁷

² AJ Hochhauser issued an Order that summarized issues with the scheduling of the Prehearing Conference. AJ Hochhauser noted that she notified the parties on September 10, 2024, that the Conference would be held at 12:00p.m. instead of 2:15p.m. Employee did not acknowledge AJ Hochhauser’s emails regarding the time change and did not appear for the Prehearing Conference at the rescheduled time. AJ Hochhauser summarized the conversation she had with Agency’s Representative, who appeared for the Conference at the rescheduled time, and her conversation with Employee, who came to the Office at the original time of the Prehearing Conference.

³ AJ Hochhauser issued a duplicate Summary and Order on September 30, 2024.

⁴ AJ Hochhauser ordered Agency to submit the collective bargaining agreement. Agency was also ordered to submit proof that the Worker’s Compensation denial letter was sent to Employee.

⁵ This settlement involves a matter not before this Office and thus the confidential settlement terms will not be discussed or disclosed herein.

⁶ Employee’s statement to show cause was due by April 29, 2025.

⁷ The undersigned instructed Agency to provide all information required by the Post Status Conference Order dated February 27, 2026 (which did not include a request for an AWOL policy).

On May 1, 2026, Employee filed a Motion for Discovery⁸ and on May 7, 2026, Agency submitted its response. On June 2, 2026, Employee filed a “Motion to Enforce Court Order/Compliance.” On June 8, 2026, Agency filed a Request for Status Conference, citing that Agency had received numerous correspondences from Employee, which appeared to be accepted by this Office.⁹ On June 26, 2026, I issued an Order scheduling a Status Conference for July 7, 2026. On July 10, 2026, I issued an Order Rescheduling Status Conference to July 14, 2026, due to a scheduling conflict.¹⁰ The Status Conference was held as scheduled. On July 15, 2026, I issued a Post Status Conference Order and provided Agency with the option to file a response to Employee’s Motion to Strike, Employee’s Motion for Discovery, and/or Employee’s Motion to Enforce Court Order. Agency’s response to Employee’s Motions was due by July 27, 2026. Agency provided its response on July 27, 2026. On August 10, 2026, Employee filed a “Motion to Strike the Agency’s Evasive July 27, 2026 Submission and Request for an Immediate Ruling”¹¹.

Upon review of the record, I determined that an Evidentiary Hearing was not warranted in this matter. The record is now closed.

ISSUES

Whether this appeal should be dismissed for lack of jurisdiction.

Whether Agency had cause for the adverse action.

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:

⁸ Employee requested a copy of a DCSF-1199-A Form, which is a form required by the DPM to document an employee’s AWOL status. As an independent agency, DCPS is not governed by the DPM.

⁹ On June 18, 2026, I emailed the parties regarding potential dates for the Status Conference and also provided a list of documents received from the parties after the Post Status Conference Order dated February 27, 2026. On June 24, 2026, the parties agreed to July 7, 2026, as the date for the Status Conference.

¹⁰ I contacted the parties via email to confirm a new date for the Conference.

¹¹ It is hereby ordered that Employee’s Motions to Strike filed on April 2, 2026 and August 10, 2026, respectively are denied as moot. Employee’s Motion for Discovery filed on May 1, 2026 is denied. The AWOL policy and form cited to by Employee in his Motion does not apply to Agency (*See supra* note 7).

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.

JURISDICTION

For the reasons explained below, this Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee was a Custodian with the District of Columbia Public Schools from February 19, 2013 to October 27, 2023. (“DCPS” or “Agency”). Agency determined that Employee abandoned his job/voluntarily resigned after failing to return to work on October 27, 2023, after being sent a Return to Duty notice on October 25, 2023.

Employee’s Position

Employee maintains that he did not voluntarily resign, that Agency’s decision was made in haste, and he was not given adequate time to respond to Agency’s notices.¹² Employee asserts that on August 17, 2023, he “fell to the floor after standing during a meeting with the assistant principal and supervisor at the start of my first day back to work” at Jackson Reed High School.¹³ Employee reports that a few days later he experienced some discomfort and lower back pain and thereafter he sought medical treatment while he also applied for Worker’s Compensation.¹⁴ Employee asserts that he was verbally informed by the claims adjuster that his Worker’s Compensation was approved. He notes that he was “totally shocked when I received notification that the Worker’s Compensation was denied...”¹⁵

Employee asserts that on September 1, 2023, he emailed Mr. Jorge Salazar (“Mr. Salazar”) of Labor Management and Employee Relations (“LMER”) that his cell phone was broken and a friend, Crystal Harrod was receiving and sending email messages on his behalf. Employee maintains that he also informed Mr. Salazar that he was seeking medical treatment from the fall incident and that Mr. Salazar acknowledged receipt of his email on September 14, 2023.¹⁶

Employee avers that while out on Worker’s Compensation on October 25, 2023, Agency sent a Return to Duty letter at 5:19 p.m. to his work email address, which he asserts he could not access. He notes that Agency also emailed a copy of the Return to Duty letter to his friend Crystal Harrod who was receiving emails on his behalf due to personal cell phone problems. He notes that the Return to Duty letter stated to report to work on October 27, 2023. Employee further asserts that on October 27, 2023, he also received another letter that informed him that he had abandoned his job.¹⁷ Employee maintains that he was not aware of the emails until November 1, 2023, because Crystal Harrod was

¹² Employee’s Petition for Appeal, p. 7 (November 20, 2023).

¹³ Employee’s Brief, p. 1 (February 14, 2024).

¹⁴ *Id.*

¹⁵ Employee’s Petition for Appeal, p. 7 (November 20, 2023).

¹⁶ Employee’ Brief, p. 1 (February 14, 2024).

¹⁷ *Id.*

experiencing personal family matters and did not see them until November 1, 2023.¹⁸ Employee maintains that while a written Return to Duty letter was mailed, he did not receive it until around October 29th or October 30th.¹⁹

Employee asserts that on November 1, 2023, he notified Mr. Salazar that he did not receive the Return to Duty work notification email because Crystal Harrod was experiencing personal family matters and did not see the email until November 1, 2023. Employee notes that Mr. Salazar replied and indicated that Employee was issued a final determination for Worker's Compensation regarding his claim.²⁰ Employee maintains that Mr. Salazar was aware of his email situation and that Crystal Harrod was receiving emails on his behalf. Employee contends that he did not receive the Worker's Compensation denial letter until October 30th by regular mail.²¹

Employee further contends that Agency violated his union agreement by not notifying his union of his separation.²² Employee asserts that per his union contract, if any employee is accused of a violation, all parties are to be notified. He also argues that this Office has jurisdiction over his appeal because he is a career service employee and was improperly terminated without "being afforded constitutionally required due process protections, namely notice and an opportunity to respond."²³ Employee avers that he had a legitimate property interest in his continued employment and is "protected by the Fifth and Fourteenth Amendments to the U.S. Constitution."²⁴ Employee maintains that he was not provided notice and a meaningful opportunity to respond because the notice was not received in a timely manner: the written letter was received after the report date, and he was not provided an opportunity to respond. Employee asserts that these procedural defects cannot divest OEA of jurisdiction over his appeal.²⁵

Agency's Position

Agency contends that Employee was never on Worker's Compensation. Agency notes that Employee reported that he fell to the floor while in a meeting with his supervisor on August 17, 2023, and subsequently filed a Worker's Compensation claim with the Office of Risk Management ("ORM"). Agency states that ORM investigated the claim and concluded that Employee did not actually fall to the floor but was caught while falling and placed in a chair. Agency contends that ORM further found that Employee stated that he fainted at work due to stress and issues on the job and in his personal life. ORM concluded that Employee did not experience any injury on the job and the claim for work-related stress did not qualify for Worker's Compensation. Agency contends that Employee's claim for Worker's Compensation was denied for these reasons.

Agency asserts that Employee's Worker's Compensation claim was denied on October 20, 2023, and ORM emailed a copy of the denial notice that same day to Employee's personal email address and sent a hard copy to his address of record.²⁶ Agency asserts that DCPS also emailed Employee on October 20, 2023 at 5:14 p.m. to his work email address, stating that his Worker's

¹⁸ Employee's Brief, p. 1 (February 14, 2024).

¹⁹ Employee's Brief on Jurisdiction (August 12, 2025).

²⁰ Employee's Brief, p. 1 (February 14, 2024).

²¹ Employee's Brief, p. 2 (February 14, 2024).

²² Employee's Brief, pp. 1-2 (June 20, 2024).

²³ Employee's Brief on Jurisdiction, pp. 1-2 (August 25, 2025).

²⁴ *Id.* at p. 2 (August 25, 2025).

²⁵ *Id.*

²⁶ Agency's Brief p. 1, 2 (May 7, 2026).

Compensation claim was denied, and thus he was expected to report to work on Monday, October 23, 2023.²⁷ Agency thus argues that “Employee had at least 3 days’ notice from two different agencies that his claim was denied, and that he was expected to return to work on the following business day, which in this case was the following Monday.”²⁸ Agency maintains that while Employee claims he did not receive the Worker’s Compensation denial letter until much later, “DCPS is not obligated to assure that another Agency ensures that notification was received by the intended recipient. Therefore, Employee was never on Worker’s Compensation and had no reason not to report to work from October 23 through October 25.” Agency contends that accordingly it had the authority to order Employee to return to work no later than October 27, 2023.²⁹

Agency asserts that after failing to return to work on October 23, 2023, Employee was sent a ‘Return to Duty’ notice on October 25, 2023, to his personal email address, Crystal Harrod’s email address, and his DCPS email address, which advised him that he was being charged as absent without leave (“AWOL”) for October 23, 2023 through October 25, 2023. Agency indicates that the Return to Duty letter stated that if Employee did not return to work by October 27, 2023, his failure to return to work would be considered job abandonment and/or voluntary resignation.³⁰ Agency indicates that when Employee failed to report to work on October 27, 2023, it was deemed that he abandoned his job/voluntarily resigned effective October 27, 2023.³¹

Agency further notes that in the Return to Duty Notice dated October 25, 2023, Employee was notified that if he was incapacitated during the period of AWOL that he was to provide medical documentation to Agency and that his absences would only be justified if there was an approved leave accommodation, such as FMLA. Agency asserts that there was no application for approval of leave of any kind on file at the time of Employee’s AWOL status. Agency asserts that therefore Employee was provided an opportunity to explain why he did not return to work, or was unable to work, and he provided neither.³²

Agency argues that “Employee is not saying he did not receive the notices, but rather, that he did not check his email due to someone else not checking his email on his behalf.” Agency maintains that “DCPS is not responsible for ensuring that Employee checks his email account or his physical mailbox to ensure that he receives correspondence; DCPS is only obligated to provide notice(s) to the email and physical addresses provided by Employee.”³³ Agency further asserts that the email address where the notices were sent is the same email address used in Employee’s Worker’s Compensation paperwork, and in several correspondence emails between Employee and DCPS. Agency maintains that OEA does not have jurisdiction over Employee’s appeal because Employee’s job abandonment is treated as a voluntary resignation according to the DC municipal Regulations, and thus he was not subject to an adverse action.³⁴ Further Agency maintains that because it followed the required notification process that the voluntary resignation should be upheld.³⁵

²⁷ *Id.* at p. 2 (May 7, 2026).

²⁸ *Id.*

²⁹ Agency’s Brief, p. 2 (April 15, 2024).

³⁰ Agency’s Answer to Employee’s Petition for Appeal and Motion to Dismiss, p.1 (December 20, 2023).

³¹ Agency’s Brief p. 2 (May 7, 2026).

³² *Id.*

³³ Agency’s Brief, p. 3 (April 15, 2024).

³⁴ Agency’s Answer to Employee’s Petition for Appeal and Motion to Dismiss, p.1 (December 20, 2023).

³⁵ Agency’s Brief, p. 3 (April 15, 2024). *See also* Agency’s Brief p. 2 (May 7, 2026).

ANALYSIS³⁶

This office has long held that it cannot exercise jurisdiction over voluntary resignations.³⁷ The question of whether a resignation is voluntary or involuntary has been considered in several cases before this Office. A typical matter concerns an employee who affirmatively resigns, and then appeals to OEA, asserting that their resignation was the result of coercion, duress or constructive discharge, consistent with the holding in the seminal case in the federal sector on this issue, *Christie v. The United States*.³⁸ In the instant matter, however, the voluntary resignation is a result of a regulation and did not result from Employee's active decision to resign. Instead, the resignation was effectuated from Employee's failure to return to work after notice. The regulation Agency invoked states "failure to report to work after notice shall be deemed a voluntary resignation due to abandonment of position. The voluntary resignation shall not be considered an adverse action."³⁹ This regulation does not provide details as to how the regulation should be implemented, such as the length of time an employee has to be absent for the resignation to be considered voluntary or the type of notice Agency must provide.

In such cases where an agency determines that an individual has abandoned their position and thus voluntarily resigned, this Office has held that "when an employee fails to communicate with Agency, fails to report to work with an accepted excuse, and/or fails to respond to requests from Agency for documentation or information in those instances, Agency could reasonably assume that the employee has demonstrated a lack of interest in retaining his or her employment."⁴⁰ However, "...if the preponderance of evidence establishes that Agency acted improperly and that it cannot avail itself of the regulation, the presumption of voluntariness is rebutted, and the jurisdiction of this Office is established."⁴¹ Further, in accordance with the D.C. Court of Appeals' decision in *Metropolitan Police Department v. Stanley*,⁴² the OEA Board has held that the "test to determine voluntariness is an objective one that, considering all the circumstances, the employee was prevented from exercising a reasonably free and informed choice."⁴³ Thus, in determining whether this Office retains jurisdiction over this matter, the undersigned must determine whether Agency acted properly, and whether the presumption of voluntariness has been rebutted.

While the facts cited above confirm that Employee failed to report to work after notice to return, the undersigned finds that the preponderance of evidence establishes that the return-to-duty deadlines imposed by Agency amounted to time pressure. In *Debra v. DCPS*,⁴⁴ the OEA Board ("The

³⁶ 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 *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").

³⁷ See *Employee v DC Department of Transportation*, J-004-22 (June 29, 2022).

³⁸ In *Christie*, the Court of Claims held that employee resignations are presumed to be voluntary and thus it is incumbent on the employee, to present sufficient evidence to prove that his resignation was involuntary. *Christie v. The United States*, 518 F.2d 584, 587 (July 11, 1975).

³⁹ DCMR Title 5-E, Chapter 10, Section 1020.6 (October 3, 1980).

⁴⁰ *Debra v District of Columbia Public Schools*, 1601-0037-13, p. 17, Opinion and Order on Petition for Review (January 19, 2017).

⁴¹ *Id.* at p. 12.

⁴² *Metropolitan Police Department v. Stanley*, 942 A.2d 1172 (February 28, 2008).

⁴³ *Morris Yarborough v. Department of Public Works*, OEA Matter No. J-0022-19, *Opinion and Order on Petition for Review* (January 14, 2020).

⁴⁴ In *Debra*, Agency notified the employee on November 16, 2012, that her medical documentation for her ADA claim was due by November 23, 2012 and her failure to either return the forms or report to work would be treated as job

Board”) agreed with the AJ’s finding that the agency imposed an unreasonable deadline when requiring the employee to submit medical forms or face voluntary resignation.⁴⁵ The Board found that the unreasonable deadline amounted to time pressure.⁴⁶ Similarly, the Board in *Employee v UDC*⁴⁷ found that the employee “...was not allowed a reasonable amount of time to evaluate [resignation] as an option and make an informed choice.”⁴⁸ While the Board indicated that “if Agency could show that Employee failed to return to work after providing notice then it would be considered abandonment, and the abandonment would not be considered an adverse action, the Board further noted that according to *District of Columbia Metropolitan Police Depart v. Stanley*, an employee’s resignation may be involuntary if it is induced by the employer’s application of duress or coercion, *time pressure*, or the misrepresentation or withholding of material information (emphasis mine).⁴⁹

In the instant matter, the undersigned finds that Agency imposed unreasonable deadlines for Employee to return to work. In its Brief, Agency noted that the Office of Risk Management or ORM emailed Employee on Friday October 20, 2023, at 3:45 p.m., notifying him that his Worker’s Compensation claim was denied. Agency emailed Employee that same day at 5:14 p.m. to his work email address only, notifying him that his claim had been denied and thus he should return to work on Monday October 23, 2023.⁵⁰ Agency asserts that thus “Employee had at least 3 days’ notice from two different agencies that his claim was denied, and that he was expected to return to work on the following business day, which in this case was the following Monday.”⁵¹ The undersigned finds that the email from Agency to Employee on Friday October 20, 2023, was not sufficient notice and presented an unreasonable time frame with which to comply. Here, Agency emailed Employee on a Friday at 5:14 p.m. to his work email only, and noted that he had to return to work the following business day. As Agency cited in its brief, “...Employee was in some sort of light duty status while he awaited a final determination from ORM... as typically once an employee files for worker’s compensation, their personnel actions are taken over by ORM until official notification is given to all parties.”⁵² Thus, Agency essentially required Employee to check his work email after hours, even though he had been in a leave status pending resolution of his Worker’s Compensation claim.⁵³ The undersigned finds that it is a reasonable assumption that Employee would not be expected to check his work email after 5pm on a Friday, while in a leave status.

Notably, Agency also concedes that “...the dates between August 17, 2023, and October 23, 2023, are not in dispute regarding attendance...” because Employee was in a leave status.⁵⁴ Thus, the undersigned finds that Agency cannot assert that an email sent only to Employee’s work email address on Friday October 20, 2023, was sufficient notice that he should report to work on Monday October 23, 2023, while also acknowledging that Employee was in a leave status on October 20, 2023. Thus, the undersigned finds that the email sent on October 20, 2023 at 5:14 p.m. does not count as the first

abandonment/voluntary resignation. Agency further denied employee’s request for an extension to submit the paperwork. *Debra v DCPS*, OEA Matter No. 1601-0037-13, *Opinion and Order on Petition for Review* (December 19, 2017).

⁴⁵ *Id.* at p. 3, 8.

⁴⁶ *Id.* at p. 8, (citing to *District of Columbia Metropolitan Police Depart v Stanley*, 942 A.2d 1172 (February 28, 2008)).

⁴⁷ OEA Matter No.1601-0035-21.

⁴⁸ *Id.* at p. 6.

⁴⁹ *Id.* at p. 6 (and citing to *Debra Johnson v D.C. Public Schools*, OEA Matter No 1601-0037-13.

⁵⁰ Agency’s Brief, pp. 1-2. (May 7, 2026).

⁵¹ *Id.* at p. 2.

⁵² Agency’s Brief, p. 2 (April 15, 2024).

⁵³ While Agency states that Employee had over three days’ notice to return to work on October 20, 2023, Agency also concedes that the dates in question are October 23-27. Thus, the undersigned disagrees with Agency’s assertion that he had at least three days’ notice from two difference Agency’s that he should have reported to work on October 23, 2023.

⁵⁴ Agency’s Brief, p. 2 (April 15, 2024).

day of notice and Agency's contention that Employee had three days' notice (counting non-business days) that he should report to work on Monday October 23, 2023, is not supported by the evidence.

Further, the email sent on October 20, 2023, did not include an official Return to Duty Notice. As noted in its brief, Agency asserts that "...DCPS is only obligated to provide notice(s) to the email and *physical address* provided by Employee."⁵⁵ Thus, an email sent only to Employee's work email address at the end of a business day on a Friday, does not meet Agency's stated notice requirements. Thus, proper notice that Employee was to report to work on Monday October 23, 2023, was not provided to Employee until October 25, 2023, at 5:19 p.m., when Agency emailed Employee a copy of the Return to Duty letter to Employee's work, and personal email addresses, including his partner, Crystal Harrod's email address, and sent a copy to his home address.⁵⁶ This notice cited that Employee was being charged as absent without leave ("AWOL") for October 23rd through October 25th; yet by the time it was sent, Employee was already deficient for two work days.⁵⁷ Thus, the undersigned finds that Employee was penalized⁵⁸ for absences despite not receiving sufficient notice that he was to return to work.

Further, the undersigned finds that the Return to Duty Notice sent on October 25, 2023, did not allow a reasonable amount of time for Employee to return to work. Title 5-E, DCMR Chapter 10, Section 1020.6 states that "failure to report to work *after* notice shall be deemed a voluntary resignation due to abandonment of position." (Emphasis mine). The Return to Duty Notice was emailed at the end of the business day at 5:19 p.m. on Wednesday October 25, 2023, when employees are presumably not obligated to check work emails (and the mailed copy was not received by Employee until after October 27, 2023). Thus, Employee effectively had only one full business day of Notice, October 26, 2023, that he was to report to work by October 27th or risk being separated from his employment. The undersigned finds that one full day of notice is unreasonable to notify a career service Employee that he will be separated from his employment.⁵⁹ Thus, the undersigned determines that Agency imposed an unreasonable timeframe for which Employee had to return to work or face separation.

Failing to report to work after one full day of notice is also insufficient to determine that an employee has made the decision to abandon or voluntarily resign from his job. In accordance with the D.C. Court of Appeals,⁶⁰ the OEA Board has held that the "test to determine voluntariness is an objective one that, considering all the circumstances, the employee was prevented from exercising a reasonably free and informed choice."⁶¹ The undersigned finds that because the Return to Duty Notice provided one full business day of notice to return to work or be separated, Agency cannot assert that Employee made a "free and informed choice" to abandon his job. While Title 5-E, DCMR Chapter 10, Section 1020.6 is silent as to how many days an employee must be absent to determine that he has

⁵⁵ Agency's Brief, p. 3 (April 15, 2024)

⁵⁶ Employee noted that he received the mailed copy on or around October 30, 2023, which is after the date he was separated from employment.

⁵⁷ Agency asserts that it was Agency's Policy at the time to provide the Return to Duty Notice after Employee misses two full days of work. However, the undersigned finds that Agency did not provide proper or timely notice that Employee was to report to work on Monday October 23, 2023. (Agency's Brief, p. 53 (May 7, 2026)).

⁵⁸ AWOL is an unpaid status. 6B DCMR § 1268.3 (November 30, 2007).

⁵⁹ Unlike at-will employees, Career Service employees generally must be separated for cause and have the right to appeal adverse actions. Thus, policies and regulations that may skirt these requirements should be implemented with due diligence. See DC Official Code § 1-608.01a(13)(*establishing that career service employees are separated for cause*); See also 5E DCMR § 1000.1 (October 3, 1980)(Establishing that DCPS custodial employees are part of the Career Service).

⁶⁰ *Metropolitan Police Department v Stanley*, 942. A.2d 1172, 1176 (February 28, 2008).

⁶¹ *Debra Johnson v District of Columbia Public Schools*, OEA Matter No. 1601-0037-13, *Opinion and Order on Petition for Review* (January 19, 2017).

voluntarily resigned or abandoned his job, reasonable minds would agree that failing to return to work with only one full business day of notice is not sufficient.

Further, I find that Agency did not adhere to its own stated timeline. In the Notice of Voluntary Resignation, Agency indicated that “consistent with DCPS policy” Employee must submit leave *after* five days of absences. This would imply that Employee would have the opportunity to submit leave after the fifth day of his absence. However, Employee was fired on the fifth day and was not provided an opportunity to submit leave or otherwise account for his absences. Thus, the undersigned finds that Employee should not have been terminated before October 30, 2023, which was the sixth workday.⁶²

Accordingly, I find that based on this evidence above, Agency’s actions resulted in time pressure because Agency provided unreasonable timeframes with which Employee had to comply. While I agree with Agency’s assertion that Agency is not responsible for ensuring that Employee checks his email accounts or physical mailbox to assure that he receives correspondence,⁶³ the undersigned finds that Agency remains responsible for ensuring that Employee has a reasonable timeframe in which to comply with Agency’s directives and respond to its notices. Thus, in invoking this statute, it must be clear that Employee has made the choice to abandon his job, such as failing to Return to Duty after sufficient and reasonable notice. Employee further rebutted the presumption that he abandoned his job when on November 1st, his friend Crystal Harrod emailed Agency on Employee’s behalf and informed Agency that Employee believed he was still on Worker’s Compensation and further noted that a family emergency kept her from checking emails on Employee’s behalf prior to November 1, 2023. Thus, the evidence does not support that Employee voluntarily abandoned his job.

As the evidence does not support that Employee voluntarily resigned, I find that the current action is a constructive termination, which is an adverse action over which this Office has jurisdiction. Thus, Employee’s appeal is reviewable by this Office.⁶⁴ Further, because the undersigned finds that Agency has not shown that it had cause for the adverse action or that it followed proper protocol in instituting the adverse action, such as complying with the notice requirements outlined in the Collective Bargaining Agreement,⁶⁵ this termination cannot stand.

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

1. Agency’s action of removing Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee to the same or comparable position prior to his removal from service; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of his removal; and

⁶² Agency asserts that “Employee’s CBA states “[i]f sick leave extends for more than five (5) consecutive days, employee must submit an application for leave to the DCPS Leave of Absence Team for Approval.” This language is referenced in Return to Duty notice to endure that Teamster employees are aware of the policy that allows them to apply for sick leave to cover current and future absences.” Agency’s Brief, p. 2 (May 7, 2026). However, as Employee was terminated on day five (5), he was not on leave for more than five (5) consecutive days, and thus was not provided the opportunity Agency asserts was required by the CBA.

⁶³ Agency’s Brief, p. 3 (April 15, 2024).

⁶⁴ *Employee v. District of Columbia Public Schools*, No. 17-CV-301 (D.C. Aug. 19, 2018).

⁶⁵ Article 14 governs discipline and discharge and requires Agency to provide fifteen (15) workdays advance notice, and notes that DCPS shall not discipline an Employee without cause.

4. Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ Natiya Curtis
Natiya Curtis Esq.
Administrative Judge