THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1]	)	
	)	OEA Matter No. 1601-0083-22R24
v.	)	
	)	Date of Issuance: May 29, 2025
OFFICE OF THE CHIEF TECHNOLOGY OFFICER,	)	
	)	
Agency	)	
	)	

SECOND OPINION AND ORDER
ON PETITION FOR REVIEW

This matter was previously before this Board. Employee worked as an Information Technology Specialist for the Office of the Chief Technology Officer ("Agency"). On August 31, 2022, Agency issued a final notice of separation removing Employee from his position. Employee was charged with falsifying time entries, in violation of 6-B District of Columbia Municipal Regulations ("DCMR") §§ 1607.2(c)(1) – knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents and 1607.2(b)(2) – misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations. Agency alleged that Employee falsified time logs by submitting entries for hours not worked between

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

August 4, 2021, and February 11, 2022, which resulted in Agency overpaying $53,391.66 in wages to Employee. Additionally, Agency contended that during its investigation, Employee provided conflicting answers and refused to answer questions related to the overpayment of funds. Consequently, Employee was terminated.[2]

On September 30, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He argued that he did not knowingly or intentionally submit false time logs. Employee contended that he was unaware that PeopleSoft was automatically inputting his time.[3] As a result, he requested that the termination action be rescinded and that he be reinstated to his previous position.[4]

According to Agency, Employee admitted that he manually input his time for days he reported to work in-person, which was a direct violation of its Exception Time Reporting ("ETR") policy.[5] Moreover, Agency argued that Employee received ETR training and was aware that manually entering his regular hours constituted a violation of its policy and that his actions could have resulted in an overpayment of wages. Agency also asserted that Employee misrepresented, falsified, or concealed material facts during an official investigation.[6] Moreover, it contended that

---

[2] *Petition for Appeal*, p. 7 (September 30, 2022).

[3] PeopleSoft is a software application used by District employees, where they are able to input time, submit a leave request, review paycheck and benefits, request training, and update their personal information. Employee claimed that he and several of his colleagues, including his supervisor, were unaware of the automatic update in PeopleSoft. Further, he argued that he did not notice the overpayment because his paychecks were directly deposited into his bank account.

As it related to his refusal to answer questions, Employee contended that it was only after investigators badgered him and asked the same questions to which he had already provided an answer. Thus, it was Employee's position that he did not misrepresent, falsify, or conceal any material facts or records related to Agency's investigation. Additionally, he argued that Agency failed to follow the progressive discipline guidelines provided under 6-B DCMR § 1607.2.

[4] *Petition for Appeal*, p. 2 and 5 (September 30, 2022).

[5] Agency is an exception-based time reporting agency, which means that employees only report time exceptions on their time sheet — i.e., annual leave, routine telework, jury duty, etc. According to Agency, employees were not to report regular time when they worked in-person; they were required to leave the day blank because the system would automatically enter their time for those days.

[6] Agency argued that when it inquired about the overpayment of wages, Employee provided that he was unaware of the overpayment because his wife handled their finances. However, it contended that Employee admitted to routinely

based on the Table of Illustrative Actions in 6-B DCMR § 1607.2, removal was appropriate given Employee's conduct. Agency explained that it considered the *Douglas*[7] factors when selecting the penalty of removal.[8] Therefore, it requested that the Petition for Appeal be dismissed.[9]

The Administrative Judge ("AJ") issued an Initial Decision on July 18, 2023. She held that Employee accurately submitted his time manually into the PeopleSoft system, which was approved by his supervisor. The AJ noted that PeopleSoft automatically recorded the time for the same period that Employee submitted his time; thereby, prompting the payroll system to consider the additional time entered by Employee as overtime pay. Moreover, she determined that although Employee's lengthy history of complying with the ETR policy proved that he was aware of how

---

withdrawing money from the bank account in which he received direct deposits of the overpayment. Agency also claimed that Employee refused to answer relevant questions and provided conflicting explanations as to why the overpayment wages were no longer in his bank account.

[7] The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

> 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
> 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
> 3) the employee's past disciplinary record;
> 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
> 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
> 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
> 7) consistency of the penalty with any applicable agency table of penalties;
> 8) the notoriety of the offense or its impact upon the reputation of the agency;
> 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
> 10) potential for the employee's rehabilitation;
> 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
> 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

[8] Agency reasoned that Employee's conduct of consistently submitting false time sheets over a six-month period adversely impacted its reputation; betrayed his position of public trust; showed his inability to be rehabilitated; and necessitated an adequate disciplinary action to deter others.

[9] *Agency's Answer*, p. 4-11 (October 31, 2022).

to accurately report the time, Agency failed to consider the impact that the Covid-19 Public Health Emergency had on to its time recording policy.[10] The AJ reasoned that Agency failed to prove that Employee knowingly submitted, or allowed the submission of, falsified time logs into the payroll system. Furthermore, she held that Employee did not misrepresent, falsify, or conceal material facts or records in connection with Agency's investigation. According to the AJ, Employee offered to repay the overpayment with one $25,000 installment, followed by smaller installments. Consequently, she concluded that Agency lacked cause to terminate Employee. As a result, she ordered that Employee be reinstated and that Agency reimburse Employee all back and benefits lost, less the overpayment amount of $53,391.66.[11]

Agency disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on August 23, 2023. It contended that the AJ's decision regarding its misrepresentation and falsification charges are based on an erroneous interpretation of the regulations and its policy. Agency claimed that its ETR policy remained the same throughout, and after, the pandemic. It further maintained that employees were required to use PeopleSoft to manually enter time when working out of the office and could not enter time for hours worked in the office.[12] Thus, Agency argued that the AJ incorrectly determined that Employee accurately submitted his time manually; that Agency failed to consider the impact of the pandemic on its ETR policy; and that Agency did not meet its burden of proof to establish that Employee knowingly submitted false time logs. Accordingly, it requested that the Board grant its petition because the AJ's conclusions of law are

[10] The AJ noted that during the pandemic, Agency's time reporting policies changed. Employees were required to manually enter their time using the time reporting code "STTW" for Telework (Situational). According to the AJ, Agency did not provide any evidence to dispute this assertion.
[11] *Initial Decision*, p. 8-13 (July 18, 2023).
[12] Agency submitted that it did not instruct its employees to switch to manual time reporting from situational telework to regular pay. It argues that Employee entered "REG" manually, which was incorrect and a direct violation of the ETR policy.

unsupported by the record, and the decision was based on an erroneous interpretation of OEA's regulations and Agency's policies.[13]

On September 27, 2023, Employee filed a Response to Agency's Petition for Review. He opined that the AJ correctly determined that Agency failed to offer proof of his intent to falsify his time logs. Employee argued that the AJ took judicial notice that all District employees were required to use the time reporting code "STTW" while teleworking during the Covid-19 Public Health Emergency, which represented a change in policy for reporting time prior to the pandemic. Finally, he contended that Agency lacked proof that Employee offered inconsistent statements or concealed evidence during its investigation. Therefore, Employee requested that Agency's Petition for Review be denied.[14]

The OEA Board found that the Initial Decision was not based on substantial evidence. Moreover, it determined that the Initial Decision did not address all material issues of fact in this case. The Board explained that although the AJ requested briefs from both parties, the briefs offered conflicting facts, and the documents submitted created more questions than answers. Thus, rendering it even harder for the Board to rule that the Initial Decision was based on substantial evidence.[15]

The Board also held that the parties' positions regarding time reporting pre-pandemic, during the pandemic, and after the pandemic contradicted each other. As it related to the misrepresentation, falsification, or concealment of material facts in connection with an investigation, the Board held that a review of Agency's investigation offered evidence of Employee being evasive or providing no response to several questions. It further opined that Employee

---

[13] *Agency Petition for Review*, p. 1-13 (August 23, 2023).
[14] *Employee's Response to Agency Petition for Review*, p. 5-20 (September 27, 2023).
[15] *Employee v. Office of the Chief Technology Officer,* OEA Matter No. 1601-0083-22, *Opinion and Order on Petition for Review*, p. 9-11 (November 16, 2023).

seemed to concede that he refused to answer questions during the investigation because he felt that the investigator was "badgering" him.[16] Accordingly, the Board remanded the case to the AJ to conduct an evidentiary hearing to adequately address the material issues of facts in dispute.[17]

On September 23, 2024, the AJ issued an Initial Decision on Remand. She determined that Agency's ETR time entry procedure did not change during or after the pandemic. Accordingly, she held that Employee violated the time entry policy and should have allowed the system to automatically enter eight hours of regular pay instead of manually entering the hours himself, which resulted in the overtime payments. However, she found that there was no evidence that Employee knowingly supplied incorrect information with the intention of defrauding, deceiving, or misleading Agency and that he provided a plausible explanation to negate an intent to deceive or mislead Agency.[18] Moreover, the AJ opined that Employee had a duty to answer questions during the investigation, and she found that Employee did not answer the questions or found his answers to be evasive. However, she ruled that Employee's responses were not intended to defraud or mislead Agency for his own private gain. Accordingly, she reversed Agency's termination action and ordered that Employee be reinstated with backpay, less the $53,391.66 overpayment.[19]

Agency disagreed and filed a Petition for Review on October 28, 2024. It argues that the AJ erroneously interpreted the law applicable to Employee's violation of DCMR § 1607.2(b)(2) by insisting that there be an intent to defraud, deceive, or mislead Agency for a private material gain. As for the misrepresentation, falsification, or concealment charge, Agency opines that

---

[16] *Petition for Appeal*, p. 5 (September 30, 2022).
[17] *Employee v. Office of the Chief Technology Officer,* OEA Matter No. 1601-0083-22, *Opinion and Order on Petition for Review*, p. 11-12 (November 16, 2023).
[18] The AJ found that Agency did not provide testimonial or documentary evidence to show that a manager did not inform Employee to enter his time manually when he returned to work. She also held that one other employee made the same erroneous time submissions.
[19] *Initial Decision on Remand*, p. 11-19 (September 23, 2024).

although the AJ found that Employe had a duty to cooperate with the investigation and failed to do so, she, again, erroneously relied on the intent to defraud, deceive, or mislead for private material gain element. According to Agency, this is higher burden than should not have been imposed. Therefore, it requests that the OEA Board reverse the Initial Decision on Remand.[20]

On December 9, 2024, Employee filed his response to Agency's Petition for Review and argues that because DCMR § 1607.2(b)(2) does not explicitly provide a private material gain requirement, does not mean that it cannot be imputed to the requirements for proving the charge. Thus, according to Employee this is not a basis for reversing the Initial Decision on Remand. He also asserts that he did not have the requisite intent and that there was a lack of rebuttal witnesses who could have contradicted his version of events. Therefore, Employee requests that the Petition for Review be denied.[21]

Cause

Employee was charged with violating DCMR §§ 1607.2(c)(1) – knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s) and 1607.2(b)(2) – misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations. DCMR §§ 1607.2 provides the following:

> The illustrative actions in the following table are not exhaustive and shall only be used as a guide to assist managers in determining the appropriate agency action. Balancing the totality of the relevant factors established in § 1606.2 can justify an action that deviates from the penalties outlined in the table.
>
> (b) False Statements/Records
>
> (2) Misrepresentation, falsification or concealment of material facts or records in connection with an official matter, including investigations

[20] *Agency Petition for Review* (October 28, 2024).
[21] *Employee's Response to Agency's Petition for Review* (December 9, 2024).

(c) Fiscal Irregularities

> (1) Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).

Agency's final notice provides that he was removed in accordance with DCMR § 1607.2(c)(1) which relates to fiscal irregularities for knowingly submitting false time records. However, the AJ's entire analysis in the Initial Decision on Remand is based on DCMR § 1607.2(b) pertaining to false statements and not DCMR § 1607.2(c). Additionally, the OEA case law that the AJ relied on in *John J. Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15 (March 1, 2017), pertained to an employee who was charged with "any knowing or negligent material misrepresentation on other documents given to a government agency: intentional false statement." This charge is different than the fiscal irregularity charge levied against the Employee in this matter.[22] On its face, this Board cannot conclude that the Initial Decision on Remand is based on substantial evidence, in light of the error of the analysis provided.[23]

The decision on remand provided that to establish that Employee knowingly submitted false time records, Agency must prove by preponderance of the evidence that Employee knowingly supplied incorrect information *with the intention of defrauding, deceiving, or misleading the agency* (emphasis added). While this may be an appropriate analysis used in some cases when determining if an Employee falsified statements, it should not have been used by the AJ when analyzing if Employee engaged in fiscal irregularities as provided in subsection (c). In *Kyle*

---

[22] *Initial Decision on Remand*, p. 13-15 (September 23, 2024).

[23] According to OEA Rule 637.4(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

Quamina v. D.C. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0055-17R19, p. 13 (July 9, 2020) and *Eileen Perry v. Department of For-Hire Vehicles*, OEA Matter No. 1601-0040-20, p. 9-11 (October 3, 2021), OEA Administrative Judges determined if employees provided knowing submissions of falsely stated time logs, and neither offered an analysis of an employee's intention of defrauding, deceiving, or misleading the agency. Moreover, in *District of Columbia Department of For-Hire Vehicles v. D.C. Office of Employee Appeals and Eileen Perry*, Case No. 2022-CAB0005771 (D.C. Super. Ct. June 27, 2024), the Superior Court for the District of Columbia did not disturb the AJ's holding as it related to the charge of knowing submissions of falsely stated time logs, which also did not include an analysis of intent to defraud, deceive, or mislead.

The analysis offered by the AJ of DCMR subsections (b) and (c) cannot be interchangeable as the regulations clearly distinguish that the causes of action are separate. This is especially true because the AJ determined that there was evidence that Employee violated Agency's time entry policy when he entered eight (8) hours of "regular" time. However, she found that Employee provided a plausible explanation that negated an inference of intent to deceive or mislead Agency. The AJ's plausible explanation is based on an analysis of the incorrection DCMR subsection (b) related to false statements and not fiscal irregularities outlined in subsection (c), as the cause of action with which Agency charged Employee in charge one.

As it relates to Agency's second charge of DCMR § 1607.2(b)(2), misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations, the AJ held that while Employee was frustrated by the investigator's questions, he had a duty to answer and that some of his answers were evasive. However, she found that Employee's answers were not intended to defraud or mislead Agency for *his own private*

material gain because Employee maintained that he could repay the overpayment in one lump sum and in smaller payments thereafter (emphasis added). In Agency's Petition for Review, it argued that the plain language of DCMR § 1607.2(b)(2) and OEA's previous holdings related to this regulation, do not include an analysis of the private material gain element that the AJ considered here. This Board agrees with Agency's position. OEA Administrative Judges, including the AJ in this matter, have correctly relied on an analysis that did not include the private material gain requirement in previous OEA decisions.[24] As a result, this Board must remand the matter for the AJ to consider the merits of the case while applying the applicable regulations and case law.

[24] *Employee v. University of the District of Columbia*, OEA Matter No. 1601-0006-21 (September 18, 2023); *Employee v. D.C. Public Library,* OEA Matter No. 1601-0055-22 (May 22, 2023); and *Employee v. District Department of Transportation*, OEA Matter No. 1601-0058-20 (November 15, 2021).

ORDER

Accordingly, it is hereby **ORDERED** that this matter is **REMANDED** to the Administrative Judge.

FOR THE BOARD:

_____
Dionna Maria Lewis, Chair

_____
Arrington L. Dixon

_____
Lashon Adams

_____
Jeanne Moorehead

_____
Pia Winston

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.