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

In the Matter of:	)	
	)	OEA Matter No.: 1601-0050-12
KISHA SPENCER,	)	
Employee	)	
	)	Date of Issuance: September 26, 2014
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
TAXICAB COMMISSION,	)	
Agency	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

Gina Walton, Employee Representative  
Sonia L. Weil, Esq., Agency Representative  
Molly Young, Esq, Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Kisha Spencer (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on January 18, 2012, challenging the District of Columbia Taxicab Commission’s (“Agency”) decision to remove her from her position, effective January 13, 2012. Employee was employed as a Public Vehicle Enforcement Inspector.<sup>1</sup> Employee’s removal was based on the following causes: (1) Any on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations, to include: insubordination and two separate and distinct instances of neglect of duty; and (2) Any on-duty or employment related reason for corrective or adverse action that is not arbitrary or capricious; specifically arguing with a co-worker or use of offensive language. Agency filed its Answer on February 23, 2012. This matter was assigned to me on August 9, 2013.

A Status Conference was held on November 8, 2013. Subsequently, a Post Status Conference Order was issued, which required the parties to submit legal briefs addressing the issues in this matter. Both parties submitted their briefs accordingly. Upon consideration of the

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<sup>1</sup> These employees are commonly referred to as Hack Inspectors.

briefs, it was determined that there were material issues of facts and an Evidentiary Hearing was warranted. As such, an Evidentiary Hearing was convened on June 3, 2014, where both parties presented testimonial and documentary evidence. The parties were subsequently ordered to submit written closing arguments. The written closing arguments were submitted accordingly. 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; and
2. If so, whether the penalty of removal was appropriate under the circumstances.

### 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.

### SUMMARY OF TESTIMONY

On June 3, 2014, an Evidentiary Hearing was held before this Office. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their position.

Agency's Case-in-Chief***Shawn Laster ("Laster") Tr. 10-120***

Laster is currently employed by D.C. Fire and EMS as a Human Resources Officer. In January of 2011, Laster was employed with Agency as an Administrative Officer, where she oversaw the operations to include human resource issues, personnel issues, payroll issues, and performance management training. Laster was also the Hack Inspectors' supervisor at the times relevant in this matter.

Laster testified that Hack Inspectors are responsible for enforcing Title 31 of the District of Columbia Municipal Regulations. Pursuant to Title 31, Hack Inspectors issue citations to taxicabs and other vehicles for hire who are not in compliance. Once a citation is issued, Hack Inspectors are then required to defend the citation in a hearing conducted by the District's Department of Motor Vehicles ("DMV").<sup>2</sup> Hearings are generally held Monday through Friday, between 1:00 p.m. and 3:30 p.m. The DMV is responsible for scheduling these hearings. Each Hack Inspector was given a monthly copy of their scheduled hearing dates. A copy of the hearing schedule was also posted in the common area at the Agency, which included the Hack Inspectors' name and the time of the hearing. Each Hack Inspector was required to attend their hearings, even if it was outside of their normal working hours. Any inspector who did not attend the hearing causes the District government to lose revenue. When a Hack Inspector is required to attend a hearing outside of their tour of duty, they are compensated with overtime pay.

Laster testified that the major duties of Hack Inspectors were to assist with the day to day operations of Agency in the areas of license processing, citizen's compliant processing, and hearings as needed.<sup>3</sup> Other significant factors to being a Hack Inspector require the incumbent to be able to work three rotating shifts and be subject to a callback to work and/or work weekends, as needed.

As a consequence of the repeated failures by Hack Inspectors to attend the hearings, Laster sent out two e-mails, on August 11, 2010 and August 25, 2010, respectively, which served as a reminder to the inspectors that they were required to attend hearings, even if it was outside their normal duty hours.<sup>4</sup> Laster's e-mail also indicated that failure to appear would lead to a reprimand and/or termination. Laster stated in her e-mail that hearings could be rescheduled by employees upon request to the DMV. The ultimate decision to reschedule a hearing was left to the DMV. The e-mail sent on August 25, 2010, indicated that Laster was working with the DMV to adjust the hearings to fit within the Hack Inspectors' tour of duty. Laster identified Employee as one of the inspectors who repeatedly failed to attend the hearings.

Laster conducted an audit of the hearings scheduled from February 2011 to June 2011, to determine which inspectors were missing their respective hearings.<sup>5</sup> According to the audit reports, Employee failed to appear forty to forty-five times, which caused the D.C. government

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<sup>2</sup> These hearings are commonly referred to as BTA (Bureau Traffic Adjudication) Hearings.

<sup>3</sup> See Agency's Exhibit 4.

<sup>4</sup> Agency's Tab 5.

<sup>5</sup> See Agency's Exhibit 6 and Joint Exhibit 1.

to lose between \$9,000 and \$10,000. Employee also had hearing attendance issues on previous occasions which resulted in a 15-day suspension. Laster stated that Employee did not provide her any notice that she would not be able to attend the hearings. Laster and Agency's former General Counsel, Dena Reed, met with Employee to ask why she missed so many hearings. Employee stated that she did not attend the hearings because they were outside her tour of duty and she had other obligations. Subsequent to this meeting, Employee continued to miss hearings. After Laster issued the e-mails reminding Hack Inspectors of their obligations to attend hearings, she stated that other Hack Inspectors also continued to miss hearings, but she did not find that they missed an excessive amount of hearings like Employee.

On cross examination, Laster acknowledged that she approved Employee for leave February 16, 2011.<sup>6</sup> Employee was also out on unscheduled leave from February 22-25, 2011; and on scheduled sick leave March 4 and 7, 2011.<sup>7</sup> In the Advance Written Notice of Proposed Removal, Laster indicated that the times were unavailable for the missed hearings on February 11, 2011, and April 6, April 12, April 13, April 26, April 29, 2011. Laster stated that she did not have the times of the hearings when she did the report, but that the eTIMS systems would have provided that information to Employee. Laster further stated that the missed hearing listed in the advanced notice for April 23, 2011, which was a Saturday, was probably an oversight on her part.

Laster further testified regarding her understanding of the procedures to release impounded vehicles. Employee was cited for an incident that occurred on May 19, 2011, for failing to follow the proper procedure for releasing an impounded vehicle. Laster described the procedures for releasing an impounded vehicle as follows: (1) once a vehicle has been impounded, and the tags have been confiscated, Agency would run the operator of the vehicle's name through the OTR's (Office of Tax Revenue) Clean Hands process to ensure that they did not have any other outstanding tickets or owed any money to the government; (2) after the vehicle driver received their clean hands report, Agency had a Legal Examiner who was responsible for releasing the tags in the main office. Tags may be released up until 4:00 p.m.; anything after 4:00 p.m. would be released the next business day; (3) upon release of the tags, Agency personnel would have to sign and stamp a release form. The legal examiner was the only person authorized to sign the release form. The staff assistant was also able to sign the release form in the legal examiner's absence.

On cross-examination, Laster stated that if both the legal examiner and staff assistant were absent, then she would appoint someone to release the tags. Laster stated that she had appointed a Hack Inspector on previous occasions to release vehicles. Laster testified that without being appointed, Hack Inspectors were not authorized to release vehicles. Prior to a SOP (Standard Operating Procedure) being implemented, Laster acknowledged that Employee may have released vehicles before. Laster stated that the SOP regarding who was permitted to release vehicles was issued in the form of an e-mail. Laster did not have a copy of the e-mail regarding the SOP and it was not provided to the hearing officer at the administrative review level.

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<sup>6</sup>See Employee's Exhibit 1.

<sup>7</sup>Employee's Exhibit 3.

Laster stated that, on May 19, 2011, she received a call from Calvin Bears (“Bears”) informing her that he had been contacted by Able Towing Company who stated that they had received a call from Employee instructing them to release a vehicle to an operator and to destroy the release form. After receiving the call from Bears, Laster instructed Bears to check the log book and see if the vehicle’s tags were still there, which they were not. Laster then instructed Bears to slide the log book under her office door. Laster also spoke with the owner of Able Towing who told her that Employee had called and instructed him to release the tags, and that the release form was not signed, and Employee told him to destroy the release form.

Laster also had the opportunity to speak with the owner of the taxicab who told her that he met Employee in the parking lot and stated to Employee that he was there to get his tags released. Employee ended up bringing the cab owner his vehicle tags outside sometime after 4:30 p.m. Employee signed the release form. Laster stated that Employee failed to do all three steps in releasing the vehicle because she failed to properly document the release of the vehicle from the log, did not check for Clean Hands, and she released the documents after normal business hours.

Laster also testified regarding an incident that occurred on July 5, 2011, while she was working at Agency as an Administrative Officer. Laster was having a meeting with Lead Hack Inspector, Mia Bowden, regarding eTIMS (Electronic Ticket Information Management System). While Laster and Bowden were having a conversation, Employee started shouting to Bowden to mind her business. Employee and Bowden began having “words back and forth.”<sup>8</sup> Laster heard Employee call Bowden a “wench” and a “dummy.” Laster intervened once the exchange began to escalate. Laster told the two of them that they can have their differences, but they could not call each other names. Laster submitted a written statement about this incident.<sup>9</sup>

Ultimately, Laster issued an Advanced Notice for Proposed Removal to Employee for two separate instances of neglect of duty, insubordination, and arguing and using offensive language towards a co-worker.

**Kalvin Bears (“Bears”)** (Transcript pp. 123-139)

Bears has been employed with Agency for approximately four and a half years as a Hack Inspector. Bears was a co-worker of Employee for approximately two (2) years. Bears described the incident that occurred on May 19, 2011, involving Employee. Specifically, Bears received a phone call from the owner of Able Towing, who asked him why Employee called and told him to destroy the release form of an impounded vehicle. Bears did not know why Employee made this request. About ten (10) minutes later, Bears received a phone call from Employee but was unavailable to talk at the time. Subsequently, Bears received a text message from Employee while he was in Laster’s office seeking to find out what was going on. Before Bears was able to read the text message, Laster grabbed Bears’ phone and read the text message upon learning that it was a message from Employee. Bears eventually saw the text message,

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<sup>8</sup> Tr. at 39

<sup>9</sup> Agency’s Tab 17

which stated that Employee needed a big favor and asked him to release a vehicle to Thair, the owner of the impounded taxicab.<sup>10</sup>

Bears testified that he did not believe that it was normal protocol to ask the towing company to destroy a release form. While in Laster's office, Bears told Laster that he received a call from Able Towing Company, who was calling to ask about the phone call they received from Employee about destroying a release form and releasing an impounded vehicle. Laster then asked Bears to go retrieve the release book; however, no information was in the release log book about a car being released. Laster then asked Bears to go to Able Towing and get the release paper that was given to them by the cab driver. Once Bears received the release form from Able Towing, he stated that he was only concerned with the time stamp on the form, which was 4:22 p.m., because as far as he was aware, Agency never released a vehicle after 4:00 p.m. Bears further stated that they can "make changes for everything." Bears wrote a statement regarding this incident at the request of Laster.

On cross-examination, Bears was asked if Laster was at the office when he returned, to which he stated "yes." However, in Bears' written statement, he wrote that he called Laster, who then asked him to check to see if the vehicle tags were gone and to see who signed them out. Also in his written statement, Bears wrote that the tags were gone, and that they were not signed out in the release log book. Laster advised Able Towing to keep the receipt and the tags once they were brought in by the cab driver and instructed them not to release the cab.<sup>11</sup> Laster also instructed Bears to put the log book underneath her office door.

Bears stated that there was no written policy or protocol for releasing impounded vehicles and believed that anybody could have released impounded vehicles. Employee taught Bears how to release impounded vehicles.

Bears stated that he did receive an e-mail regarding the procedure to release impounded vehicles, but was unsure if it was before or after the incident concerning Employee. Bears also received an e-mail which identified Renee Hevor and Brenda McKinney as the individuals who were permitted to release impounded vehicles. Bears noted that this e-mail was issued after Employee was terminated. At the time of the incident with Employee, Hack inspectors were allowed to release vehicles.

**Mia Bowden ("Bowden")** (Transcript pp. 141-181)

Bowden has been employed by Agency for eleven (11) years and has been a Lead Hack Inspector since February of 2009.

Based on Bowden's understanding, in 2011, Hack Inspectors were required to attend hearings, even outside of the tour of duty. If a Hack inspectors' hearing was scheduled outside of their tour of duty, and there was no money in the budget to pay Hack Inspectors overtime, then compensatory time had to be agreed upon between the Hack Inspector and his or her

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<sup>10</sup> See Agency's Exhibit 13; Tr. at 127.

<sup>11</sup> See Agency's Exhibit 9.

supervisor. If money was in the budget to pay Hack Inspectors overtime, then the Hack Inspectors could not argue against attending, even if it was outside of their tour of duty. Bowden was told by Laster that there was money in the budget to pay Hack Inspectors overtime.<sup>12</sup>

Bowden testified that during the course of her employ with Agency as a Hack Inspector, there were times when she did not attend hearings. The hearings that Bowden missed occurred prior to 2009. The reason Bowden missed these hearings were because Agency did not have money in the budget to attend hearings outside of her tour of duty and she did not agree to the compensatory time.

Bowden further testified that it was prior to 2011 when they were told they did not have money in the budget to compensate Hack Inspectors for overtime to attend their hearings. Bowden did not attend BTA hearings that were scheduled outside her tour of duty if she was not being paid overtime unless she and her supervisor agreed that compensatory time would be provided.

Bowden also testified regarding an incident that occurred on July 5, 2011, between her and Employee. Specifically, Bowden and Laster were in Laster's office conversing about getting her (Bowden) access to the eTIMS system. While conversing, Employee was in the common area, just outside of Laster's office, making comments. Bowden looked to see who Employee was talking to and Employee started looking at Bowden and began shouting. The two then began shouting back and forth at each other and Employee eventually came into Laster's office. Their exchange was then taken to the common area. Employee called Bowden a "wench" and a "dummy." Ms. Hevor eventually calmed Employee down and walked her out of the office.<sup>13</sup> Bowden believed Employee started the argument and that the incident was disruptive to the office because it was loud, irate, and unnecessary. Bowden was not disciplined for this argument.<sup>14</sup>

Bowden was detailed in the office for about eight or nine months to work on administrative duties. During this detail, Bowden worked at the counter as a Legal Instruments Examiner. Bowden was never formally trained on the process of releasing impounded vehicles; rather, she learned the process through the course of her time with Agency. Bowden testified that she had received a memo regarding the proper procedures for releasing a vehicle, although she could not remember when she received the memo.

On cross-examination, Bowden was questioned about her testimony in a previous proceeding before this Office, which was held on January 30, 2013. At that proceeding, Bowden testified that if a hearing was scheduled outside of her tour of duty, then she had the following options: (1) attend the hearing and receive overtime pay if money was available in the budget; (2) if money was not available in the budget, then she could elect to receive compensatory time, as long as it was agreed upon by herself and her supervisor; or (3) request a schedule change.<sup>15</sup> If money was available to pay overtime pay, then declining to attend her hearing was not an

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<sup>12</sup> Tr. at 160; Agency Exhibit 5.

<sup>13</sup> See Agency Tab 8.

<sup>14</sup> Tr. at 172.

<sup>15</sup> See Employee's Exhibit 5, p. 73-81

option. Compensatory time and changing her schedule had to be mutually agreed upon between herself and supervisor. If money was not in the budget and she did not agree to compensatory time or changing her schedule, then she would not attend the BTA hearings.

**Emad (“Eddie”) Hassan (“Hassan”)** (Transcript pp. 184-195)

Mr. Hassan is the owner of Able Towing Company. Hassan testified regarding the May 19, 2011 incident, involving Employee, who called and asked him to release an impounded car and to destroy the release form. Employee told Hassan that a cab driver was coming to retrieve his impounded cab, but Hassan could not remember if Employee told him that she forgot to time stamp the release form. He testified that, as a result of Employee’s request, he called and asked Bears whether this was proper procedure. Bears responded that was not the proper procedure for releasing an impounded car. Hassan stated that he had never received this kind of request in the past and further stated that he was required by District of Columbia law to keep records of impoundment for three (3) years. Laster asked Hassan to write a statement regarding this incident.<sup>16</sup>

Hassan also testified that the time stamp on the release form was not always correct. The time stamp indicates the time when Agency signed off on the release form, which is then given to the cab owner/driver to go retrieve their car from the tow company.

**Rateb (“Randy”) Thahir (“Thahir”)** (Tr. at 196-203)

Thahir is the owner of Dial Cab Company. He testified about the incident involving the impoundment of his cab. When Thahir’s car was towed, he called the tow company (Able Towing) who told him that he needed to get a release form from Agency in order to get his car released. Thahir went to Agency and provided Employee a copy of his driver’s license, the car registration, insurance card, and a copy of his face card. Once Employee received Thahir’s paper work, she asked him to wait in the Hack Inspector’s lobby area and then returned, giving him the necessary paper work to have his car released from the tow company.

After Thahir received the release form from Employee, he went back to the tow company, but they refused to release his car because there was no time stamp on the release form. Thahir returned to Agency for a second time, where Employee assisted him in getting the time stamp on the release form. Thahir then went back to the tow company and eventually retrieved his car.<sup>17</sup>

**Employee’s Case-in-Chief**

**Carl Martin (“Martin”)** (Tr. 206-226)

Martin is currently employed by Agency as a Lead Hack Inspector. Martin’s employment with Agency began in 2007, when he was hired as a lead inspector. Martin received

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<sup>16</sup> Agency’s Exhibit 12

<sup>17</sup> See Agency’s Exhibit 11.



on-the-job training when he first arrived at Agency and then again in 2009 at the police academy. Some of the on-the-job training included how to release impounded vehicles and tags. Martin was never provided any written documents describing the process for releasing impounded vehicles or tags. Martin did recall receiving a draft copy of standard operating procedures, and he was instructed to read them and then return the draft copy.

Prior to Laster's arrival at Agency, Martin participated in the scheduling of hearings for Hack Inspectors. Once Laster assumed her role at Agency, he no longer scheduled hearings. When Martin was tasked with scheduling hearings, he would go into the eTIMS system and coordinate the hearings to fit within a Hack Inspector's tour of duty. Martin attended training on how to operate the calendars for the inspectors from DMV personnel prior in 2011. Agency's former chairman, Leon Swain, and Laster also attended this training.

One of the issues that started to occur at Agency after Laster assumed the office manager position was that Hack Inspectors started to miss a lot of hearings because the times were being scheduled outside of their tour of duty. Prior to Laster, if a Hack Inspectors' hearing was scheduled outside of his or her tour of duty, it was usually scheduled an hour or so from their initial shift time. For example, if an inspectors' shift was from 3:30 p.m. to midnight, then their hearings would not be scheduled for 7:30 a.m. the following morning, but rather would be in the 3:00 p.m. range.

Martin stated that since the change of management, he has missed scheduled hearings without calling in sick or using leave, and has never been disciplined. He further stated that other inspectors have missed hearings without calling in sick or using leave without being subject to disciplinary actions.

Mr. Martin testified that Employee and Bowden used to be "very close" and described their relationship as "sisterly."<sup>18</sup> However, after Ms. Laster arrived, "the atmosphere changed" and Bowden became "more distant" towards Employee. He testified that he believed Bowden received preferential treatment from Ms. Laster.

Martin testified that he would have attended hearing outside his tour of duty only if he was going to be paid overtime or receiving compensatory time. From January 1, 2011 through June 30, 2011, Martin missed ten (10) hearings.

**Timothy Evans ("Evans")** (Tr. 226-238)

Evans is currently employed by Agency as a Lead Hack Inspector. Evans began working at Agency in September of 2003 and became a Lead Hack Inspector in January of 2010. Employee once served as Evans' Assistant Lead Inspector in 2010.

Prior to this instant matter involving Employee, Evans was able to release vehicles as a Hack Inspector. He testified that there were no written procedures and that the procedures were spread by word of mouth. Evans also testified that he has failed to attend his hearings without

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<sup>18</sup> Tr. at 214.

calling in sick or using leave. He has never been disciplined for not attending his hearings. From January 1, 2011 through June 30, 2011, Evans missed 10 hearings.

Evans further testified that there was not a customer service window in 2011 where vehicles were supposed to be released, but that the vehicles were released in the front of the office in the open common space area. He further stated that vehicles were supposed to be released during normal business hours.

Evans has never called a tow company and asked them to destroy a receipt; however, he acknowledged that there may be legitimate reasons for doing so, such as there being a duplicate form in existence. Another reason to ask that the original release form be destroyed would be if there was a mistake on the original release form. An example of a mistake on a release form would include omitting a time stamp.

Evans acknowledged the e-mail sent from Laster regarding the attendance of BTA hearings, but stated that the new policy/rule did not go into effect because it went against union policy. Evans stated that overtime money was not in Agency's budget at the time the e-mail was sent so it was the inspectors' decision whether to attend the hearings or not.

**Kisha Spencer ("Employee")** (Tr. 239-286)

In 2011, Employee was employed by Agency as an assistant to the Lead Hack Inspector. Employee began working with Agency in April of 2006. Employee was trained by the office staff regarding the procedures to release an impounded vehicle and car tags. Throughout Employee's tenure with Agency she released approximately 50 vehicles. Employee explained the procedures regarding releasing vehicles: (1) when the driver or the car's owner came to Agency to retrieve the impounded vehicle, and if no one was at the front desk, then whichever Agency employee was available at the time would assist the driver or the car's owner in picking up their vehicle.; (2) Once an employee was able to identify why the vehicle was towed, then the driver (or owner) would provide the employee with a current registration card, insurance, and/or face card, depending on what the vehicle was towed for. If the owner was not the one picking up the car, then the individual picking up the car would need a notarized letter stating that the owner authorized them to pick up the vehicle; (3) An employee would then get the tags from the drawer and fill out a release form, make a copy, time stamp the release form and give it to the person who is there to pick up the car.

On May 19, 2011, Employee saw Thahir downstairs as she was entering the building. Employee asked Thahir what he was there for, to which Thahir stated that he was double-parked and was seeking to get his vehicle released. Once Employee confirmed that Thahir had all of the proper documentations, she assisted him in getting the release form so that he could retrieve his car. After Thahir left, he called Employee and stated that she did not stamp the release form. When Thahir told Employee that he was on his way to the impound lot, she stated that she could call and ask Able Tow Company to tear the form up and that she would bring them a corrected form with a time-stamp, or Thahir could come back to the office to retrieve a form with a time-stamp. When Employee called the tow company to inform them of the situation, Hassan, the tow

company owner, said okay. After speaking with the tow company, Employee filled out another release form, stamped it, and waited for Thahir to return and get the new form.

As Employee was waiting for Thahir to return and pick up the new form, Thahir called and said that the security guard would not let him in because the office was closed. Employee then came downstairs and brought Thahir the release form. Later that day, she received another call from Thahir who stated that the tow company would not release his car because of something to do with the tag numbers. Employee called Bears to seek assistance in helping Thahir get his car released because Bears was the inspector who had Thahir's vehicle towed. Employee called, then sent Bears a text message, after he stated that he could not talk, soliciting his help in trying to get Thahir's vehicle released. Bears stated that he was told by Capital Police that Thahir's registration and VIN number did not match. Employee responded that all of the paperwork indicated that everything matched up and that there was no reason why the vehicle should not be released. Bears then stated that he did not know any other information and told Employee to call Laster. Employee called Laster on her mobile and desk phone, to no avail.

Employee reiterated to Bears that all of the numbers pertaining to the vehicle matched up and that all of the paperwork was on top of her locker. When Martin came in the office he saw the paperwork on Employee's desk and then placed it on top of Employee's locker at her request. Employee told Martin that she would take care of the paper work and put it in the log book in the drawer when she returned to the office at the end of her shift.

Employee received a mass text message from Martin later that night, which stated that if any cars were towed then the inspectors would have to put the tags underneath Laster's office door. The tow book and release forms were also underneath Laster's desk in her office. At the end of Employee's shift at midnight, she was unable to write her name in the tow book because it was in Laster's Office.

Employee also testified in regards to the verbal exchange she had with Bowden on July 5, 2011. She recounted a conversation she had with Bears about something that happened between them earlier in the day. Employee was also talking to Renee Hevor about not having a key card and being able to exit the office. Employee stated that she heard Bowden laughing at her, but paid her no attention at the time. After Employee completed her shift for the day, she returned back to the Hack Inspectors' office where she waited until 4:45 p.m. to sign out and leave for the day. As she was signing out, Employee noticed Bowden looking at her and making facial expressions with her eyes and lips. Employee then proceeded into Laster's office where Bowden was, and told Bowden to "mind [her] business."<sup>19</sup> Employee then described the back and forth exchange between herself and Bowden. Laster also chimed in the conversation, although it was not for purposes of defusing the situation. Renee Hevor was able to eventually get Employee to leave the office.

Employee's badge number was 11. Based on Joint Exhibit 1, Employee missed 66 BTA hearing from January 1, 2011 through June 30, 2011. Badge number 18 was either Inspector Benson or Inspector Byrd, and that inspector missed 43 hearings. Badge number 15 missed 55

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<sup>19</sup> Tr. at 257.

hearings. Employee was never given a written description of her job, which states that an “incumbent will be required to appear and/or testify at court in adjudication hearings.”<sup>20</sup> No one to Employee’s knowledge has even been disciplined for failing to attend their scheduled hearings.

On cross-examination, Employee acknowledged that she called Bowden a “wench” and told her that she was not a “dummy” and that she knew better than to act the way she was acting.<sup>21</sup> Employee was previously disciplined for insubordination and neglect of duty, which resulted in a 15 day suspension.

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

### Undisputed Facts

At some point during late 2010 and throughout 2011, Agency started having issues with its Hack Inspectors attending their BTA Hearings. As a result, Laster issued an e-mail reminding the Hack Inspectors of their obligations to attend their hearings, even if it was scheduled outside their tour of duty. Employee was identified as one of the Hack Inspectors who began missing an “excessive” amount of hearings.<sup>22</sup> Based on these specifications, Agency took adverse action against Employee based on the causes of neglect of duty and insubordination.

On May 18, 2011, Ratib “Randy” Thahir went to Agency to get his vehicle tags and a release form so that he could retrieve his impounded cab from Able Towing Company. Thahir encountered Employee who released Thahir’s tag and signed the release form. When Thahir went to Able Towing to retrieve his car, he was unable to do so because of a deficiency with the form. Whether Employee followed the proper procedures for releasing Thahir’s vehicle tags and signing the release form is at dispute. Based on these specifications, Agency took adverse action against Employee based on a neglect of duty charge.

On July 5, 2011, Employee and Bowden got into a heated exchange. This incident occurred in Laster’s office and then continued into the common area of the Hack Inspector’s office. Based on these specifications, Agency took adverse action against Employee for arguing with a co-worker and use of offensive language.

### 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*

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<sup>20</sup> Tr. at 278.

<sup>21</sup> Tr. at 272.

<sup>22</sup> Tr. at 28.

*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. Employee’s termination was based on Section 1603.3(f) and (g): (f) any on-duty or employment related act or omission that interferes with the efficient and integrity of government operations; specifically, insubordination and two separate causes of neglect of duty; and (g) any on-duty or employment related reason for corrective or adverse action that is not arbitrary or capricious; specifically arguing with a co-worker or use of offensive language.

**Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty and insubordination.**

*Neglect of Duty (first cause)*

The District’s personnel regulations provide that there is a neglect of duty in the following instances: (1) failure to follow instructions or observe precautions regarding safety; (2) failure to carry out assigned tasks; or (3) careless or negligent work habits.<sup>23</sup> Agency’s first cause for neglect of duty stems from the BTA Hearings that Employee did not attend from February 2011 through June 2011.<sup>24</sup> The Hearing Officer’s Report and the Advance Written Notice of Proposed Removal state that Employee missed at least forty-four (44) hearings from February 2011 through June 2011, which resulted in approximately \$10,000 in loss revenue for the District. No other Hack Inspector received discipline for failing to attend their BTA hearings.

It is not disputed that Employee missed a great deal of BTA Hearings. The number of hearings Employee actually missed is unclear from the record since some of the dates provided in the Advance Written Notice were days in which Employee was either on scheduled or unscheduled leave.<sup>25</sup> Specifically, Laster acknowledged that she approved Employee for leave on February 16, 2011.<sup>26</sup> Employee was also out on unscheduled leave from February 22-25, 2011; and on scheduled sick leave March 4 and 7, 2011.<sup>27</sup> Furthermore, the April 23, 2011 date in the Advance Written Notice is an error, as it was on a Saturday and Agency does not hold hearings on Saturdays.<sup>28</sup> These dates formed part of the basis for Agency’s adverse action against Employee. Although Employee does not dispute that she missed several of her BTA

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<sup>23</sup> See D.C. Mun. Regs. tit. 16 § 1619.1(6)(c). Table of Appropriate Penalties.

<sup>24</sup> See Agency’s Exhibit 3, Advance Written Notice of Proposed Removal.

<sup>25</sup> See Employee’s Exhibit 1 and Exhibit 3.

<sup>26</sup> See Employee’s Exhibit 1.

<sup>27</sup> Employee’s Exhibit 3.

<sup>28</sup> See Employee’s Exhibit 4.

hearings because they were scheduled outside her tour of duty, she raises a disparate treatment argument based on the testimony adduced at the Evidentiary Hearing.

An employee who raises an issue of disparate treatment bears the burden of making a *prima facie* showing that he or she was treated differently from other similarly-situated employees.<sup>29</sup> If such a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.<sup>30</sup> “In order to prove a disparate treatment, [Employee] must show that a similarly situated employee received a different penalty.”<sup>31</sup> In determining whether a penalty is reasonable it is appropriate to consider whether the agency has meted out similar penalties for similar offenses. *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

Further, in *Jordan v. Metropolitan Police Department*, OEA Matter No. 1601-0285-94, Opinion and Order on Petition for Review (September 29, 1995), this Office’s Board set forth the law regarding a claim of disparate treatment:

[An Agency must] apply practical realism to each [disciplinary] situation to ensure that employees receive fair and equitable treatment where genuinely similar cases are presented. It is not sufficient for an employee to simply show that other employees engaged in misconduct and that the agency was aware of it, the employee must also show that the circumstances surrounding the misconduct are substantially similar to [her] own. Normally, in order to show disparate treatment, the employee must demonstrate that he or she worked in the same organizational unit as the comparison employees and that they were subject to [disparate] discipline by the same supervisor [for the same offense] within the same general time period.

Here, Laster was the supervisor over all of the Hack Inspectors at the times relevant in this matter. Laster admitted that after she issued the e-mails reminding Hack Inspectors of their obligations to attend hearings, other Hack Inspectors besides Employee also continued to miss hearings. However, Laster stated that other Hack Inspectors were not disciplined because they did not miss an “excessive” amount of hearings like Employee.<sup>32</sup> Employee missed 66 BTA hearings, which was the most out of all fourteen (14) Hack Inspectors. The next highest amount of missed hearings was fifty-five (55), and then forty-three (43).

Bowden’s testimony regarding her attendance at BTA hearings at times relevant to this matter was impeached at the Evidentiary Hearing. Based on Bowden’s testimony, it was unclear as to what her stance was in regards to attending BTA hearings. However, based on Bowden’s testimony in a previous matter held before this Office, she made it clear as to when she would

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<sup>29</sup> *See Hutchinson v. D.C. Fire Department*, OEA Matter No. 1601-01190-90, Opinion and Order on Petition for Review (July 22, 1994).

<sup>30</sup> *Id.*

<sup>31</sup> *Social Sec. Admin. v. Mills*, 73 M.S.P.B. 463 (1991).

<sup>32</sup> Tr. at 28; Tr. at 74.

attend her hearings.<sup>33</sup> In her previous testimony, Bowden stated that she would attend hearings outside of her tour of duty only if there was money in the budget to pay her overtime. Additionally, in her previous testimony, Bowden stated that if money was not in the budget to pay her overtime, and she did not agree to compensatory time, then she would not attend her hearings. Bowden was never disciplined for failing to attend her hearings nor was any other Hack Inspector who did not attend their hearings. It is clear that Bowden's failure to attend her hearings was for the same reasons Employee and many other Hack Inspectors did not attend their hearings.

Martin testified that the issue concerning Hack Inspectors not attending their hearings started to arise frequently after Laster assumed the office manager position. This was because the hearing times were being scheduled outside of the Hack Inspectors' tour of duty. Martin further testified that he attended hearings outside his tour of duty, but only if he was being paid overtime or receiving compensatory time.

In Evans' testimony, he acknowledged the e-mail sent from Laster regarding the attendance of BTA hearings, but stated that the new policy/rule did not go into effect because it went against union policy. Evans stated that overtime money was not in Agency's budget at the time Laster sent the e-mails so it was the inspectors' decision whether or not to attend the hearings. Evans acknowledged that he had missed hearings and stated that he was never disciplined for not attending his BTA hearings. Evans missed ten (10) hearings from January 1, 2011 through June 30, 2011.

Joint Exhibit 1 provides a chart with each inspector's badge number along with the number of missed hearings that each inspector failed to attend. The number of missed hearings range from one (1) to sixty-six (66) among the 14 inspectors. Employee had the most missed hearings at sixty-six (66). The next highest number was 55. Each Hack Inspector has an obligation to attend their hearings and defend the citations that they issue. Half of the Hack Inspectors failed to attend 20 or more hearings and Employee is the only inspector to be disciplined for her failure to attend her hearings. The only reason Agency offers for imposing discipline against Employee for her failing to attend hearings, and no other inspectors, was because Employee's failure to attend was deemed "excessive."

While Joint Exhibit 1 provides the number of hearings Employee missed, I am not persuaded that this list is accurate. Laster admitted that many of the hearings Employee was cited for missing was when she was on leave.<sup>34</sup> In fact, Laster sent Employee an e-mail confirming that she was granting her leave for February 16, 2011, yet Laster still used this date against Employee in the Advance Written Notice of Proposed Removal. Another date listed on the Advance Notice was on April 23, 2011, a Saturday, a day when Agency does not hold hearings.<sup>35</sup> Employee cannot be held responsible for failing to attend hearings when she was on leave. Agency's argument that Employee's failure to attend her hearings was "excessive" cannot stand. The number of missed hearings deemed "excessive" by Laster is arbitrary. Although Joint Exhibit 1 provides that Employee missed the most hearings out of all the Hack Inspectors,

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<sup>33</sup> See Employee's Exhibit 5; *Spencer v. DCTC*, OEA Matter No. 1601-0033-11, Tr. at 73-81. (January 30, 2013).

<sup>34</sup> See Employee's Exhibits 1 and Exhibit 3.

<sup>35</sup> Employee's Exhibit 4.

the inaccuracy of the Exhibit discredits the credibility of the report. As testified to by several witnesses and demonstrated in Joint Exhibit 1, several other Hack Inspectors missed hearings and were not subjected to discipline. All of the inspectors fall under Laster's supervision. As such, I find that Employee was subjected to disparate treatment and the penalty imposed against Employee for the first charge of neglect of duty must be reversed.

### ***Insubordination***

Insubordination includes an employee's refusal to comply with direct orders, accept an assignment or detail; or refusal to carry out assigned duties and responsibilities.<sup>36</sup> Further, insubordination is defined as a willful and intentional refusal to obey an authorized order of a superior officer which the officer is entitled to have obeyed.<sup>37</sup> Agency's removal of Employee was also based on the cause of insubordination. Specifically, Agency asserts that Employee was insubordinate by repeatedly declining to attend BTA hearings after e-mails were issued advising Hack Inspectors that they were required to attend, even if the hearings were outside of their tour of duty. Further, in a June 14, 2011 meeting with Laster and then-interim Chairperson, Dena Reed, Employee indicated that pursuant to the advice of her union, she did not have to attend hearings scheduled outside of her tour of duty. Ms. Reed stated that there needed to be clarification from the Union, but she did not believe the union intended to convey that Employee did not need to attend hearings scheduled outside of her tour of duty.<sup>38</sup>

Because there was an issue with Hack Inspectors attending BTA Hearings outside of their tour of duty, Laster issued an e-mail on August 11, 2010, and August 25, 2010.<sup>39</sup> These e-mails reminded the Hack Inspectors of their obligation to attend their hearings, even outside of their tour of duty, and noted that failure to attend could lead to a reprimand and/or termination. The August 25, 2011 e-mail stated that Laster was working with the DMV to get the inspectors' hearings scheduled within their tour of duty.

I am not persuaded that Employee was insubordinate. Agency cited Employee with being insubordinate because she "disregarded repeated admonishments from her superiors" regarding her attendance at her BTA hearings.<sup>40</sup> Presumably, those admonishments include the e-mails issued by Laster and a meeting that took place on June 14, 2011, with Employee, Laster, and Dena Reed, then-interim Chairperson of Agency. Based on the summation of that meeting, as described in the Advance Written Notice of Proposed Removal, Reed stated that the parties needed clarification regarding the attendance of hearings scheduled outside of an inspectors' tour of duty.<sup>41</sup> I do not find this to be a direct order, but rather a qualifying statement which indicated that issues needed to be clarified before making a final determination. I also do not find that the e-mails issued by Laster were direct orders in which Laster, as the supervisor, was entitled to have obeyed. It is clear that Dena Reed's statement in the June 14, 2011 meeting leaves open the

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<sup>36</sup> See D.C. Mun. Regs. tit. 16 § 1619.1(6)(d). Table of Appropriate Penalties.

<sup>37</sup> *Walker v. Dep't of Army*, 102 M.S.P.B. 474, 477, 2006 MSPB 207 (2006) (citing, *Phillips v. General Services Administration*, 878 F.2d 370, 373 (Fed. Cir. 1989)).

<sup>38</sup> See Agency's Exhibit 3, Advance Written Notice of Proposed Removal at p. 4.

<sup>39</sup> Agency's Exhibit 5

<sup>40</sup> Agency's Brief at p.12 (December 6, 2013).

<sup>41</sup> See Agency's Exhibit 3, p. 4.



possibility that inspectors may not have been required to attend hearings outside of their tour of duty if money was not available in the budget to pay the Hack Inspectors overtime. The issue of whether Hack Inspectors were required to attend hearings outside their tour of duty if there was no money available to pay overtime is an issue outside the purview of the undersigned. This was made apparent by Laster's e-mails and Dena Reed's comments in the June 24, 2011 meeting. Thus, I find that Agency has not met its burden of proof that Employee was insubordinate.

Even if the e-mails from Laster and the meeting between Employee, Laster, and Reed were deemed direct orders, Employee's disparate treatment argument still applies. No other Hack Inspector was subjected to discipline for failing to adhere to the e-mails issued by Laster. Accordingly, Agency's decision to take adverse action against Employee for insubordination must be reversed.

### *Neglect of Duty (second cause)*

Agency's second cause for neglect of duty stems from Agency's assertion that Employee failed to follow Agency's proper procedures/protocol for releasing an impounded vehicle. Specifically, Agency asserts that Employee signed a release form and removed a confiscated vehicle tag from Agency's office without proper documentation.

Laster, the supervisor over all of the Hack Inspectors, described the procedures for releasing an impounded vehicle: (1) when a vehicle is impounded, and the tags have been confiscated, Agency runs the operator of the vehicle's name through the Office of Tax and Revenue's Clean Hands process to ensure that they do not have any other outstanding tickets or owed any money to the government; (2) after the vehicle driver received their clean hands report, Agency had a legal examiner who was responsible for releasing the tags in the main office. Tags may be released up until 4:00 p.m.; anything after 4:00 p.m. would be released the next business day; (3) upon release of the tags, Agency personnel would have to sign and stamp a release form. The legal examiner was the only person authorized to sign the release form. The staff assistant was also able to sign the release form in the legal examiner's absence. Laster stated that the SOP regarding who was permitted to release vehicles was issued in the form of an e-mail; however, Laster was unable to provide a copy of the e-mail and a copy of the SOP was not introduced as evidence.

Despite Laster's testimony that the Legal Examiner, or the staff assistance in the Legal Examiner's absence, was the only person authorized to sign the release form, there was ample testimony that Hack Inspectors routinely signed release forms. On cross-examination, Laster admitted that she had appointed a Hack Inspector to sign release forms in the Legal Examiner's and Staff Assistance's absence. Laster further acknowledged that Employee had likely signed a release form, without consequence on prior occasions.

Bears, Martin, Evans, and Employee all testified that there was no written policy or protocol for releasing impounded vehicles. Bears testified that he believed that anybody could have released impounded vehicles and stated that Employee taught him the procedure on how to release impounded vehicles. Bears further stated that at the time relevant to this matter, Hack Inspectors were allowed to release vehicles. While Bears testified that he did receive an e-mail

regarding who was permitted to release vehicles, he noted that this e-mail was sent after Employee was terminated.

While most of the events surrounding the May 19, 2011 incident are undisputed, the issue arises from whether Employee violated Agency protocol/procedures in releasing the impounded vehicle. Employee, Laster, Bears, Hassan, and Thahir all provided testimony regarding the incident. The owner of Able Towing, Hassaan, called Bears and asked why Employee called and told him to destroy the release form of an impounded vehicle, to which Bears stated he did not know why Employee made the request. Employee stated that she called Able Towing and asked them to disregard the release form because she inadvertently omitted the time-stamp on the form. This assertion is supported by Thahir's testimony that Able Towing would not release his vehicle because the release form did not include a time-stamp. Hassan, the owner of Able Towing, did not dispute that Employee told him that she forgot to time-stamp the form, but rather he was unsure if she told him that. I found Thahir and Employee's testimony to be credible regarding the omission of the time-stamp. I do not find that Employee's omission of the time-stamp on the release form interfered with the efficiency and integrity of government operations.

Based on the testimony provided and the lack of documentary evidence regarding the procedures and protocol for releasing an impounded vehicle, I do not find that Employee neglected her duty when she signed the release form and provided Thahir his vehicle tags so that he could retrieve his car from the impoundment lot. The testimony supports that Hack Inspectors routinely released vehicles and signed released forms. While the release form indicated that it was time-stamped at 4:22 p.m., beyond the 4:00 p.m. time Laster stated was the cut off for releasing car, I find this to be *de minimis* considering that Employee was correcting the original release form. I do not find that Employee deviated from the procedures testified to regarding the release of a vehicle. As such, I do not find that Agency had cause to take adverse action against Employee based on neglect of duty regarding these specifications.

**Any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious; specifically, arguing with a co-worker and use of offensive language.**

I find that Agency had cause to take adverse action against Employee for arguing with a co-worker and her use of offensive language. This charge is a "catchall" phrase which includes activities for which an investigation can sustain is not *de minimis*. Here, on July 5, 2011, Employee and Bowden had "words back and forth."<sup>42</sup> Employee admitted in her testimony that she called Bowden a "wench." I find the use of the word "wench" in the exchange between Bowden and Employee to be offensive. Although the evidence demonstrates that both employees engaged in this back and forth, there was no testimony that Bowden used offensive language. As such, I find that Agency had cause to take adverse action against Employee for arguing and her use of offensive language towards Bowden.

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<sup>42</sup> Tr. at 39

### **Appropriateness of penalty**

As discussed above, the two charges of Neglect of Duty and the Insubordination charge cannot be upheld, thus I will not address the appropriateness of penalty with regard for those charges. However, I do find that Agency has met its burden as to the charge of “use of offensive language.”

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. In the instant case, I find that Agency has not met its burden of proof for the two charges of neglect of duty and the insubordination charge. However, I do find that Agency has met its burden as to the charge of “[a]ny other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious; specifically, arguing with a co-worker and use of offensive language.” Thus, Agency can only rely on this charge in disciplining Employee.

DCMR § 1619.1(7) (Table of Appropriate Penalties) provides the range of penalties for the charge of any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious. The penalty for the first offense for this cause ranges from a reprimand up to a fifteen (15) day suspension. The penalty for the second offense of this cause ranges for a twenty (20) day to thirty (30) day suspension. Based on the record, this is Employee’s second offense for any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious.<sup>43</sup>

In *Dunn v. DYRS*<sup>44</sup>, the OEA Board held that this Office has the authority to modify an agency’s penalty when a decision is made to dismiss some causes of action while sustaining others. Here, four separate charges were lodged against Employee which formed the basis of her removal. Only one charge was substantiated based on the testimonial and documentary evidence presented in the record. The charge that was substantiated, any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious, was Employee’s second offense for this charge. As such, Agency abused its discretion in removing Employee from her position. The more appropriate penalty for this charge is a thirty (30) day suspension.

### **Prior case involving Employee**

It is noted that Employee was suspended for 15 days in a prior matter for neglect of duty and insubordination involving similar specifications.<sup>45</sup> Employee’s 15-day suspension was ultimately upheld in that case. The instant case is distinguished from the previous matter because disparate treatment was not raised in the previous case.

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<sup>43</sup> See *Spencer v. DCTC*, Initial Decision, OEA Matter No. 1601-0033-11 (August 6, 2013).

<sup>44</sup> See *Dunn v. DYRS*, Matter No. 1601-0047-10, Opinion and Order (April 15, 2014) (citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313) (1981).

<sup>45</sup> *Spencer v. DCTC*, Initial Decision, OEA Matter No. 1601-0033-11 (August 6, 2013).

Here, Agency's adverse action against Employee was for neglect of duty and insubordination; specifically for failing to attend her hearings. Neither cause can be upheld because of the disparate treatment analysis discussed above. In the previous matter, Laster explained that the prior disciplinary action was not taken against Employee because she did not attend her hearing, rather, it was "Employee's blatant refusal to attend a scheduled hearing that she originally acknowledged."<sup>46</sup> In the prior matter, Laster also admitted that other Hack Inspectors failed to attend hearings without being subjected to disciplinary actions.<sup>47</sup> Previously, Laster also stated that no other Hack Inspector had ever been given a "direct order...to attend a particular hearing."<sup>48</sup> The disparate treatment argument was not addressed in that case because Laster stated that it was Employee's refusal to comply with a direct order to attend a particular hearing. Here, there was no particular hearing Employee was ordered to attend, but rather it was over a period of time that included missed hearings by all of the Hack Inspectors.

### **ORDER**

Accordingly, it is hereby **ORDERED** that:

1. Agency's termination of Employee is **REVERSED**; and
2. Agency shall reinstate Employee and reimburse her all back-pay and benefits lost as a result of her removal; and
3. Employee is suspended for thirty (30) days for her second offense for use of abusive or offensive language; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge

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<sup>46</sup> *Spencer v. DCTC*, Initial Decision, OEA Matter No. 1601-0033-11, at p. 4(August 6, 2013).

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*