

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

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

In the Matter of:	)	
	)	
EMPLOYEE <sup>1</sup>	)	
	)	
v.	)	OEA Matter No.: 1601-0024-22
	)	
	)	Date of Issuance: January 19, 2023
DISTRICT OF COLUMBIA	)	
PUBLIC SCHOOLS,	)	
Agency	)	
	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Employee previously worked as a teacher for D.C. Public Schools (“Agency” or “DCPS”). In May of 2021, as the result of a settlement agreement with Agency, Employee was notified that he would be reinstated and assigned to Anacostia High School at the start of the 2021-2022 school year. On September 7, 2021, Agency issued a Notice of Pending Investigation alleging that Employee improperly maintained dual employment as a teacher with DCPS and Prince George’s County, Maryland Public Schools (“PGCPS”); worked overlapping hours; and received dual compensation. Specifically, Employee was charged with violation of D.C. Municipal Regulation (“DCMR”), Title 5, Sections 1401.2(b) and 1401.2(i) for grave misconduct and dishonesty. On

---

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

October 15, 2021, Agency issued a Final Notice of Termination, sustaining the charges against Employee. The effective date of his termination was November 1, 2021.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on November 29, 2021. He argued that Agency erred in concluding that he was an employee of DCPS at the time of his termination. Employee asserted that he never signed an offer letter; reported to work at Anacostia High School; or received compensation for employment from Agency. As a result, he requested damages for wrongful termination, defamation of character, and an opportunity to fulfill the terms of his previous settlement agreement since he alleged that Agency did not adhere to the terms.<sup>2</sup>

Agency filed its answer on January 12, 2022. It stated that the settlement agreement with Employee stipulated that he would be reinstated as a teacher for a twelve-month period. Agency noted that Employee admitted to attending virtual professional development sessions for DCPS and communicated with his supervisors, the Director of Labor Management and Employee Relations, and the DCPS administrative team from August 20, 2021, until September 10, 2021. According to Agency, Employee was terminated after it confirmed that he had been employed as a mentor teacher with PGCPs. Since Employee was simultaneously and improperly receiving compensation from two school districts, Agency reasoned that his actions amounted to grave misconduct and dishonesty, which warranted termination. Alternatively, Agency suggested that if Employee was not in fact an employee of DCPS during the relevant time, OEA lacked jurisdiction over his appeal.<sup>3</sup>

An OEA Administrative Judge (“AJ”) was assigned to the matter in January of 2022. During a March 9, 2022, prehearing conference, the AJ concluded that jurisdiction was not

---

<sup>2</sup> *Petition for Appeal* (November 29, 2021).

<sup>3</sup> *Agency Answer to Petition for Appeal* (January 12, 2022).

established and ordered the parties to submit briefs addressing the issue. On April 28, 2022, the AJ issued an Order on Jurisdiction. Based on the parties' submissions, she held that OEA retained jurisdiction over Employee's appeal because he was employed by DCPS at the relevant time. In support thereof, the AJ highlighted an email communication from the Director of the Office of Pay and Retirement Services ("OPRS"), Temony McNeil, which reflected that there were four payments remitted to Employee between August and November of 2021 for time worked, bereavement leave, sick leave, and summer pay credit. The AJ further noted that Employee made leave requests via an official DCPS email address. Therefore, she concluded that this Office was permitted to adjudicate Employee's appeal because he was an employee of Agency at the time it initiated the termination action.<sup>4</sup>

After jurisdiction was established, the AJ ordered the parties to submit written briefs to address whether Agency had cause to terminate Employee. In its brief, Agency argued that Employee's termination was proper because his conduct violated Title 5, Sections 1401.2(b) and 1401.2(i) of the DCMR. It reiterated that Employee improperly worked for two, separate government employers while receiving compensation for overlapping hours. Agency acknowledged that Employee was reinstated during the COVID-19 Public Health Emergency ("PHE"), which required virtual teaching in many cases but reasoned that he began earning a salary effective August 17, 2021. According to Agency, Employee submitted several leave requests to DCPS for bereavement and COVID-19-related reasons. Because Employee maintained dual employment with DCPS and PGCPS, Agency reasoned that it established cause to terminate Employee because his conduct constituted fraud and manipulation of taxpayer dollars, which was an affront to public policy. Consequently, it opined that Employee's termination was proper.<sup>5</sup>

---

<sup>4</sup> *Order on Jurisdiction* (April 28, 2022).

<sup>5</sup> *Agency's Brief* (July 1, 2022).

In his brief, Employee reiterated that he was not an employee of Agency because he never received payment from DCPS; never signed an offer letter; never reported to work; and never performed any job function during the time Agency alleged that he was employed by DCPS. Additionally, Employee argued that Agency's actions over the course of the appeal process resulted in personal and professional harm against him because the charges were false in nature. To support his position, Employee cited to a conditional offer letter which stated that he was not permitted to report to work at his DCPS location until he received and accepted an official offer letter. Employee further claimed that counsel for Agency was sharing false information about him. Therefore, Employee believed that Agency's adverse action was unwarranted.<sup>6</sup>

The AJ issued an Initial Decision on August 23, 2022. She reiterated her previous rationale for finding that Employee was officially employed by DCPS between August of 2021 and September of 2021. The AJ explained that D.C. Code §1603.01(7) defines an employee as "...an individual who performs a function of the District government and who receives compensation for the performance of such services." The AJ disagreed with Employee's argument that he was not an employee of DCPS at the time of his termination, noting that by his own admission, Agency issued him two pay checks on September 10, 2021, and September 24, 2021. Additionally, she cited to a July 13, 2021, assignment letter which was signed by Employee. The letter stated that Employee was being assigned to Anacostia High School as of July 19, 2021, and that the twelve-month assignment would expire on July 15, 2022.<sup>7</sup> Further, in establishing employment with Agency, the AJ relied on several written communications between Employee and OPRS related to the wages that were reported on his W2 for the 2021 tax year.<sup>8</sup>

---

<sup>6</sup> *Employee Brief* (August 2, 2022).

<sup>7</sup> *Agency's Brief at Exhibit 3* (July 1, 2022).

<sup>8</sup> *Initial Decision* (August 23, 2022).

Regarding the substantive charges of grave misconduct and dishonesty, the AJ highlighted affidavits from representatives at PGCPS to establish that Employee received compensation from two school districts in September of 2021. According to the AJ, Employee was serving in a full-time position, with a Monday through Friday work schedule at PGCPS. Further, the record revealed emails which included copies of Employee's attendance records at DCPS during the 2021-2022 school year; emails with DCPS personnel; and copies of Employee's leave requests. After reviewing the parties' submissions, the AJ concluded that Employee was simultaneously employed by both DCPS and PGCPS, in violation of DCMR Section 1401.2(b) and DCMR Section 1402(i). Therefore, she held that Agency's adverse action was supported by cause.<sup>9</sup>

As for the penalty of removal, the AJ relied on the holding in *Stokes v. District of Columbia*, 502 A.2d. 1006 (D.C. 1985), wherein the Court of Appeals held that OEA is tasked with determining whether the penalty was in the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of relevant factors; and whether there is a clear error of judgment by agency. In her analysis, the AJ acknowledged that Agency considered the relevant *Douglas* factors<sup>10</sup> as well as three, similar previous disciplinary actions.

---

<sup>9</sup> *Id.*

<sup>10</sup> *Douglas v. Veterans Administration*, 5 M.S.P.R. 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 in the future by the employee or others.

After reviewing the record, she concluded that Agency properly exercised its managerial discretion in selecting the appropriate penalty. Therefore, Agency's termination action was upheld.<sup>11</sup>

Employee disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on September 26, 2022. He argues that the penalty of termination was inappropriate and submits that he has identified new and material supporting case law in support his petition. Employee maintains that he never signed an official employment contract with Agency and asserts that he never performed paid functions for DCPS. According to Employee, Agency never compensated by him for working as a teacher. Additionally, Employee opines that Agency's initiation of the termination action was a harmful and damaging experience. Therefore, he requests that this Board grant his Petition for Review.<sup>12</sup>

Employee subsequently filed an Addendum to Petition for Review on October 20, 2022. In his filing, Employee highlights the holding in *Employee v. D.C. Public Schools*, OEA Matter No. J-0010-12 (March 5, 2012), to support his argument that OEA does not retain jurisdiction over his appeal. He reiterates his previous contention that he was never employed by Agency; therefore, this Office erred in concluding that it was permitted to adjudicate the instant appeal. As such, he again requests that his Petition for Review be granted.<sup>13</sup>

### Discussion

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides: The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

---

<sup>11</sup> *Initial Decision* at 8.

<sup>12</sup> *Petition for Review* (September 26, 2022).

<sup>13</sup> *Addendum to Petition for Review* (October 20, 2022).

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Additionally, the Initial Decision must be based on substantial evidence, which is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. Under OEA Rule 628.1, 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.

In its October 15, 2021, Notice of Termination, Agency notified Employee of its final decision to terminate him based on violation of 5-E DCMR Section 1401.2(i) (dishonesty) and 5-E DCMR 1401.2(b) (grave misconduct). Specifically, Agency alleged that an investigation revealed that Employee maintained simultaneous employment with DCPS and PGCPS while receiving compensation from both school systems. Agency also claimed that although Employee stated to a DCPS investigator that he was not employed by DCPS, the record reflects that Employee repeatedly requested leave from DCPS between August 20, 2021, and September 10, 2021, and initiated communications with the Labor Management & Employee Relations’ staff regarding leave requests.

Employee counters Agency’s assertions by claiming that he was not an employee of DCPS because he never performed functions for Anacostia High School; never signed an offer letter; and

neither reported to work nor received compensation from DCPS. In support of his argument, Employee cites to a D.C. Ethics and Government Accountability Board (“BEGA”) Notice of Violation, wherein an employee was accused, amongst other ethical violations, of engaging in outside employment that “conflicted with the respondent’s official government duties.” However, this Board notes that a Notice of Violation from BEGA does not represent a binding legal decision or authority which is compulsory over OEA; therefore, Employee’s reference is neither persuasive nor applicable. Under D.C. Code §1603.01, an employee is defined as “an individual who performs a function of the District government and who receives compensation for the performance of such services.” This Board has thoroughly reviewed the record and finds that there is substantial evidence to support a finding that Employee was employed by DCPS at the time of his termination.

On May 25, 2021, Agency issued Employee a letter entitled Reinstatement of Employment at DCPS.<sup>14</sup> The letter provided that Employee would be reinstated as a result of a settlement agreement for the 2020-2021 school year as a full-time teacher. Further, the notice stated that the first date of his employment was “contingent upon your acceptance of this position and completion of pre-employment clearances.” On July 13, 2021, Agency issued a second letter which served as notification that Employee was assigned to Anacostia High School effective July 19, 2021. The bottom of the document reflects an acknowledgement of receipt from Employee, whose name was printed, signed by him, and dated July 15, 2021.<sup>15</sup> Moreover, Agency produced a series of emails between Employee, DCPS staff member, Patricia Williams-Ross, and Anacostia principal, William Haith. The August 20, 2021, emails detail Employee’s request to take leave from DCPS to attend a funeral in Philadelphia.<sup>16</sup> The record further includes pay stubs issued to Employee on

---

<sup>14</sup> *Agency Answer* at Exhibit 3.

<sup>15</sup> *Agency’s Brief* at Exhibit 3.

<sup>16</sup> *Id.* at Exhibit 5.



September 10, 2021, and September 24, 2021; copies of Employee's attendance records for the 2021-2022 school year; and proof that Employee attended virtual meetings and trainings with DCPS.<sup>17</sup> Accordingly, we find that the documentary evidence is overwhelmingly sufficient to counter Employee's argument that he was not an employee of DCPS during the relevant time period.

As it relates to the verification of simultaneous employment at PGCPs, both Agency and the AJ relied on affidavits from representatives at PGCPs which confirmed Employee's status at the time during which he was actively employed by DCPS. Of note, a June 30, 2022, affidavit from Instructional Supervisor with the Office of Professional Learning and Leadership, Eric Stephens ("Stephens"), states that Employee worked as a mentor teacher with the Office of Professional Learning and Leadership. Stephens, who was Employee's supervisor at that time, also verified that Employee was serving in a "full-time...position with a Monday-Friday work schedule with core work hours of 8:30 a.m. through 4:00 p.m." Stephens also confirmed that Employee was actively employed with PGCPs on September 10, 2021, and he had been employed since July 26, 2018.<sup>18</sup> As such, this Board concludes that Employee held active teaching positions with DCPS and PGCPs during the 2021-2022 school year.

Agency has the primary responsibility for managing its employees. This responsibility includes the imposition of appropriate discipline.<sup>19</sup> OEA limits its review of the penalty to determining if "managerial discretion has been legitimately invoked and properly exercised."<sup>20</sup> This Office will not substitute its judgment of the penalty imposed by Agency if it comes "within the range allowed

---

<sup>17</sup> *Id.* at Exhibit 8.

<sup>18</sup> *Id.*

<sup>19</sup> See, e.g., *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994).

<sup>20</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

by law, regulation, or guidelines and is clearly not an error of judgment.”<sup>21</sup> Agency contends that Employee’s conduct was sufficiently egregious to warrant removal. We agree. Employee’s actions were not only dishonest and egregious but also affected the efficiency of government operations and erodes the trust of taxpayers and the public, overall. Consequently, the AJ’s finding that Agency met its burden of proof in establishing that Employee violated 5-E DCMR Section 1401.2(i) and 5-E DCMR 1401.2 is supported by the record. Further, her conclusion that termination was warranted under the circumstances is based on substantial evidence. Lastly, Employee’s argument raised in his Addendum Petition for Review regarding jurisdiction attempts to akin the facts in this case to those of *Employee v. D.C. Public Schools*, OEA Matter No. J-0010-12 (March 5, 2012). As previously stated, the AJ issued an Order on Jurisdiction finding that OEA retains the ability to adjudicate the applicable substantive arguments. The AJ’s rulings are based on substantial evidence; therefore, Employee presents no persuasive legal authority for reversing her order. For these reasons, Employee’s Petition for Review must be denied.

---

<sup>21</sup> *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915 (1985).

**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

**FOR THE BOARD:**

---

Clarence Labor, Jr., Chair

---

Jelani Freeman

---

Peter Rosenstein

---

Dionna Maria Lewis

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.