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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of:	)	
	)	
NIKEITH GOINS and	)	
SHAWNEE NOWLIN-GOINS,	)	
Employees	)	
	)	OEA Matter Nos.: 1601-0083-20
v.	)	1601-0084-20
	)	
	)	Date of Issuance: April 22, 2021
METROPOLITAN	)	
POLICE DEPARTMENT,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Nekeith Goins and Shawnee Nowlin-Goins (“NG” and “SNG” respectively, or “Employees”) worked as police officers with the Metropolitan Police Department (“Agency”). Employees, who were spouses during the relevant time, were legal residents of Maryland. In March of 2017, the D.C. Office of the State Superintendent of Education (“OSSE”) received an anonymous tip that two of Employees’ children were attending a District school, tuition-free, as Maryland residents. As a result, Agency issued NG and SNG a Proposed Notice of Termination on October 1, 2018. The notices alleged that Employees engaged in various acts of misconduct from 2010 through 2017. Specifically, Employees were charged with conviction of a crime

whether or not a court record reflects a conviction (fraud) and prejudicial conduct (conspiracy).<sup>1</sup> The charges detailed allegations that Employees committed fraud by unlawfully accepting educational services for their children, in violation of D.C. Code § 22-3221(a). Agency also accused NG of purposefully falsifying student enrollment and verification forms which affirmed that his children were residents of the District, when they were not. The notices also alleged that Employees conspired with SNG's mother, Glendora Harris ("Harris"), and a family cousin, Deshawn Bell ("Bell"), to fraudulently register their children at D.C. Preparatory Public Charter School ("D.C. Preparatory"). An Agency Adverse Action Panel ("Panel") held an administrative hearing to review the charges against the officers on May 1<sup>st</sup> and May 7<sup>th</sup> of 2019. The Panel concluded that Employees were guilty of fraud and prejudicial conduct. Consequently, it recommended that they be terminated. Employees filed appeals with the Metropolitan Police Chief, which were subsequently denied. The effective date of Employees' terminations was July 5, 2019.

Employees then filed separate appeals with the Office of Employee Appeals ("OEA").<sup>2</sup> In his appeal, NG contended that he was unfairly terminated because other officers were only suspended for committing the same offense. He also believed that Agency violated D.C. Code § 5-1031, commonly referred to as the ("90-day rule"), in issuing its notice of proposed removal.<sup>3</sup> In her appeal, SNG argued that her termination was not taken for cause and that Agency issued

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<sup>1</sup> Charge No. 1 against NG contained three specifications: fraud; making false statements; and false swearing under oath. The Panel concluded that he was not guilty of false swearing under oath. Charge No. 2 against NG contained one specification of prejudicial conduct (collusion). Charge No. 1 against SNG contained two specifications: fraud and false swearing under oath. The Panel held that SNG was not guilty of false swearing under oath. Charge No. 2 contained one specification of prejudicial conduct (collusion)..

<sup>2</sup> This matter was consolidated after the parties submitted their briefs to the OEA Administrative Judge because the issues addressed in both matters were nearly identical with the exception of the specifications of charges for each employee.

<sup>3</sup> *Petition for Appeal* (Nikeith Goins) (August 26, 2019).

its Notice of Proposed Termination in an untimely manner.<sup>4</sup> Agency filed its responses to each appeal on September 17, 2019. It denied each allegation and requested that an evidentiary hearing be held.<sup>5</sup>

An OEA Administrative Judge (“AJ”) was assigned to the matter in January of 2020. On March 17, 2020, the AJ convened a telephonic prehearing conference. During the conference, he determined that the Collective Bargaining Agreement (“CBA”) between the Fraternal Order of Police-Metropolitan Police Department Labor Committee (“Union”) and Agency, as well as the holding in *Pinkard v Metropolitan Police Department*, 801 A.2d 86 (D.C. 2006), precluded a *de novo* hearing.<sup>6</sup> Therefore, the parties were ordered to submit written briefs addressing whether Agency’s termination actions were supported by substantial evidence; whether Agency committed a harmful procedural error; and whether the termination actions were taken in accordance with all applicable laws, rules, and regulations.<sup>7</sup>

In its briefs, Agency argued that the charges against Employees were based on substantial evidence. As it related to NG, Agency contended that he committed fraud in the first degree by knowingly accepting educational services for his children that they were not entitled to. Agency explained that the Panel made the appropriate credibility determinations and considered relevant documentary evidence from every year in which the children were enrolled in the school,

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<sup>4</sup> *Petition for Appeal* (Shawnee Nowlin-Goins) (August 28, 2019).

<sup>5</sup> *Agency Answer to Petition for Appeal for Nekeith Goins* (August 28, 2020) and *Agency Answer to Petition for Appeal for Shawnee Goins* (August 26, 2020)

<sup>6</sup> Under the holding in *Pinkard*, this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met: the appellant is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department; the employee has been subjected to an adverse action; the employee is a member of a bargaining unit covered by a collective bargaining agreement; the collective bargaining agreement contains language essentially the same as that found in *Pinkard*; and at the agency level, the employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

<sup>7</sup> *Post-Prehearing Conference Order* (March 17, 2020).

ultimately finding that there were multiple residency verification and enrollment forms that were intentionally prepared to circumvent the registration process at D.C. Preparatory. It also opined that NG was guilty of making false statements because on April 14, 2014, April 22, 2015, and April 18, 2016, NG electronically submitted documentation affirming that his children were residents of the District despite knowing that the content of the forms was false. Additionally, Agency submitted that the record supported a finding that NG was guilty of prejudicial conduct and conspiracy because he colluded with his spouse, Harris, and Bell to unlawfully register his children at the school. Thus, it believed that each charge and specification against NG was supported by the record.<sup>8</sup>

Regarding SNG, Agency contended that the charge of fraud was appropriate under the circumstances. It reasoned that while SNG testified that she did not wish to be involved with the enrollment process, pleading ignorance as a defense, the evidence demonstrated that she knowingly accepted educational services for her children to which they were not legally entitled. Agency also explained that there was a preponderance of evidence to support a finding that SNG was guilty of conspiracy because she knew, or should have known, that her children were attending a District school as Maryland residents. Therefore, Agency submitted that the charges against SNG should be sustained.<sup>9</sup>

In their respective briefs, Employees argued that Agency violated D.C. Code § 5-1031 by initiating the termination actions more than ninety days after the date Agency knew, or should've known, of the act or occurrence allegedly constituting cause. Employees noted that the 90-day rule contains a tolling provision, which suspends the time period for initiating adverse actions

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<sup>8</sup> *Agency Brief for Nikeith Goins* (April 30, 2020).

<sup>9</sup> *Agency Brief for Shawnee Nowlin-Goins* (April 30, 2020).

when there is an ongoing criminal investigation by certain adjudicatory entities. It was their belief that Agency's issuance of the proposed termination notices was well beyond the ninety-day period prescribed in D.C. Code § 5-1031. Employees pointed out that the ninety-day clock was triggered when an Incident Summary ("IS") number was generated on October 18, 2017. They opined that there were only two events that could serve to toll the statute: a referral to the U.S. Attorney's Office ("USAO") for possible criminal prosecution, or a referral to the Office of the Attorney General ("OAG"). Thus, in calculating the total time in which the matters were tolled, Employees claimed that their notices were issued twenty-nine days beyond the ninety-day statutory period. As a result, Employees submitted that Agency was time-barred from initiating termination actions against them under D.C. Code § 5-1031.<sup>10</sup>

Concerning the substantive charges, Employees contended that Agency failed to meet its burden of proof for each charge and specification levied against them. They averred that the Panel erroneously concluded that they engaged in fraud by enrolling their children in D.C. Preparatory. Further, Employees believed that there was no evidence in the record to show that they engaged in any act of conspiracy. Lastly, they contended that the penalty of termination did not align with similarly situated employees. Consequently, Employees requested that their terminations be reversed and that they be reinstated with back pay and benefits.<sup>11</sup>

In its reply briefs, Agency stated that it did not violate the 90-day rule. It argued that relevant case law supported the conclusion that the rule is not a mandatory in nature, but rather a directory rule created to balance the interests of Agency, the Union, and its members. Citing to the holding in *Brown v. D.C. Public Employee Relations Bd.*, 19 A. 3d 351 (D.C. 2011), Agency

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<sup>10</sup> *Brief for Nikeith Goins* (July 29, 2020) and *Brief for Shawnee Nowlin-Goins* (July 29, 2020).

<sup>11</sup> *Employee's Briefs* at 24.

opined that because D.C. Code § 5-1031 contains no penalty for violation of the 90-day period; the rule should be interpreted as directory in nature.<sup>12</sup> In the alternative, Agency suggested that even if the 90-day rule was interpreted as being mandatory, its actions nonetheless did not violate the statute because the proposed termination notices were issued less than ninety days before Agency concluded its criminal and administrative investigations. Lastly, Agency reiterated its previous contentions that the substantive charges against Employees were based on substantial evidence. Therefore, it requested that the AJ sustain the termination actions.<sup>13</sup>

An Initial Decision was issued on December 3, 2020. As previously stated, OEA's review of these matters under the holding in *Pinkard* was limited to determining whether the Panel's decision was supported by substantial evidence; whether Agency committed a harmful procedural error; and whether the adverse actions were taken in accordance with applicable laws and regulations. Concerning the substantive charges against NG, the AJ agreed with the Panel's conclusion that he committed fraud in the first degree because both of his children attended D.C. Preparatory under the pretense that they were District residents, when they were not. He concluded that the record evidence established that: NG was a Maryland resident during the relevant years; NG claimed his children as dependents on his taxes during each of these years; and he had no legal documentation establishing the children as District residents. Additionally, the AJ noted that the Panel considered witness testimony and numerous documents that proved that NG signed paperwork that contained information which turned out to be erroneous, notwithstanding his acknowledgement that the information provided in the forms was true and

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<sup>12</sup> In *Brown*, the D.C. Court of Appeals upheld the employee's termination despite the fact that the agency failed to hear the subject appeal until several months after the window set forth in the applicable statute.

<sup>13</sup> *Agency's Sur-Reply Brief for Nekieth Goins* (September 16, 2020) and *Agency's Sur-Reply Brief for Shawnee Nowlin-Goins* (September 16, 2020),

accurate. Additionally, he agreed with the Panel's determination that NG's work challenges did not establish the inability to care for his children, which was a prerequisite to establishing the necessity for giving another individual other primary caretaker status of a child.<sup>14</sup>

Regarding the charge of making false statements, the AJ held that on April 14, 2014, April 22, 2015, and April 18, 2016, NG knowingly falsified and signed student enrollment and verification forms affirming that his children were residents of the District despite knowing that the content of the forms was false. The AJ opined that NG's actions constituted prejudicial conduct because he orchestrated a scheme with the help of SNG, Harris, and Bell to enroll his children in a District school as Maryland residents. Additionally, he held that NG's actions were prejudicial to the good order and reputation of Agency.<sup>15</sup>

Concerning SNG, the AJ reasoned that there was enough evidence in the record to show that she was also guilty of committing fraud because as a parent and a sworn officer, she had a responsibility to ensure that her children were properly receiving District resources. Moreover, he noted that SNG's admitted ignorance did not absolve her of any liability or responsibility for the fraudulent documents that were submitted, as she had a close relationship with all of the parties involved. For the same reasons stated above, the AJ also held that SNG's actions constituted prejudicial conduct in that she conspired with her spouse and other family members, to enroll her children at D.C. Preparatory under false pretenses to obtain an unjust enrichment. The AJ agreed with the Panel's rejection of SNG's defense that she left the registration process up to her husband and was reluctant to be involved, taking a "see no evil," hands-off approach to the enrollment process. He noted that allowing the children to be enrolled at the tuition-free

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<sup>14</sup> *Initial Decision.*

<sup>15</sup> *Id.*

school, first using SNG's mother's address, then using a cousin's address, established that all of the parties involved conspired to ensure the enrollment of the children at D.C. Preparatory. Consequently, the AJ concluded that each charge and specification levied against Employees should be sustained.<sup>16</sup>

Finally, as it related to whether Agency violated the 90-day rule, the AJ highlighted D.C. Code § 5-1031, which provides that no corrective or adverse action against a sworn member of the Metropolitan Police Department shall commence more than 90 days (excluding Saturdays, Sundays, and legal holidays) after the date Agency either knew or should have known of the act or occurrence allegedly constituting cause. He explained that the statute contained a tolling provision under § 5-1031(b) in cases where there is an ongoing criminal investigation by Metropolitan Police Department, the USAO, OAG, or the Office of Police Complaints. In calculating the timeline, the AJ provided that the ninety-day period was triggered when Agency generated an IS number for Employees on October 18, 2017.<sup>17</sup> The AJ provided that under D.C. Code § 5-1031(b), the matter was tolled from October 25, 2017 to October 26, 2017, when the matter was referred to the USAO for review, and from December 18, 2017 to June 6, 2018, when the matter was under review by OAG.<sup>18</sup>

Because the AJ did not believe that Agency conducted its own criminal investigation during the remaining time periods, he surmised that the ninety-day clock was not tolled from October 18<sup>th</sup> through October 25<sup>th</sup> of 2017, and from October 26<sup>th</sup> through December 18, 2017, for purposes of D.C. Code § 5-1031. The AJ ultimately determined that a total of 119 business days passed between when the IS number were generated and when Agency issued its notices of

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<sup>16</sup> *Id.*

<sup>17</sup> One IS number was generated to investigate NG and SNG.

<sup>18</sup> OAG also declined to prosecute the matters.

proposed termination. Since Employees did not receive their notices until October 1, 2018, the AJ held that Agency violated D.C. Code § 5-1031, which he deemed was a mandatory statutory provision, not discretionary. As such, Agency's termination actions were reversed; it was ordered that Employees be reinstated to the same or similar positions; and Agency was instructed to reimburse Employees for all back pay and benefits lost as a result of their terminations.<sup>19</sup>

Agency disagreed with the AJ's findings and filed a Petition for Review with the OEA Board on January 5, 2021. It submits that the Initial Decision is based on an erroneous interpretation of statute, regulation, or policy.<sup>20</sup> In further support of its position, Agency submitted a Statement of Reasons in Support of Petition for Review on March 31, 2021. It states that OAG's June 6, 2018 letter of declination marked the conclusion of the criminal investigation for purposes of the 90-day rule because it marked an objective "bright line" from which to measure the ninety-day period. According to Agency, although the USAO previously issued its letter of declination on October 26, 2017, it still believed that the matter had criminal overtones based on its subsequent referral to OAG for possible prosecution. Thus, it opines that the proposed notices were issued in a timely manner and did not violate the 90-day rule. It reasons that the AJ's interpretation and application of D.C. Code § 5-1031 in this case resulted in an injustice that should not stand. Alternatively, it requests that if the Board determines that there was a 90-day rule violation, that the matter be remanded for it to submit evidence that it continued to conduct a criminal investigation after the USAO declined to prosecute Employees.

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<sup>19</sup> *Id.*

<sup>20</sup> *Petition for Review* (January 5, 2020).

Consequently, Agency asks that its Petition for Review be granted or remanded to the AJ for further consideration.<sup>21</sup>

#### Discussion

On April 21, 2021, Agency filed a motion to dismiss its Petition for Review. It informed this Office that the parties have resolved this matter pursuant to an executed a settlement agreement. Since this matter has been settled, Agency's appeal is moot. Therefore, its Petition for Review must be dismissed.

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<sup>21</sup> *Agency's Statement of Reasons in Support of Petition for Review* (March 31, 2021).

**ORDER**

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DISMISSED**.

**FOR THE BOARD:**

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Clarence Labor, Jr., Chair

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

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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.