

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ROBIN Y. JACKSON,)	
Employee)	OEA Matter No. 1601-0024-05
)	
v.)	Date of Issuance: October 12, 2007
)	
OFFICE OF CONTRACTING)	
AND PROCUREMENT,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
_____)	

Stephen C. Leckar, Esq., Employee Representative
Thelma C. Brown, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On March 3, 2005, Robin Jackson (hereinafter “the Employee”) timely filed a petition for appeal with the Office of Employee Appeals (hereinafter “OEA” or “the Office”) contesting the Office of Contracting and Procurement (hereinafter “the Agency”) summary removal action. A prehearing conference as well as various status conferences were held in this matter. During the course of these proceedings, I decided that an Evidentiary Hearing was required. Consequently, a Hearing was held on June 13 & 14, 2006. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

STATEMENT OF THE CHARGES

By notice dated January 14, 2005, the Employee was notified of her summary removal from the Agency based on the charges of “incompetence, inefficiency and discourteous treatment of other employees, [and] conduct that threatens the integrity of government operations as provided in subsection 1617.1 of the DPM.” In pertinent part, the notice reads as follows:

You were instructed in advance to meet with the principal OCP managers for the purpose of gathering pertinent information necessary for the preparation of the Interim Chief Procurement Officer’s testimony for Wednesday, September 29, 2004. As you are aware testimonies held before the DC City Council require extensive research, fact finding and input from various sources and therefore, are time consuming. On Tuesday evening, September 28, 2004 the testimony was still in a draft form. Your failure in following oral instructions has caused the staff involved in the preparation of the testimony to work under stressful conditions and therefore is not able to assist in the preparation of high quality product.

Also while meeting with staff on Tuesday evening September 28, 2004, you were speaking to a co worker in a tone of voice that was considered discourteous.

On Tuesday, October 7, 2004 you were provided with documentation that indicated expectations of duties and responsibilities. Your expectations of duties and responsibilities included Council Relations/Hearing Preparation; Policies and Procedures; Green Committee; Ratification Panel; Interpersonal interactions and other related duties.

In addition to the above mentioned hearing, this type of behavior

was again displayed in preparation for Council hearings held on November 3 and December 20, 2004. You presented documents that were inaccurate and required critical changes resulting in the resubmission of a revised testimony to the Councilmember. Testimonies have been submitted for senior level review that were incomplete, did not flow in a clear, concise manner appropriate for Council hearings and had to be rewritten by another staff member. Overall, your quality of work is unacceptable and does not meet expectations as outlined in the document provided to you on October 7, 2004.

SUMMARY OF THE TESTIMONY

Kahni Ward

Kahni Ward (hereinafter "Ward") testified in relevant part that: she has worked for the Agency since January 2005 and that her current position within the Agency is Chief of Staff. As part of her initial and current duties, Ward had supervisory responsibilities over several of the Agency's employees. At the time of the Employee's summary removal, Ward was her supervisor. Like the Employee, Ward has had extensive experience preparing testimony for District of Columbia Council hearings. According to Ward, the process for preparing testimony starts with information gathering. Depending on the subject matter, information gathering may involve soliciting significant input from persons who are knowledgeable of the particular subject matter. Once all of the relevant information is collected, it is then synthesized into draft testimony where it is then presented before key Agency leaders for further vetting and review. If necessary, changes to the draft testimony are then incorporated into the final product. Once that process has concluded, the testimony is then codified into its final form for presentation before the District of Columbia Council. In carrying out these duties it is the policy analysts' duty to write the testimony. The information that is contained within said testimony must be provided by the person(s) who possess the relevant subject matter expertise. Ward further testified that it is the primary responsibility of the policy analyst, in this matter the Employee, to carry out the above referenced process of preparing testimony.

One of the allegations made by the Agency in support of its summary removal of the Employee relates to an incident between the Employee and Bruce Witty (hereinafter "Witty"). Relative to her recollection of the incident Ward testified thusly:

Q: Do you recall a meeting, a staff meeting, regarding, involving testimony with [Witty] where [Witty] and the [Employee] were present and discussing upcoming testimony?

A: I do.

Q: Who was at the meeting? Do you recall?

A: ... I do not recall everyone at the meeting, but I do recall Nancy Hapeman being there, [the Employee], [Witty], and likely Mr. Walton, Ms. Lee, and Mr. Soderberg.

Q: Where did these meetings physically take place?

A: Normally they take place in the Director's conference room in 441 Suite 700.

Q: What is the proximity of this conference room to the office of Mr. Tillery?

A: It's next door. There is a door that connects the two rooms...

Q: During the meeting with Mr. Tillery are you aware of any difficulties or any obstacles that [the Employee] had in preparing the testimony at that meeting discussed at that meeting?

A: I recall there being a discussion about needing additional information to complete – because there were two things that were occurring. Mr. Tillery was testifying but he was not testifying to the details of [Witty's] action. [Witty] was providing his own separate testimony associated with that. So there was discussion at that meeting about needing additional information to complete those testimonies.

Q: Was [the Employee] responsible for drafting the testimony for [Witty] as well as Mr. Tillery?

A: Yes.

Q: In order to do that what would she have had to receive from [Witty]?

A: Any relevant pertinent points.

Q: So can you tell us what happened at the meeting relative to that testimony?

A: I don't recall specifically what was said. I know things went as normal initially in terms of having the conversation, discussion about the testimony, but I do recall specifically an outburst by [the Employee] towards [Witty]. She was visibly upset and loud about what she did or did not have to complete preparation....

Q: Do you recall specifically what was said?

A: I do not recall specifically what was said...

Q: How did the outburst, as you characterize it, how did it impact on the ability of [the Employee] to ultimately prepare the testimony or did it?

A: I don't know. I don't really remember specifically what happened after that. I mean she was responsible for gathering the information and pulling together the testimony so that it could be delivered. So I don't know what subsequent interaction she may have had with [Witty] after that. I mean, I imagine that there were some to get exactly what it was that she needed.

Transcript at 72- 76.

Ward was subsequently subjected to cross examination by Mr. Leckar relative to the aforementioned outburst between the Employee and Witty and testified as follows:

Q: ... In terms of that outburst. You never recommended that [the Employee] be disciplined for that. Isn't that right?

A: No.

Q: In fact you are unaware whether [Witty] ever went to Mr. Tillery and said: Please discipline her for what she said to me?

A: I am not aware of any.

Q: Prior to January of 2005 did you ever see or hear of a document from anybody to Mr. Tillery recommending that [the Employee] be disciplined for this extraordinary unprecedented outburst?

A: I never - - I am not aware of any document.

Q: Irrespective of what happened that day in the meeting between [the Employee] and [Witty], you never wrote anybody any memo complaining about her testimony. Isn't that right?

A: Complaining about what?

Q: The testimony that she drafted? Isn't that right?

A: No, I don't recall.

Q: ... Did you ever see any memo from anybody else complaining about the quality of her testimony that she wrote for the September 29th hearing other than this January 14th firing notice? That's Exhibit No. 2?

A: I don't recall ever seeing anything.

Transcript at 160 – 161.

Relative to testimony presented by Mr. Tillery to the District of Columbia Council (hereinafter "DC Council") on or about November 4, 2004, it was alleged that the Employee wrote an incorrect numerical figure that Mr. Tillery had to correct while providing testimony to the DC Council. This discrepancy resulted in revised written testimony having to be submitted to the DC Council after the hearing had concluded. This incident was cited by the Agency as one of the justifications as to why the Employee was summarily removed. When cross examined on this incident, it was intimated that the Employee would not create numerical figures, but that instead she would get that information from someone else to include in the testimony. It was also revealed that Ward was not aware of any notice (either verbal or written) being given to the Employee admonishing her about the errors that were in said testimony. Of relevance to this matter is the following excerpt from Ward's cross examination:

Q: ... Your deposition sworn under oath, you have that right hand up and you testified right? What you said then was all true, right?

A: Yes.

Q: Page 102, line two, you were asked the following question and gave the following answer: "Now, I want to focus on the November 4th testimony. Do you know in any way that testimony was inaccurate and required critical changes other than the submission of a revised testimony of a corrected number?"
Answer: "I don't recall specifically at this time."

Were you asked that question and did you give that answer?

A: Yes.

Ward was also questioned regarding testimony that the Employee prepared in anticipation of a DC Council hearing that was scheduled for December 20, 2004. It was alleged by the Agency that this testimony contained errors requiring it to be re-written by Ward (with possible assistance by Nancy Hapeman) on the day the testimony was to be presented to the DC Council. It was also alleged that the draft testimony was late thereby resulting in a sub-par work product.

It was revealed during cross examination that the Employee prepared and sent the

draft testimony for further vetting to Ward, among others, the evening of Friday, December 17, 2004, via email. Ward could not recall whether or not she opened and reviewed this email before the morning of Monday, December 20, 2004 (the day of the aforementioned hearing). However, Ward did admit that it was unlikely that she did. It was further revealed that in the days after the testimony was submitted that Ward was not aware of any communication to the Employee (either verbally or in writing) that the testimony was late or exactly which alleged errors presented cause for concern with the sole exception of the January 14, 2005, letter summarily removing the Employee from service.

Nancy Hapeman

Nancy Hapeman (hereinafter "Hapeman") testified in relevant part that: she is employed by the District of Columbia Office of Contracting and Procurement as its General Counsel. She has served in this position since November, 1997. Among other job-related duties, she has traditionally been involved with the drafting and reviewing of testimony on behalf of the Agency. She has performed this function to varying degrees for various Directors of the Agency. In a somewhat similar fashion as Ward, Hapeman describes the process of drafting testimony as being a collaborative process that involves information gathering from person(s) possessing the relevant experience or knowledge on the topic *du jour*. The information is then synthesized into draft form which is then vetted and reviewed by various co-workers, and once the group is satisfied with the work product it is then submitted to the Agency Director for further review before being codified into its final form. In participating in this process, Hapeman's role has varied throughout her tenure. However she has generally been called upon to provide a legal analysis relative to prospective draft testimony.

Concerning the incident between the Employee and Witty, Hapeman recalls being present and noted a tone of anger and frustration being expressed by both the Employee and Witty regarding Witty's alleged lack of involvement in providing information for the then upcoming DC Council hearing. The nature of this hearing involved, among other things, Witty's alleged personal involvement in questionable procurement contracts. The Employee privately indicated to Hapeman that Witty was not providing the information that was necessary for completion of the testimony and was frustrated by his inaction. During cross examination, Hapeman revealed that she believed the Employee when she indicated that Witty was not communicating with her so that she could timely finish drafting the testimony. After the incident Hapeman did not recommend to anyone that the Employee be disciplined for her part in this incident.

Relative to the November 4, 2004, hearing and by extension the testimony drafted by the Employee, Hapeman cannot recall the specific testimony provided by the Employee nor could she recall any alleged inaccuracies with said testimony. Similarly, relative to a DC Council hearing scheduled on or about December 20, 2004, she does not recall with any specificity what, if any, inaccuracies or issues that were raised regarding the Employee draft testimony submitted for review in anticipation of this hearing. Hapeman does not recall complaining to Mr. Tillery regarding the draft testimony

submitted by the Employee.

Lastly, Hapeman testified that she had no role in effectuating the Employee's summary removal nor has she recommended that the Employee be disciplined in any capacity for the alleged actions that are the subject of the instant matter.

Herbert R. Tillery

Herbert R. Tillery (hereinafter "Tillery") testified in relevant part that: at the time of this proceeding he was both the Deputy Mayor for Operations as well as the interim Chief Procurement Officer of the Agency. At the time of this proceeding, Tillery had served as interim Chief Procurement Officer of the Agency since September, 2004. Tillery was first acquainted with the Employee when he started his tenure with the Agency. Tillery describes the Employee's main job-related duty as being the drafting and preparation of testimony.

As it relates to the incident between Witty and the Employee, Tillery remembers that while in his office that he had heard an "outburst" emanating from an adjoining conference room. The following excerpt describes his initial response:

... So I just stuck my head in the door and said, you all need to knock it off, or words to that effect. Something to let them know that that was bothering me and that was not the way I expected that meeting to go.

Q: Did you ever find out or did you determine who she was speaking to or the context of the outburst?

A: Not that I can recall. I have been - - not that I can personally recall.

Q: Did you ever discuss with [the Employee] the outburst and what you overheard?

A: I think in a follow-up conversation - - and I'm just guessing - - in a follow-up conversation, and it might have been during that time that I gave her her outline of her duties and responsibilities, that that's not the kind of environment or atmosphere that I want.

But it wasn't just to her. I had made that known to the organization when I first got there, that in order for us to create the team environment that I'm so used to and just press, is that you got to work together, not, you know, with these kind of adverse activity toward each other.

Tr. at 318 – 319.

Tillery relates that he decided to summarily remove the Employee because her work product (testimony) was allegedly “not being done timely, factually ..., nor were facts being gathered in the congenial manner that I had requested in terms of, you know, folks working together...” Tr. at 353 – 354. Furthermore, Tillery goes on to relate that the Employee communicated to him the difficulties she was having with getting the required information from other employees so that she could promptly prepare the requested draft testimony. Tr. at 360.

During cross examination, Tillery could not specifically relate what was wrong with the December 20, 2004, draft testimony prepared by the Employee. Tillery also generally stated that some of the Employees’ past supervisors had made general complaints about her performance; however, when confronted with his deposition testimony, Tillery was not able to recall any supervisors who had any complaints regarding the Employee’s performance. Tr. at 408.

Regarding the Employee’s summary removal Tillery testified thusly on cross examination:

Q: True or false [Tillery]: In your deposition when you were asked the following question - -

A: What page are you on?

Q: Page 35, line 6. You were asked the following question --

A: Can I take a moment?

Q: ... “Is there a reason why [the Employee’s] removal letter, which came about a month later, didn’t say why you concluded that the summary removal process was necessary in her case?” What did you answer, [Tillery]?

A: “I don’t know. I don’t have any recollection or thoughts about comparing the two letters.”

Tr. at 449

Q: True or False, [Tillery]: Tell ... Judge Robinson, true or false, none of your leadership team recommended that [the Employee] be fired summarily? True or false?

A: I don’t recall whether that’s true or false.

Q: You don’t recall?

A: I don't recall.

Tr. at 450.

Relative to the allegation that the Employee threatened the integrity of government operations ultimately necessitating her summary removal, Tillery explained initially that the Employee was allegedly insubordinate and was unable to get along with her co-workers. During cross examination the following exchange occurred:

Q: Page 14 of your deposition, [Tillery], line 6, you were asked the following question: Sir - - and did you give the following answer: "Now, Mr. Tillery, please tell me on January 14, 2005, what led you to conclude that [the Employee] was threatening the integrity of government operations?" and you answered, "I don't recall what I was thinking on January 14,." Were you asked that question and did you give that answer?

A: Yes, I did.

Tr. at 473 – 474.

Tillery was generally dissatisfied with the quality and the timeliness of the Employee's work product; he also was dissatisfied with the perceived lack of rapport that she endeared from some of her work colleagues. When pressed, Tillery was unable to recall specific examples of his dissatisfaction, nor what he did to remedy his dissatisfaction before summarily removing the Employee. *See generally*, Tr. at 487 – 491, 524 – 525 and 532 (among others).

Tillery generally cited the length of time that has transpired between the Employee's removal and either the deposition or the evidentiary hearing in this matter in order to explain his lack of recall about certain salient events.

Robin Jackson

The Employee testified in relevant part that: she is an attorney licensed to practice law in the state of Ohio. After graduating from Case Western Reserve University School of Law, she held various positions primarily related to policy making and government relations. She started working for the Agency on or about December 3, 2001.

The Employee's rendition of how testimony is drafted (generally speaking) is not considerably different than what was previously described by Ward, Hapeman, or Tillery. While she has had several immediate supervisors since the beginning of Tillery's tenure, none of them criticized her. The only time that she received criticism during Tillery's tenure was the day that she was summarily removed from her position.

As it relates to the incident that she had with Witty, the Employee explained that Witty never responded to her requests to collaborate for an upcoming hearing. Since it was Witty's personal action(s) revolving around his prior approval of a number of contracts that did not get the requisite DC Council approval prior to their payment, Witty's involvement in crafting the testimony was critical to its completion. The Employee complained to a number of colleagues within the Agency about Witty's avoidance of completing the assignment. The Employee even went so far as to call Hapeman at home over the weekend in order to get some advice on how to resolve this situation. Hapeman informed her that there was nothing that could be done on the weekend and that this issue should be addressed on the next business day (Monday). On Monday, a staff meeting was called where the Employee, Witty, and others were present to discuss the matter of preparing the testimony. When questioned about his participation to date in helping to prepare the testimony, Witty allegedly said that he had been cooperating, at which point the Employee disagreed with Witty's response and accused him of lying. *See generally*, Tr. at 609. The Employee disputes Tillery's contention that he then belatedly showed up at this staff meeting. After this meeting, the Employee found Witty more cooperative and she was subsequently able to complete the testimony. Until she received her summary removal letter, the Employee contends that none of her supervisors had voiced any concern regarding her conduct in this meeting.

As it relates to the November 4, 2004, testimony that was allegedly inaccurate because it contained a figure of \$10,000 where in fact the figure should have read \$1,000,000, the Employee explained that the number was supplied to her by someone else, as she would not make a determination of putting a figure on her own, since she "didn't have the authority or knowledge to do that." Tr. at 613. Furthermore, before the inaccuracy was noticed by Tillery, the testimony had gone through a vetting process with other senior members of the Agency and no one else had picked up on the inaccuracy. Lastly, Tillery did not discuss his dissatisfaction over the quality of this (or any other) testimony prepared by the Employee.

As it relates to the December 20, 2004, testimony, the Employee contended that she prepared the testimony and then emailed a copy of it to Ward on Friday, December 17, 2004, at her request. The Employee then related that she did not hear from Ward over the weekend and when she reported to work on December 20, 2004, she went to Ward and asked her if she had had an opportunity to review the testimony. The Employee related that Ward indicated that she had not reviewed the testimony. To the Employee, "[Ward] didn't seem angry or upset. She didn't criticize me or complain about anything." Tr. at 619. The Employee also contended that if there were any issues with that (or by implication any other) testimony that needed resolving that she was ready, willing to make whatever corrections were necessary in a workmanlike and expeditious manner.

The Employee also testified about other incidents that have occurred during her tenure with the Agency. These incidents are not addressed or discussed in this initial decision because I deem said incidents irrelevant to a proper disposition of the instant

matter.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

The January 14, 2005, letter addressed to the Employee (hereinafter "Removal Letter") served as final notice that she is being summarily removed from her position as a policy analyst on charges of "incompetence, inefficiency and discourteous treatment of other employees, [and] conduct that threatens the integrity of government operations as provided in subsection 1617.1 of the DPM." The Undersigned must take note that the provision of the DPM cited by the Agency in its Removal letter does not reference the summary removal process. DPM § 1617.1 states:

1617 Disciplinary Grievances: General Discipline

1617.1 An employee against whom a corrective action has been taken shall be entitled to contest the final decision as a disciplinary grievance under the procedure set forth in § 1636.

I am left to assume that in its Removal letter the Agency intended to reference DPM § 1616.1 which states:

1616 Summary Removal: General Discipline

1616.1 An agency head may remove an employee summarily when the employee's conduct:

- (a) Threatens the integrity of government operations;
- (b) Constitutes an immediate hazard to the agency, to other District employees, or to the employee; or
- (c) Is detrimental to public health, safety, or welfare.

In the Removal letter, the Agency contends that summary removal was necessary and cites instances that ostensibly buttress that contention. Said instances date over a period of time three months prior to the date of the Removal letter. Nothing in the Removal letter cites any activity that occurred during calendar year 2005 (when the Removal letter was presented to the Employee). While Agency's error may be typographical in nature and as such *de minimis* in result, it is evident to the Undersigned that the Agency failed in other regards to follow the proper procedures in effectuating the Employee's removal. Such failures on the Agency's part shall be discussed in more detail *infra*.

The Summary Removal process (DPM § 1616) is not a tool that should be used lightly in managing the District of Columbia workforce. Furthermore, it is not a tool that should be used by an Agency in an attempt to circumvent an employee's career service rights. Summary removal has not been litigated to a final decision in recent memory within the OEA. However, it stands to reason that it is a tool that should only be used in circumstances most dire and should be done almost immediately after the Employee has committed said action. For example, if a career service employee were caught using illicit drugs during their regularly scheduled tour of duty and at their place of work, then the summary removal process may be the best option for addressing said behavior. It allows the Agency to address employee conduct that, because of its mere occurrence, causes an unsafe environment for others or otherwise threatens the integrity of District of Columbia government operations.

While I cannot accurately gauge how soon an Agency should use summary removal to address said issue, I find that it should be done within a close proximity of time to the Agency conclusively learning of this event. I would not measure the time in months or weeks but in days within when the Agency knew or should have known of the employee's poor choice in judgment. In the instant matter, the Agency elected to summarily remove the Employee from service effective January 14, 2005. The Removal letter cited allegedly unsatisfactory Employee conduct dating from late September 2004, to late December 2004. This constituted a period of time of almost four months where the Agency cataloged instances in which it felt that the Employee's conduct and work product were unsatisfactory. Given the instant facts, I find that the time frame listed in the removal letter to be too long to otherwise justify a summary removal action. Also, after considering the documents of record as well as the testimonial evidence presented by the parties, I also find that the circumstances listed by the Agency to buttress its summary removal action do not fit within the acceptable grounds for initiating the summary removal process as defined by DPM § 1616.1.

As a part of the Employee's appeal process within this Office, I held an evidentiary hearing on the issue of whether Agency's action of terminating the Employee was in accordance with applicable law, rule, or regulation. In doing so, I heard testimony from Ward, Hapeman, Tillery, and the Employee. Ward and Tillery, working either singularly or in conjunction with one another, were involved in the process of either recommending and/or effectuating the Employee's removal. As such, Ward and/or Tillery either singularly or in conjunction with others would have been privy to all relevant circumstances and information that the Agency used to buttress the Agency's adverse action in the instant matter. During the evidentiary hearing, I had the opportunity to observe the poise, demeanor and credibility of the Agency's witnesses as well as the Employee in this matter. In a nutshell, when it came to salient instances regarding the Employee's conduct that were cited as a predicate to Agency's action, Ward and Tillery generally used a variation of the refrain "I do not recall". This refrain was used when asked about the incident that the Employee had with Witty and what action was taken immediately afterwards. It was also consistently stated by Ward, Hapeman, and Tillery that they collectively did not recall the particular circumstances

that led them to collectively believe that the Employee's work product was deficient, if in fact her work product truly was. Or in that same vein, what if any admonishment was given to the Employee immediately after these alleged incidents that caused concern for the Agency's hierarchy. Lastly, Tillery failed to recall any action of the Employee that he felt threatened the integrity of government operations¹.

As was stated previously, the Agency has the burden of proof by a preponderance of the evidence standard² to prove that its action was legally justified. I find that the documents of record that were presented by the Agency during the course of the Employee's appeal process do not provide an adequate "paper trail" for the Undersigned to make a determination that summary removal was a proper recourse for the Agency in this matter. The Agency's witnesses, while under oath both during the depositions as well as during the evidentiary hearing, failed to recall any and all relevant facts or circumstances that would potentially buttress the Agency's general contention that its adverse action should be upheld. Considering as such, I find that the Agency utterly *failed* to meet its burden in this matter. Further, I conclude that given the aforementioned findings, the Agency's action of removing the Employee from service should be reversed.

ORDER

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

1. Agency's action of removing the Employee from service is REVERSED; and
2. The Agency shall reinstate the Employee and reimburse her all back-pay and benefits lost as a result of her removal; and
3. The 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:

Eric T. Robinson, Esq.
Administrative Judge

¹ See generally, DPM § 1616.1 (a).

² See the Burden of Proof Section *supra* of this initial decision for a recitation of this Office's rules regarding burden of proof, preponderance of the evidence standard, and under what circumstances does either party possess said burden.