THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
Warren Williams	)	OEA Matter No. 1601-0001-18
Employee	)	
	)	Date of Issuance: May 2, 2018
v.	)	
	)	Joseph E. Lim, Esq.
D.C. Department of General Services	)	Senior Administrative Judge
Agency	)	

Warren Williams, Employee *pro se*
C. Vaughn Adams, Esq., Agency Representative

INITIAL DECISION

PROCEDURAL BACKGROUND

On October 2, 2017, Warren Williams ("Employee") filed a petition for appeal with this Office regarding his September 1, 2017, removal as a Protective Services Police Officer by the Department of General Services ("Agency" or "DGS") for testing positive for marijuana.

This matter was assigned to me on December 11, 2017. I held a Prehearing Conference on January 16, 2018, and subsequently concluded that a hearing was not warranted. I ordered the parties to submit their legal briefs on the issue of whether Agency's choice of Employee's penalty should be upheld. I issued an Order for Good Cause Statement to Employee for his failure to submit a brief. Although Employee failed to show cause, his late submission of a brief was accepted so that this matter can be decided on the merits. The record was closed after the parties filed their submissions.

JURISDICTION

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

ISSUES

1. Whether Agency had proper cause to remove Employee from service.
2. If so, whether Agency's penalty was appropriate under the circumstances.

FINDINGS OF FACT

The following facts are undisputed:

1. Employee was a Protective Services Police Officer CS-0083-06, with Agency's Protective Services Division ("PSD").

2. Employee, as a Protective Services Officer, was subject to the requirements of the Security Officers Management Branch ("SOMB") of MPD and to random drug and alcohol testing under Title I of the Child and Youth, Safety and Health Omnibus Emergency Amendment Act of 2004.[1] His employment with DGS was subject to satisfactory findings.[2]

3. On March 30, 2017, Employee submitted to mandatory annual drug screening urinalysis for continued employment with DGS as a Special Police Officer ("SPO") and for renewal of his SPO commission from the Security Officer's Management Branch ("SOMB"). The results of that urinalysis came back as positive for the presence of marijuana.

4. On April 12, 2017, the results of the positive drug test were reported to the Protective Services Division by the Medical Review Officer of the Police and Fire Clinic ("PFC") the medical provider that administered the urinalysis test for DGS. Employee was immediately placed on leave.

5. On April 18, 2017, Employee's law enforcement powers were revoked by SOMB. Employee's commission was revoked because of his positive test for marijuana use as required by D.C. regulations.[3]

6. On June 20, 2017, Employee received a fifteen (15) day advance written notice of a proposal to remove him for cause from his position of SPO with the DGS's PSD, for: 1) testing positive for marijuana in violation of 6A DCMR §1106.8, and D.C. Metropolitan Police Department ("MPD")'s General Order 100.24 (effective September 11, 2015); and 2) inability to perform the essential functions of his position as a Special Police Officer because his commission as a Special Police Officer was revoked by the SOMB on April 18, 2017.

7. Employee's notice of proposed separation also informed him of his right to present a response and have the assistance of a representative.

8. On or about June 27, 2017, Employee submitted his response to the notice of proposed separation to the assigned hearing officer.[4] Employee's response did not deny that he had a positive test result for marijuana and admitted that he informed medical professionals at the PFC that he may have inadvertently consumed some marijuana laced refreshments.

9. This statement is confirmed in the April 12, 2017 communication from PFC to DGS PSD "Positive Confirmation Screening Test for Illicit Drugs", where in the comments state that "Member admits ingestion. Says he ate a cookie that was laced with it."[5]

10. Employee points out what he claims are irregularities in the way he was treated after the test.

---

1 D.C. Official Code §1-620.31, et seq.
2 Agency's Brief (January 26, 2018), Tab 1, Position Description, p. 15 of 24.
3 See 6B DCMR §1607.2(n).
4 Agency's Brief (January 26, 2018), Tab 2.
5 *Supra,* Tab 1.

11. On August 21, 2017, Hearing Officer Dwayne C. Jefferson, Esq., Deputy General Counsel for the D.C. Fire and Emergency Services, presented his report and recommendations concerning the proposed removal to the Deputy General Counsel of DCHR.[6]

12. Based upon his review of the record, which included the Agency's proposed removal and supporting documents, Employee's response and supporting documents, a telephone conversation with Employee and the relevant regulations and general orders, the Hearing Officer recommended that the proposed removal be substantiated on both charges: positive drug screening test result and inability to perform the essential functions of his position because Employee's SPO commission had been revoked, rendering him unable to exercise law enforcement authority as a SPO.

13. On September 1, 2017, upon consideration of the factual record in the Advance Notice of Proposed Removal, Employee's Response, the Hearing Officer's recommendation, the Douglas Factors[7] and the record before her, DGS Director Greer Johnson Gillis sustained the proposed removal for both charges presented in the Advance Notice of Propose Removal.[8]

14. The effective date of Employee's removal was September 1, 2017.

ANALYSIS AND CONCLUSION

---

6 *Supra,* Tab 3.

7 *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 it's 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.

8 *Supra,* Tab 4 Notice of Final Decision.

Employee does not deny any of the charges, but at the Prehearing Conference, he argued that the ultimate penalty of removal was too severe. In his legal brief, Employee reiterated the unsatisfactory conversations and interactions he had with various people regarding his positive drug test. Employee's response goes on to point out what he claims are irregularities in the way he was treated after the test. However, these allegations have no bearing on the accuracy of the test result itself or the fact that Employee admitted to ingesting a marijuana-laced edible.

What Employee fails to realize is that he was terminated because he failed an essential requirement of his position, which is to never ingest an illegal drug. Agency's policies and D.C. regulations clearly prohibits these actions.[9]

Because of Employee's admission, there was never any question that Agency had met its burden of establishing cause for taking adverse action. However, Employee asserts that his penalty should be overturned and that he should be returned to work. Although Employee complained about his penalty, his brief never touched on how his penalty was improper.

As noted above, the only remaining issue is whether the discipline imposed by Agency was an abuse of discretion. Any review by this Office of the agency decision of selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[10] Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."[11] When the charge is upheld, this Office has held that it will leave Agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."[12]

The record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present.

For the foregoing reasons, I conclude that Agency's decision to select removal as the appropriate penalty for the employee's infractions was not an abuse of discretion and should be upheld.

ORDER

It is hereby ORDERED that the agency action removing the employee is UPHELD.

---

9 See also 6A DCMR §1100.6.

10 *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

11 *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

12 *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge