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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹ ,)	
)	OEA Matter No.: 1601-0070-22
v.)	
)	Date of Issuance: September 12, 2024
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Teacher with D.C. Public Schools (“Agency”). On July 1, 2023, Employee received notice that he would be terminated from his position under IMPACT, Agency’s performance effectiveness system. The notice informed Employee that he was being separated after receiving a final IMPACT score of “Ineffective” for the 2021-2022 school year. In accordance with IMPACT, employees who receive a score of “Ineffective” are subject to removal. Consequently, Agency notified Employee that he would be terminated effective July 30, 2022.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on August 1, 2022. He argued that his termination was unwarranted and requested that he be reinstated

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

² *Agency Answer to Petition for Appeal*, Tab 1 (August 26, 2022).

to his position of record.³ Agency filed its Answer to the petition on August 26, 2022, asserting that it properly followed the IMPACT process. It explained that Employee was evaluated during Cycles 1 and 2 of the 2021-2022 school year and participated in post-evaluation conferences after each assessment. Thus, according to Agency, Employee was subject to removal because he received a final IMPACT score of “Ineffective.” As a result, it requested that the termination action be upheld.⁴

An OEA Administrative Judge (“AJ”) was assigned to the matter in September of 2022. After conducting a prehearing conference, the AJ determined that the issues presented by the parties warranted an evidentiary hearing.⁵ Thereafter, a hearing was held on February 16, 2022, wherein both Employee and Agency presented documentary and testimonial evidence in support of their positions.

The AJ issued an Initial Decision on March 18, 2022. First, he provided that under Chapter 5E, Sections 1306.1 and 1306.2 of the D.C. Municipal Regulations (“DCMR”), each employee was required to be evaluated under IMPACT by an appropriate supervisor and rated annually based on procedures established by the Superintendent. He explained that pursuant to 5E DCMR § 1401.2, OEA’s review of Agency’s adverse action was limited to determining whether Employee was terminated for “just cause” and whether Agency followed all IMPACT procedures.

Next, the AJ provided that under the IMPACT guidelines, teachers were required to have three assessment cycles during the 2021-2022 school year: an informal first assessment, a second assessment cycle (“Cycle 1”), and a third assessment cycle (“Cycle 2”). The AJ stated that each assessment was required to be followed by a post-observation conference⁶ with the evaluator

³ *Petition for Appeal* (August 1, 2022).

⁴ *Agency Answer* at p. 3.

⁵ *Order Convening Hearing* (December 22, 2022).

⁶ IMPACT guidelines do not require the school administrator to hold a conference after the informal observation.

within fifteen days. As it related to the 2021-2022 school year, the AJ determined that: (1) Employee's informal observation occurred on December 15, 2021; (2) the Cycle 1 observation and post-evaluation conference occurred on March 14, 2022, and March 28, 2022, respectively; and (3) the Cycle 2 observation and post-evaluation conference occurred on May 18, 2022, and June 1, 2022, respectively. Based on the IMPACT scoring rubric, Employee received a final rating of "Ineffective."⁷

Citing the holding in *Shaibu v. District of Columbia Public Schools*, Case No. 2012 CA 003606 P(MPA)(D.C. Super. Ct. June 29, 2013), the AJ noted that despite his disagreements with the final IMPACT score and evaluation notes, Employee failed to sufficiently refute the factual observations made by his evaluator, Assistant Principal Tiffany Goodman ("Goodman"). He ruled that Goodman, Agency's witness, provided consistent and credible testimony as it related to Employee's IMPACT evaluation for the 2021-2022 school year. The AJ also noted that evaluators retain broad discretion in ranking their teachers. Therefore, he deemed Employee's disagreements with the comments contained within his assessments to be unpersuasive. Because Employee received a final IMPACT rating of "Ineffective," the AJ held that Agency properly terminated him in accordance with the relevant regulations.⁸

Employee filed a Petition for Review with the OEA Board on April 22, 2024. He argues that the Initial Decision was not based on substantial evidence; the decision did not address all material issues of law and fact; and new and material evidence is now available that, despite due diligence, was not available when the record closed. According to Employee, the AJ's rulings were arbitrary, capricious, and made in bad faith, which infringed upon his First Amendment right to free speech. Employee also disagrees with the AJ's conclusions related to the witnesses' credibility

⁷ *Initial Decision* (March 18, 2022).

⁸ *Id.*

determinations, as well as his findings concerning the assessment of each IMPACT component. Relying on the holding in *Shaibu*, he submits that the circumstances surrounding the Cycle 1 and Cycle 2 observations, specifically regarding the misalignment of the comments with the actual scores, exhibits a factual basis to controvert the statements contained within his IMPACT evaluation.⁹ Employee further believes that his termination was retaliatory in nature, and he maintains that Goodman abused her discretion in evaluating him. Consequently, he requests that the Initial Decision be reversed.¹⁰

Agency filed its response on May 1, 2024. It asserts that the Initial Decision was based on substantial evidence and states that it followed all IMPACT procedures in assessing Employee's work performance. Agency opines that Employee's petition to the Board only seeks to relitigate issues which have already been duly considered and decided by the AJ. It further reasons that the AJ's credibility determinations were rational considering the evidence presented. Concerning Employee's argument related to new and material evidence, Agency provides that Employee's emails and attachment of a summer paycheck have no bearing on the disposition of this matter. It also questions why Employee failed to expound upon why this purported new evidence was not produced at the evidentiary hearing, as he was represented by counsel at the time.¹¹

Lastly, Agency disagrees with Employee's contention that the AJ failed to address all material issues of fact in the Initial Decision. It maintains that the Petition for Review fails to raise an argument that the IMPACT guidelines were not followed; Employee never testified during direct testimony that he was retaliated against for engaging in protected speech; and the Initial

⁹ *Petition for Review* (April 22, 2024).

¹⁰ *Id.*

¹¹ On April 19, 2024, Employee filed a notice indicating that he was no longer represented by counsel.

Decision properly addressed the issue that was raised at the hearing: whether Agency had just cause to terminate Employee. Consequently, it requests that the Initial Decision be upheld.¹²

On July 15, 2024, Employee filed a Motion to Compel the Release of Freedom of Information Act (“FOIA”) Email Documents. His filing asserts that Agency failed to release certain emails to him in a timely manner that would have provided clarity for his arguments related to the termination action, namely his IMPACT accessor’s alleged false testimony under oath.¹³ Employee subsequently filed a Motion to Consider Additional Evidence Which was Previously Unavailable. As it relates to the purported evidence, Employee claims that the newly submitted emails establish that Goodman fabricated testimony during the OEA evidentiary hearing which proves that his due process rights were infringed upon. As a result, he requests that this Board reverse the Initial Decision in light of the AJ’s erroneous findings related to his IMPACT assessment.¹⁴

Discussion

In accordance with OEA Rule 637.4, 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:

- (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.

¹² *Agency Response to Petition for Review* (May 1, 2024).

¹³ *Motion to Compel Release of FOIA Email Documents* (July 15, 2024).

¹⁴ *Motion to Consider Additional Evidence Which was Previously Unavailable* (July 30, 2024).

Additionally, the D.C. Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.¹⁵

IMPACT Process

Regarding the IMPACT process, this Board is guided by D.C. Code § 1-617.18 and Section 15.4 of the Collective Bargaining Agreement (“CBA”) between Agency and the Washington Teachers Union (“WTU”). Employee was a member of the WTU; therefore, OEA is governed by the terms of the applicable CBA. In 2005, the 109th Congress of the United States enacted the District of Columbia Omnibus Authorization Act, P.L. 109-356, which provides the following in pertinent part:

Notwithstanding any other provision of law, rule, or regulation, during fiscal year 2006 and each succeeding fiscal year, the evaluation process and instruments for evaluating District of Columbia Public School employees shall be a non-negotiable item for collective bargaining purposes.

Moreover, Section 15.4 of the CBA provides that “the standard for separation under the evaluation process shall be “just cause,” which shall be defined as adherence to the evaluation process only. Accordingly, this Board is limited to determining whether Employee’s termination under IMPACT was supported by just cause.

In *Jones v. District of Columbia Public Schools, et al.*, Case No. 2015 CA 005054 P(MPA)(D.C. Super. Ct. August 31, 2016), the Superior Court of the District of Columbia

¹⁵ Black’s Law Dictionary, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

explained that “the CBA established the extent to which the teacher evaluation process may be subject to grievance in §§ 15.3 and 15.4. Under the grievance process, OEA can only evaluate whether Agency followed the evaluation process it established and had just cause to terminate Petitioner.” The Court in *Jones* provided that the responsibility of the OEA Administrative Judge is to review the evaluation process in place and ensure that the Employee was not arbitrarily removed from her position. As the *Jones* Court noted, given the broad latitude that the agency had to create and implement the system of its choosing for evaluating employees, OEA has limited discretion to review the system it has established.¹⁶

Moreover, the Superior Court of the District of Columbia in *Shaibu v. District of Columbia Public Schools supra* ruled that “it would not be enough for [the employee] to proffer to OEA evidence that did not conflict with the factual basis of the [principal’s] evaluation but that would support a better overall evaluation.”¹⁷ It reasoned that if the factual basis of the “principal’s evaluation was true, the evaluation was supported by substantial evidence.”¹⁸ Additionally, the Court provided that principals enjoy near total discretion in ranking their teachers when conducting performance evaluations.

During the 2021-2022 school year, Employee was a member of IMPACT Group 2. Group 2 employees were evaluated on five components: Essential Practices (“EP”); Teacher-Assessed Student Achievement Data (“TAS”); Student Surveys of Practice (“SSP”); Commitment to School Community (“CSC”); and Core Professionalism (“CP”). Members of Group 2 were required to undergo one informal evaluation and assessments for Cycles 1 and 2. Post-observation conferences

¹⁶ See *Washington Teachers Union Local #6 v. Rhee*, 2009 CA 007482 (D.C. Super. Ct. September 7, 2012) (acknowledging that “it is not for the Court to second-guess the judgments of the Mayor and the Chancellor regarding how to manage DCPS, when those judgments were made in the exercise of the Mayor and the Chancellor’s lawful authority.”).

¹⁷ *Id.* at 6.

¹⁸ *Id.* See also *Washington Teachers' Union, Local # 6 v. Board of Education*, 109 F.3d 774, 780 (D.C. Cir. 1997)

were subsequently held within fifteen days of each assessment. School-based personnel who were evaluated through IMPACT ultimately receive a final score of Highly Effective, Effective, Developing, Minimally Effective, or Ineffective.

In this case, Employee's informal observation occurred on December 15, 2021. Thereafter, Employee received feedback from his evaluator, Goodman, regarding his performance.¹⁹ Employee's Cycle 1 observation was held on March 14, 2022, and his post-evaluation conference was held on March 28, 2022.²⁰ After the conference, Employee was placed on a coaching plan as a means for increasing his proficiency in the areas identified in Goodman's feedback. Additionally, Goodman conducted Employee's Cycle 2 observation on May 18, 2022, and held a post-evaluation conference on June 1, 2022. Employee received a final IMPACT score of Ineffective for the 2021-2022 school year; therefore, he was subject to termination.

Credibility Determinations

Employee presents several arguments on Petition for Review which directly contradict the AJ's findings of fact related to witness testimony. He contends that Goodman's testimony was untruthful, unreliable, and biased. Employee maintains that contrary to the holding in *Shaibu supra*, the circumstances surrounding Cycles 1 and 2 of his IMPACT process indicate that he provided sufficient direct, contradictory evidence to support a finding that Agency lacked just cause to terminate him. However, the OEA Board has previously held that it will not second guess the credibility determinations made by the fact finder, who was the AJ in this case.²¹ Moreover,

¹⁹ *Evidentiary Hearing Transcript*, p. 69.

²⁰ Employee's Cycle 1 observation was held virtually. Employee questions Agency's ability to do so; however, the IMPACT guidelines provide that formal observations may be conducted either in-person or virtually. *See* IMPACT Guideline Book, Group 2 (2021-2022).

²¹ *Employee v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 31, 2007); *Employee v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); and *Employee v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0014-07, *Opinion and Order on Petition for Review* (November 23, 2009).

the Court of Appeals in *Metropolitan Police Department v. Baker*, 564 A.2d 1155 (D.C. 1989), ruled that great deference to any witness credibility determinations are given to the administrative finder of fact.

After reviewing the OEA hearing transcript, a reasonable mind would accept the AJ's credibility assessments as adequate to support his decision to uphold Agency's termination action. The AJ considered the parties' documentary and testimonial evidence in reaching the conclusion that Agency followed all IMPACT procedures. The AJ, who was in the best position to observe and analyze the credibility of each witness, determined that Goodman provided truthful and consistent testimony. Additionally, he found no credible evidence that Goodman abused her discretion when assessing Employee's IMPACT grading rubric.

Consistent with the rulings in *Shaibu* and *Baker*, it was within Goodman's discretion to reach a different conclusion about Employee's performance, so long as her opinion was supported by substantial evidence. Employee failed to produce any evidence to refute standing case law that Goodman enjoyed near-total discretion in evaluating his work as a teacher. We also note that Employee's contentions on Petition for Review evince an effort to relitigate the issues already decided by the AJ. However, Employee's mere disagreements with the AJ's findings of fact do not constitute a valid basis for granting his petition. This Board finds that the AJ's conclusions of law flow rationally from the record; therefore, we find no credible basis for disturbing his credibility determinations.

IMPACT Scores

Employee disagrees with the AJ's findings relevant to his scores for the TAS, CP, and EP components. As it relates to TAS, this 15% weighted component tracks academic growth over time and is required for all teachers under IMPACT. Each employee is responsible for providing

evidence in support of their score; however, Goodman testified that Employee often missed deadlines for submitting his TAS assessment for approval.²² As a result, Employee was awarded a score of 1 because of he failed to submit the requested TAS data to validate a math assessment.²³ Employee, who was represented by counsel at during the evidentiary hearing, was afforded the opportunity to present testimony to contradict Agency’s evidence supporting the TAS score but did not.

Concerning his CP score, during Cycle 2, Employee received a twenty-point deduction after being assessed a “Significantly Below Standard” rating for CP No. 2 – On Time Arrival. Goodman provided testimony relevant to Employee’s “severe attendance” problems during the school year, which included unexcused late arrivals on April 21, 2022, April 25, 2022, and April 26, 2022.²⁴ Employee also received a “Slightly Below Standard” rating for CP No. 4 - Respect. According to Goodman, Employee would send her text messages at odd hours which resulted in her fearing for her safety. Goodman further testified about inappropriate comments and conduct of Employee that led to the rating.²⁵ The AJ ruled that Goodman provided reliable testimony in support of this score, and Employee failed to produce any credible evidence a basis for reversing the AJ’s findings. Further, Employee concedes that the deductions for CP “do not mathematically affect the final IMPACT score significantly.”²⁶ Consequently, we find no grounds for reversing his ruling.

Regarding the EP component, IMPACT guidelines require that an employee’s evaluator is obligated to include at least one piece of evidence and at least one suggestion for improvement in

²² *Evidentiary Hearing Transcript*, p. 93.

²³ *Id* at p. 135 and *Agency Answer to Petition for Appeal* at Tab 7.

²⁴ *Evidentiary Hearing Transcript* at p. 80.

²⁵ *Id.* at pp. 83-84. Goodman noted that Employee’s alleged harassment did not begin until after she completed his Cycle 1 IMPACT evaluation.

²⁶ *See Petition for Review* at pp. 9 and 13.

each area of performance.²⁷ Evidence presented during the hearing shows that Goodman observed Employee during classroom instruction for at least thirty minutes during both IMPACT cycles. Goodman's testimony highlighted Employee's performance deficiencies and identified areas in which he could improve. Again, Employee's mere disagreements with the AJ's factual findings are insufficient to warrant a reversal of the Initial Decision. Goodman provided evidence in support of each EP component, which satisfies the IMPACT guidelines. Therefore, this Board finds that the AJ's findings on this issue are supported by substantial evidence.

New Evidence

In accordance with OEA Rule 637.4, a Petition for Review may be granted in cases wherein new and material evidence is available that, despite due diligence, was not available when the record closed. Employee's Motion to Consider Additional Evidence provides that its purpose is to "further expose...Goodman's lies and fabrications."²⁸ He highlights several emails and documents which he purports to prove that Agency lacked cause to terminate him. Further, Employee states that he was disadvantaged because his attendance records were not produced prior to the closing of the record. However, in reviewing Employee's new submissions, this Board finds no compelling basis for remanding the matter for further consideration. As previously stated, there is substantial evidence in the record to support a finding that Agency adhered to the IMPACT process. Employee's disagreement with the AJ's analysis of the evidentiary hearing testimony is not a valid basis for granting his Petition for Review. Moreover, he has failed to provide how these documents would translate to a higher IMPACT score that would warrant the reversal of Agency's termination action. In sum, the additional submissions on Petition for Review simply support Employee's

²⁷ *Id.* at p. 312.

²⁸ *Motion to Consider Additional Evidence* at p. 1.

disagreements with Goodman’s analysis of his work performance. As a result, we find no persuasive basis for granting Employee’s petition on these grounds.

Discrimination and Unfair Labor Practices

Employee argues that he was unfairly terminated as a direct result of him complaining to Goodman about problems with CSC Component No. 1 – Support of the Local School Initiatives. In his Petition for Appeal, Employee indicated that he has already filed a complaint with the District of Columbia Equal Employment Office (“EEO”) in May of 2024 for these same claims.²⁹ While Employee, through counsel, could have conceivably presented evidence of retaliation in support of his claims during the evidentiary hearing, he failed to do so. Additionally, D.C. Code § 2-1411.02, reserves complaints of unlawful discrimination to the Office of Human Rights (“OHR”). Accordingly, this Board will not address Employee’s claims related to unfair treatment or discrimination.

Conclusion

In accordance with Section 15.4 of the CBA, the standard for separation under the IMPACT evaluation process shall be “just cause,” which shall be defined as adherence to the evaluation process only. Employee does not dispute that he was evaluated once informally and during Cycles 1 and 2 of the 2021-2022 school year.³⁰ He also does not dispute that Agency held post-evaluation conferences within fifteen days of each assessment cycle. Since Employee received a final IMPACT score of “Ineffective” for the 2021-2022 school year, he was subject to termination. While Employee disagrees with the AJ’s analysis of the IMPACT assessments, he has not produced material evidence that would warrant a reversal of Agency’s termination action. Finally, Employee failed to present any evidence of retaliation during the evidentiary hearing.

²⁹ *Petition for Appeal* at p. 6.

³⁰ *Evidentiary Hearing Transcript*, p. 137.

Based on the foregoing, this Board finds that all IMPACT processes were followed; the AJ adequately addressed all relevant issues of law; and the Initial Decision is supported by the record.

Therefore, we must deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

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

FOR THE BOARD:

Clarence Labor, Jr., Chair

Peter Rosenstein

Dionna Maria Lewis

Arrington L. Dixon

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