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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
Charles Woolridge,)	OEA Matter No. 1601-0129-15
Employee)	
)	Date of Issuance: November 23, 2016
v.)	
)	Joseph E. Lim, Esq.
Department of Consumer & Regulatory Affairs,)	Senior Administrative Judge
Agency)	

Julia Haller, Esq., Employee Representative
Adrienne Sorcnson, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On August 19, 2015, Charles Woolridge (“Employee”), a Program Analyst, CS-343-13, Grade 13, Step 7, in the Career Service, filed a Petition for Appeal from Department of Consumer & Regulatory Affairs’ (Agency) final decision to terminate him from his position for “on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law: engaging in activities that have criminal penalties -assault.”

After a failed mediation, this matter was assigned to me on November 20, 2015. After a postponement requested by the parties, I held a prehearing conference on March 14, 2016, and an evidentiary hearing on May 24, 2016. The record was closed at the end of the hearing.

JURISDICTION

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

ISSUES

- 1) Whether Employee’s actions constituted cause for adverse action; and
- 2) If so, whether the penalty of removal is within the range allowed by law, rules, or regulations.

Position of the Parties

On or around June 1, 2015, Agency charged Employee with the cause of "any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law, in this case assault." The notice informed Employee that he would be removed from his position as a Program Analyst effective September 24, 2015. A July 14, 2015, administrative review of the proposed notice of removal considered the *Douglas* factors¹ in arriving at the penalty. It stated that the action was taken in accordance with the provisions of

¹ In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-306 (1981), the Merit Systems Protection Board, this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows:

- 1) The nature and seriousness of the offense, and its relation to the employee's duties, including whether the offense was intentional or technical or inadvertent, or was committed intentionally or 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 the 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;

Chapter 16 §1603.3(e) of the District Personnel Manual (DPM). Specifically, Agency charged that on May 22, 2015, Employee assaulted his co-worker, Keith Slade.

Employee denies intentionally attacking Mr. Slade and asserts that the physical contact was accidental. Secondly, Employee contends that the agency failed to properly consider the *Douglas* factors in selecting a penalty.

EVIDENCE

1. Keith Slade ("Slade") (transcript, pages 17 – 78)

Slade, a Program Analyst and Emergency Manager, testified that his office was down the hall from Employee's office. On May 22, 2015, he entered Employee's office looking for Aaron Easterling because Easterling and Employee shared an office. Instead, Slade saw Employee and a guy named Carl sitting around a table. He introduced himself and learned that Carl was the new intern. At this point, Employee proclaimed that Carl was his intern. Slade got into an argument with Employee when he stated that in fact, Carl was Agency's intern.

Slade then asked Employee where Easterling was. Employee dismissively answered that he did not know. Slade protested Employee's dismissiveness towards him and Employee replied, "I'm not dealing with your fucking attitude." An argument arose, and the taller Employee cursed, then stood over Slade and ordered him out of the office.

Slade testified that he was taken aback when Employee screamed at him to get out and then walked past him and stormed out. Because Easterling still had not appeared, Slade decided to exit the office into the hallway and saw Employee turn back towards him in a rage. Slade testified that Employee charged towards him and used his shoulder to pummel his face into the wall. Agency Exhibit 3 shows a slight bruise on Slade's cheek and Agency Exhibit 4 shows a long, thin crack on the drywall.

Slade asked Employee, "What the hell are you doing?" but Employee left for the reception area to talk to his supervisor, Mr. Underwood. Slade approached them to report the incident but Underwood responded that he is in a meeting and did not have time to talk to him. So Slade goes up to the fifth floor and reported the incident to Human Resources Specialist Mia Brown. Slade then reported the incident to Mr. Underwood and supervisor Rabbiah Sabbakhan.

Slade testified that he wanted to file a police report but the investigator, Mr. Lawson, persuaded him to wait until his investigation was over. Slade never filed a police report although he believed Employee's assault was intentional. He denied threatening to get Employee for assault.

Slade characterized his prior relationship with Employee as good, mentioning that Employee even cooked him meals at times. However, Slade chastised Employee for bad-mouthing other fellow workers. Slade stated that his height was around 5'10".

2. Aaron Easterling ("Easterling") (transcript, pages 78-146)

Program Coordinator Easterling confirmed that he shared office space with Employee and that he did work on an assignment with Slade. When Easterling returned to his office, an angry and agitated Employee informed him that Slade had dropped by to look for him. Later, a disturbed Employee called him several times on his cell phone and related his incident with Slade to give his version of events.

Easterling said Employee admitted elbowing Slade but that he never tried to hurt him. Employee could not understand why Slade was claiming assault since if he really intended to, he could have inflicted more damage considering that during his college football days, he claimed that he could fell a guy with one blow. Easterling testified that he was not surprised by what transpired between Employee and Slade because Employee had openly expressed his dislike of Slade and another colleague named Tay Garnett previously.

Easterling recalled that Employee had cursed out Garnett for questioning him. Easterling described Garnett as quiet and appeasing while Employee was aggressive and often angry. He described sharing an office with Employee as a miserable experience and that he even thought about resigning his job because he feared Employee. Easterling described Slade as helpful and pleasant while Employee had a hot temper.

Easterling tried to complain to his union representative but nothing happened. Easterling testified that he did not raise his concerns with management because prior experience showed management was untrustworthy.

Later, his superiors, including a human resource person, called him to a meeting to talk about the incident. Easterling related his concerns about Employee's temperament. Sabbakhan asked him why Easterling did not bring up his concerns before. When Easterling replied that there was distrust between management and staff, Sabbakhan began blaming the staff. At this point, Easterling testified that he shut up, as his suspicions that management could not be trusted were confirmed by the exchange.

3. Tay Garnett ("Garnett") (transcript, pages 149-182)

Program Specialist Garnett testified that after his supervisor, Mr. Underwood, informed him that they had a new intern, Shawn Baskerville; he put Baskerville to work. The next time Employee was at work, Garnett talked to him to clarify the intern's duties. Employee belligerently shoved his desk and loudly told him to get out. Hearing the commotion, two other employees came in and asked him to exit to pacify the situation.

Garnett stated that his prior relationship with Employee was cordial. He described Easterling as honest, compassionate, and calm. He found Slade to be diligent and mild mannered. He described Employee to be professional at work but with a temper that goes off at something minor.

4. Tyrone Lawson ("Lawson") (transcript, pages 183-230)

Investigator Lawson testified that he worked in law enforcement for twenty years and had investigated hundreds of assault cases. He authored the investigative report (Agency Exhibit 7) that concluded that there was more than enough evidence Employee assaulted Slade on May 22, 2015. Based on his interviews with various witnesses, he discerned that Easterling was scared of Employee and that Garnett also relayed a similar episode with an angry Employee. Lawson recalled Sabbakhan informing him that he demoted Slade because of the way he talked and interacted with people. According to Lawson, the intern did not hear any profanity before he exited Employee's office. Mr. Chinde, whose office was next to Employee's, did not hear anything.

5. Rabbiah Sabbakhan ("Sabbakhan") (transcript, pages 230-261)

Chief Building Officer Sabbakhan testified that Slade came to him during a meeting with design professionals, so he asked Slade to wait until the meeting was over. Slade pointed to his bruised face and related the incident. Sabbakhan interviewed other witnesses, including Employee. Employee denied assaulting Slade, characterizing it as accidentally bumping into Slade. After reviewing the photographic evidence, Sabbakhan said he did not find Employee's version that it was an accident to be credible.

Sabbakhan testified that Deputy Len Underwood was Employee's supervisor and the one who proposed Employee's termination. Hearing Officer Darnell Ingram conducted an administrative review and wrote a report recommending Employee's termination.² Because management felt that assault was a serious charge, they did not consider a lesser penalty. Sabbakhan said he did not review Employee's prior record nor was he aware of any prior negative.

When asked about Slade's prior demotion, Sabbakhan stated that Slade's management style was not compatible with the Permit Center. He said that Slade was trustworthy and that Employee was a good worker.

6. Employee (transcript, pages 261-325)

With regards the incident of May 22, 2015, Employee described an ornery and argumentative Slade barging into his office who started arguing with him about the new intern while Employee tried to reason with Slade. Employee denied raising his voice or using any profanity.

Employee asked Slade several times to leave so that he could get on with his work. When Slade would not leave, Employee said that he left to find his supervisor, Mr. Underwood.

² See Agency Exhibit 11.

Employee walked down the hallway but turned around after remembering that Underwood was in the conference room in the opposite direction. As he turned around, he accidentally collided with Slade, who turned out to be right behind him. Employee admitted that he never apologized to Slade or inquired if he was alright.

Employee testified that Slade then threatened to get him for assault. Employee responded with, "What are you talking about?" and continued down the hall towards Underwood. Both Employee and Slade tried to talk to Underwood but he brushed them off, saying that he was in a meeting with developers. After the meeting, Employee related his version in the presence of Underwood, Mia Brown and Walter Crawford of Human Resources. He was instructed to write an incident report and was placed on administrative leave. That night, he called Easterling to relate what happened while working from home.

Employee denied telling anyone that he elbowed Slade or that the collision was intentional. Employee said his height is 6'4" and weighs 270 pounds. When asked about the bruise on Slade's face, Employee said it was because Slade is fair skinned. As for the crack on the wall, Employee testified that there are several cracks around the building due to settling. He also denied yelling at Garnett or shoving his desk in anger.

Employee said that his reputation is outstanding and pointed out that his performance evaluation report show that he deals well with the public Agency serves.³ He said Agency never discussed with him the possibility of lesser sanctions. Employee mentioned that he coaches children in his spare time and that he had a great relationship with the kids and their parents. He added that no one at work ever complained to him about his behavior. Prior to this incident, Employee said he avoided Slade as much as possible because Slade was antagonistic.

When asked about Easterling and Garnett, Employee replied that he was surprised and had thought Easterling was a friend. He believed Easterling and Garnett lied about their relationship due to management coercion.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Whether Agency's action was taken for cause.

Agency is required to prove its case by a preponderance of evidence. "Preponderance" is defined as "that degree of relevant evidence which the reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue."⁴

Agency charged Employee with the cause of "any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law. Specifically, Agency alleged that Employee assaulted a fellow employee named Slade. In this

³ Employee Exhibit 4.

⁴ OEA Rule 628.1, 59 D.C. Reg. 2129 (2012).

instance, Agency defines assault as an intentional harmful or offensive physical contact made by Employee on the person of Slade.⁵

Based on their demeanor at the witness stand, the consistency of their statements, the forthrightness of their testimony, I find that all of Agency's witnesses were more credible than Employee.

I find Mr. Slade to be highly credible. Although I also find him to be an excitable man who more than likely did yell at Employee that he was going to report him after being assaulted by him, that conclusion did not negate my finding that Employee assaulted him. The photographic evidence of Slade's bruised face and the damage to the wall where Slade was pushed into leads credence to Slade's account.

I also find Employee's office roommate, Easterling, to be most credible. Despite the fact that Employee never threatened or harmed him, it was evident that Easterling was indeed afraid of Employee due to the explosive temper and disdain for Slade and Garnett that Employee had displayed before in his presence. The fact that Employee thought Easterling was his friend leads even more credence to Easterling's account.

I also found Garnett to be more credible than Employee. I credit his account that Employee had also displayed an aggressive attitude and explosive temper towards him in a prior incident.

In contrast, Employee's version is much less credible. His version that his turning around and "accidentally bumping" into Slade is belied by the amount of physical force inflicted on Slade and the wall. If Employee's version is true, then their contact point, judging from their relative heights, would have been Slade's torso, not Slade's face. In addition, Employee admitted that he never apologized to Slade or inquired if Slade was alright immediately after allegedly bumping into Slade, actions that someone who accidentally bumps into another person would logically have done.

Employee's version that Slade entered Employee's office looking for a fight is also incredible. Employee's substantially bigger size and heft compared to the smaller Slade renders that allegation improbable.

Lastly, Employee could not give a credible motive as to why Easterling or Garnett, both of whom were not involved in this altercation, would want to lie against him. At the witness stand, both Easterling and Garnett had credibly testified that Employee had a reputation among his fellow workers for being hot tempered. These facts, coupled with Employee's courtroom demeanor, lends credence to the charge that he had intentionally used his huge frame to physically harm Slade.

⁵ See Agency Exhibit 10, Advance Written Notice of Proposed Removal.

I also find that no profanity was proven. However, this adverse action was based on the charge of whether Employee assaulted his co-worker, not on whether Employee uttered any profanity. In conclusion, I find that Agency had cause to discipline Employee.

If so, whether the penalty chosen is within the range allowed by law, rules, or regulations.

Employee argues that Agency did not properly consider the Douglas Factors in selecting the appropriate penalty to be imposed in a disciplinary action. He argues that not enough consideration was given to any mitigating or aggravating circumstances that have been determined to exist.

I have reviewed Agency's Advance Notice of Proposed Removal (Agency Exhibit 10), and have found that Agency carefully laid out their consideration of the Douglas factors. Although Agency may not have weighed these factors in the exact same manner as Employee would have preferred is not a ground for overruling Agency's determination.

Employee also argues that Agency should have chosen a lesser penalty. Agencies have the primary responsibility for managing their employees.⁶ The OEA Board has long recognized that the appropriateness of a penalty "involves not only an ascertainment of factual circumstances surrounding the violation but also the application of administrative judgment and discernment."⁷ This Office will not substitute its judgment when determining if a penalty should be sustained, but rather will limit its review to determining that "managerial discretion has been legitimately invoked and properly exercised."⁸ A penalty will not be disturbed if it comes "within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment."⁹

Based on the Table of Penalties, the penalty for a first offense for "any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law" includes suspensions up to removal.¹⁰ Agency decision to choose termination, for what it considered a serious offense, is not subject to second guessing by this Office.

For the reasons stated above, I conclude that Agency did not abuse its discretion in its decision, and further conclude that the penalty was within the permitted range and was not a clear error of judgment.

⁶ See, e.g., *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994).

⁷ *Beall Construction Company v. OSHRC*, 507 F.2d 1041 (U.S. Ct. of Appeals, 8th Cir. 1974).

⁸ *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

⁹ *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C.Reg. 2915 (1985).

¹⁰ Table of Appropriate Penalties, District Personnel Manual, DC Personnel Regulations, Chapter 16, §1-1619.1(e)(c).

ORDER

Based on the foregoing, it is hereby ORDERED that Agency's action of terminating Employee from his employment is UPHELD.

FOR THE OFFICE:



JOSEPH E. LIM, Esq.
Senior Administrative Judge

NOTICE OF APPEALS RIGHTS

This is an Initial Decision that will become a final decision of the Office of Employee Appeals unless either party to this proceeding files a Petition for Review with the office. A Petition for Review must be filed within thirty-five (35) calendar days, including holidays and weekends, of the issuance date of the Initial Decision in the case.

All Petitions for Review must set forth objections to the Initial Decision and establish that:

1. New and material evidence is available that, despite due diligence, was not available when the record was closed;
2. The decision of the presiding official is based on an erroneous interpretation of statute, regulation, or policy;
3. The finding of the presiding official are not based on substantial evidence; or
4. The Initial Decision did not address all the issues of law and fact properly raised in the appeal.

All Petitions for Review should be supported by references to applicable laws or regulations and make specific reference to the record. The Petition for Review, containing a certificate of service, must be filed with Administrative Assistant, D.C. Office of Employee Appeals, 1100 4th St., SW., Suite 620E, Washington, D.C. 20024. Four (4) copies of the Petition for Review must be filed. Parties wishing to respond to a Petition for Review may file their response within thirty-five (35) calendar days, including holidays and weekends, after the filing of the Petition for Review.

Instead of filing a Petition for Review with the Office, either party may file a Petition for Review in the Superior Court of the District of Columbia. Either party may also appeal a decision on Petition for Review (also known as an Opinion and Order 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.

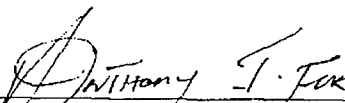
CERTIFICATE OF SERVICE

I certify that the attached **INITIAL DECISION** was sent by regular mail on this day to:

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Katrina Hill
Clerk

November 23, 2016
Date