

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
DANA WASHINGTON,)	OEA Matter No. 1601-0006-06
Employee)	
)	Date of Issuance: April 3, 2009
)	
)	
DEPARTMENT OF CORRECTIONS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Dana Washington (“Employee”) worked as a correction’s officer with the Department of Corrections (“Agency”). On September 30, 2005, Employee received a notice informing him that he was charged with negligence and would be suspended for twenty days without pay.¹ On October 18, 2005, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He requested that OEA restore all of his sick and annual leave as well as lost wages that resulted from the twenty-day suspension.

¹ The negligence charge resulted from an investigation that revealed that while Employee was on duty at the Central Detention Facility, a juvenile inmate made a call to the emergency 911 system claiming that there was a bomb at the White House. A Secret Service Agent traced the call back to the facility. Agency claimed that Employee was negligent because his duties included supervising all inmates so that incidents like this would not occur. Initially, Employee’s proposed suspension was to last for forty-five days, but after considering *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), Agency reduced his suspension to twenty days.

Employee argued he was a dependable and model employee. He also asserted that he was not the officer in charge (“OIC”) when the incident occurred and that he warned the OIC to keep the cell doors closed so that inmates could not leave their cells. Employee claimed that he learned a valuable lesson that he should have reported the OIC to cover himself, but he did not feel that this incident warranted a twenty-day suspension.²

Agency filed its response to Employee’s Petition for Appeal on November 22, 2005. It provided that it relied on several of the *Douglas* factors in making its decision.³ Agency outlined that Employee admitted that he lost sight of the inmate but made no effort to locate him. It argued that because the inmate was a juvenile, he required constant supervision. Agency also considered the seriousness of the threat that the inmate made by claiming that there was a bomb at the White House. It further provided that because this type of call originated from a detention center is reprehensible and projected the appearance that the criminal justice community was incapable of performing routine duties to secure its inmates. Accordingly, Agency requested that the OEA Administrative Judge (“AJ”) dismiss the matter.⁴

On June 8, 2006, the AJ held a hearing and on October 3, 2006, she issued her Initial Decision. The AJ reasoned that she had to determine whether Employee was negligent by considering if he had an actual duty; whether he carried out that duty; and if not, whether his failure to do so was excusable. Based on the testimony given during the

² *Petition for Appeal*, p. 7-8 (October 18, 2005).

³ Agency stated that it considered the nature and seriousness of the offense and its relation to Employee’s duties; the effects of the offense on Employee’s ability to perform at a satisfactory level and its effect on his supervisor’s confidence in his ability to perform assigned duties; the notoriety of the offense or its impact on the reputation of the Agency; and the clarity with which Employee was on notice of the rules that were violated committing the offense.

⁴ *Agency’s Pre-hearing Statement and Supporting Documents*, p. 4-7 (November 22, 2005).

hearing and documents submitted by both parties, the AJ found that Agency met its burden of proof that Employee had a duty to ensure that the inmates were secured in their cells.⁵ She held that Employee breached this duty by permitting the cell doors to be open and by failing to supervise inmates who were out of their cells. She also found that the breach of duty was not excusable. Moreover, the AJ found that the penalty imposed by Agency was proper. Therefore, she upheld Employee's twenty-day suspension.⁶

Employee disagreed with the Initial Decision and filed a Petition for Review on November 7, 2006. In it, he argued that there were no Post Orders for the late night shift. Therefore, he had to rely on information provided by the senior correctional officer. He also provided that there were new procedures outlined in the Supervisor's Log Book and the new procedures were announced during roll-call. Employee contended that at the time of the incident, there were no Post Orders available on how to govern juvenile inmates. He also argued that at the time his Petition for Review was filed there were still no Post Orders on the issue. Therefore, he requested that the Initial Decision be reversed.⁷

We agree with the AJ's decision to uphold Employee's suspension. As she properly outlined, Employee had a duty to secure the inmates. The AJ highlighted two

⁵The AJ outlined that Agency provided several sources, like the Post Order for the Housing Unit and Program Statement 4151.1A, to support its position that Employee had a duty to secure the cells. Post Order for North Three Housing Unit, Subpart 7 provides that:

C. Officers shall patrol all tiers every thirty (30) minutes to provide security, cell control, ...and maintain appropriate surveillance. . . .

1. Security inspections should be made and recorded every 30 minutes unless emergencies or scheduled activities inhibit such. . . .

Program Statement 4151.1A, Section 15 provides that:

c. Security: Correctional Officers shall constantly patrol the housing units during all out-of-cell activities to maintain accountability of all inmates. *Initial Decision*, p. 3 (October 3, 2006).

⁶*Id.*, 6-7.

⁷*Petition for Review* (November 7, 2006).

Agency rules that provided those duties. As previously stated, Post Order for North Three Housing Unit, Subpart 7 and Program Statement 4151.1A, Section 15, clearly state that Employee had a duty to constantly patrol the housing units when inmates were out of their cells. His duty was clear, and he failed to adhere to this task.

This Board also agrees with the AJ's assessment that the neglect of duty charge was grounds for an adverse action claim against Employee. Agency charged Employee with negligence because he violated Post Order for North Three Housing Unit, Subpart 7 and Program Statement 4151.1A, Section 15. Employee's failure to adhere to the duties as outlined in these two orders resulted in a neglect of his duties. Therefore, Agency was justified in bringing the adverse action against Employee.

In determining the appropriateness of Agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). The factors that we must consider are whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency.

Employee's 20-day suspension was within the range of penalty allowed by the District Personnel Manual ("DPM"). Chapter 16 of the DPM outlines the Table of Penalties for various causes of actions. The DPM clearly lists that the penalties for a neglect of duty charge ranges from a suspension to removal.

In assessing whether the penalty is based on a consideration of relevant factors, OEA relies on the *Douglas* factors. It provides 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.

As the AJ held in her Initial Decision, Agency considered all the relevant factors when imposing its penalty against Employee. After reviewing the entire record, this Board found that Agency considered the nature and seriousness of the offense, and it's relation to the Employee's duties. It considered Employee's past disciplinary record and his past work record, including his length of service with Agency and his performance on the job. Likewise, Agency considered the effects of the offense on Employee's ability to perform at a satisfactory level and its effect on his supervisor's confidence in his ability to perform assigned duties; the notoriety of the offense or its impact on the reputation of

the Agency; and the clarity with which Employee was on notice of the rules that were violated committing the offense.⁸

Based on the aforementioned, there is no clear error in judgment by Agency. It followed all of its regulations in suspending Employee. Employee failed to prove that his suspension was improper given the facts of the case. Accordingly, Employee's Petition for Review is **DENIED**.

⁸ *Agency's Pre-hearing Statement and Supporting Documents* (November 22, 2005).

ORDER

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

FOR THE BOARD:

Sherri Beatty-Arthur, Chair

Barbara D. Morgan

Richard F. Johns

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.