

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Rickey Robinson,)	
Employee)	OEA Matter No. 1601-0045-17
)	
v.)	Date of Issuance: April 9, 2019
)	
D.C. Department of Forensic Sciences,)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Rickey Robinson (“Employee”) worked as a Lab Support Repairer¹ with the D.C. Department of Forensic Sciences (“Agency”). On April 6, 2017, Agency issued a final notice of removal to Employee. The effective date of Employee’s removal was April 8, 2017.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on May 8, 2017. He argued that he should not have been terminated because he followed the procedures set forth by Agency’s drug policy notice and the Employee Assistance Program (“EAP”). Employee asserted that on July 21, 2016, he signed a drug policy notice that he would have to notify Agency within thirty days of the notice regarding a drug issue. He explained that

¹ Employee contended that his position was a Lab Support Repairer; however, his SF-50 provides that he was an A/C Equipment Mechanic.

² *Petition for Appeal*, p. 1 and 12 (May 8, 2017).

the notice provided that he would be given the opportunity to receive counseling and treatment; would not be subjected to any administrative action; and would be returned to his or her position upon completion of treatment and counseling. Additionally, Employee argued that District Personnel Manual (“DPM”) Chapters 36 and 39 provide that an agency must give an employee the opportunity to receive counseling and treatment for drug or alcohol issues before subjecting the employee to administrative action. Moreover, he claimed that Agency committed a serious error by contending that his termination was automatic upon failing a drug test because he held a safety sensitive position. Employee asserted that he was in no such position, as he only performed work on air conditioning and heating systems. Therefore, he requested that he be reinstated and awarded back pay and attorney fees.³

On June 22, 2017, Agency filed its Answer to Employee’s Petition for Appeal. It argued that it did not violate any statutes or regulations by separating Employee based on his positive drug test results. Additionally, Agency asserted that it is its policy to perform drug and alcohol testing on District employees who maintain positions with duties or responsibilities, which if performed while under the influence of drugs or alcohol, could lead to a lapse of attention and cause physical injury or loss of life to themselves or others. Furthermore, Agency argued that Employee failed to notify it of his alleged substance abuse problem or to seek treatment prior to reporting to work while under the influence of an illegal controlled substance. Therefore, it requested that OEA dismiss Employee’s appeal.⁴

The OEA Administrative Judge (“AJ”) issued an Initial Decision on September 24, 2018. She held that on July 21, 2016, Employee was notified and signed an acknowledgment form which provided that his position was designated as safety sensitive pursuant to 6B District of

³ *Id.* at 8-11.

⁴ *DCHR’S Answer to Employee’ Petition for Appeal*, p. 5-6 (June 22, 2017).

Columbia Municipal Regulations (“DCMR”) § 400 – Employee Suitability Policy. The AJ found that Employee’s position was specifically designated as safety sensitive pursuant to the Chapter 4 of the Suitability Instructions and was subject to enhanced suitability screening. The AJ disagreed with Employee’s assertion that the suitability test was pretextual in nature because he enrolled in EAP after disclosing a substance abuse problem to his doctors. She held that 6B DCMR § 2050.8 provided that an employee’s participation in an EAP “shall not preclude the taking of a disciplinary action under Chapter 16 of these regulations, if applicable or any other appropriate administrative action, in situations where such action is deemed appropriate” Moreover, the AJ held that when Employee acknowledged his new position’s designation as safety sensitive position, pursuant to 6B DCMR § 426.4, he had thirty days to disclose any substance abuse issues and undergo treatment. The AJ determined that Employee was subject to removal pursuant to 6B DCMR § 428.1, which deems an employee unsuitable for having a positive drug test. Moreover, the AJ opined that DPM § 1603.3(i) provided in the Table of Penalties that the penalty for a first offense for illegal drug use ranged from a fifteen-day suspension to removal. Accordingly, she upheld Agency’s action of terminating Employee from service.⁵

On October 29, 2018, Employee filed an Unopposed Motion for Extension of Time to File Petition for Review. He requests a two-week extension of time to file his Petition for Review. Employee provides that good cause exists for the extension because his attorney experienced medical issues, and the resulting effect on his workload in this matter and other cases, have compromised his normal work time significantly. Accordingly, he requests that his motion be granted, and the petition be due on November 12, 2018.⁶

⁵ *Initial Decision*, p. 6-9 (September 24, 2018).

⁶ *Unopposed Motion for Extension of Time to File Petition for Review* (October 29, 2018).

Subsequently, Employee filed a motion to withdraw his Petition for Review. He provides that he elected to instead file a *pro se* Petition for Review of the Initial Decision with the Superior Court for the District of Columbia.⁷ Because Employee has requested that his Petition for Review be withdrawn, a decision on the merits will not be issued by the Board in this matter. In light of Employee's request to voluntarily withdraw his petition, the Petition for Review is dismissed.

⁷ *Withdrawal of Unopposed Motion for Extension of Time to File Petition for Review* (October 29, 2018).

ORDER

Accordingly, it is hereby ordered that Employee's Petition for Review is **DISMISSED**.

FOR THE BOARD:

Clarence Labor, Chair

Vera M. Abbott

Patricia Hobson Wilson

Jelani Freeman

Peter Rosenstein

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.