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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No.: 1601-0050-23R25
v.	)	
	)	Date of Issuance: September 18, 2025
D.C. FIRE & EMERGENCY	)	
MEDICAL SERVICES,	)	
Agency	)	
	)	

OPINION AND ORDER
ON REMAND

This matter was previously before the Board. Employee worked as a Firefighter/Emergency Medical Technician (“FF/EMT”) with the Department of Fire and Emergency Medical Services (“Agency”). On December 30, 2020, he was arrested by the Prince George’s County Police Department for possession of a stolen handgun, possession of a loaded handgun on his person, and possession of a loaded handgun in a vehicle, hereinafter (“Case No. U-21-087”).² On March 14, 2021, Employee was arrested again in Prince George’s county for

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

² Employee pleaded guilty to the possession of a loaded handgun charge. The remaining charges were disposed of by way of nolle prosequi (this term is used in the criminal legal system to signify that the prosecution is discontinuing or will not prosecute). Agency’s Office of Internal Affairs (“OIA”) issued an August 24, 2022, report sustaining the allegations leading to Employee’s arrest.

second degree assault, acting in a disorderly manner, resisting arrest, and obstructing and hindering a police officer, hereinafter (“Case No. U-21-154”).³

As a result of Case No. U-21-087, Employee was charged with any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law; any act which constitutes a criminal offense whether or not the act results in a conviction; and any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations to include: neglect of duty. As a result of Case No. U-21-154, Employee was similarly charged with any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law; any act which constitutes a criminal offense whether or not the act results in a conviction; and any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations to include: neglect of duty.⁴ The effective date of Employee’s termination was June 24, 2023.⁵

The Office of Employee Appeals (“OEA”) Administrative Judge (“AJ”) issued an Initial Decision on March 15, 2024, ruling that Agency established cause to discipline Employee for both Case Nos. U-21-087 and U-21-154. However, in examining whether Agency committed a harmful procedural error, the AJ found that Agency utilized the incorrect version of the District Personnel Manual (“DPM”) in its charging documents. She assessed that the applicable regulations at the time of Employee’s termination were found in the 2019 iteration of the regulations and not the

³ All charges for this case were disposed of by nolle prosequi on August 9, 2022.

⁴ *Id.*

⁵ *Agency’s Notice of Proposed Termination* (September 14, 2022).

2012 DPM, which was utilized by Agency in its charging documents. As a result, she concluded that Agency's use of the incorrect regulations constituted a reversible procedural error.⁶

Next, the AJ opined that Employee's misconduct was not related to his employment with Agency as a Firefighter/EMT and did not occur while he was on duty. Therefore, she held that Agency could not charge Employee with any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law. Based on the same rationale, the AJ found that Agency was precluded from charging Employee with neglect of duty. Therefore, Employee's termination was reversed.⁷

Agency subsequently sought review of the Initial Decision with the OEA Board. On January 16, 2025, the Board issued an Opinion and Order on Petition for Review remanding the matter to the AJ. It provided that current case law dictated that Agency's use of the 2012 DPM was proper; thus, the AJ's finding to the contrary constituted a reversible error. Additionally, the Board concluded that the AJ failed to make findings related to how, or if, Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties. It noted that Article VII, Section 2 of Agency's Order Book did not require a nexus between Employee's off-duty conduct and his position, and members were not required to be on duty as a prerequisite to imposing discipline. Since the record was devoid of the aforementioned analyses based on the correct regulations, the Board could not determine if the Initial Decision was based on substantial

⁶ *Employee v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0050-23R25 (May 15, 2023).

⁷ *Id.*

evidence. As a result, the matter was remanded to be adjudicated based on an analysis of the 2012 regulations and Agency's Order Book.⁸

On remand, the parties were ordered to submit legal briefs addressing whether Employee's off-duty conduct adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties.⁹ In its brief, Agency contended that Employee's misconduct on December 30, 2020, and March 14, 2021, conflicted with the Department's mission to preserve life and promote safety. According to Agency, Employee's misconduct established that he was undependable; his behavior towards law enforcement resulted in the loss of confidence from his supervisors; and Employee's actions negatively impacted Agency's reputation. It noted that Employee disregarded his duty to interact with law enforcement and other first responders in a respectful manner, especially when outside of the District. Thus, Agency reasoned that Employee's December 30, 2020, arrest for possessing a stolen, loaded handgun and subsequent March 14, 2021, arrest for assaulting his fiancé was employment-related and violated Article VII, Section 2 of the Order Book. Therefore, it reiterated its position that Employee's termination should be affirmed.¹⁰

In his brief, Employee argued that his conduct on December 30, 2020, and March 14, 2021, did not materially affect Agency's operations. He explained that he was on leave from work on these days and did not violate Article VII, Section II of Agency's Order Book. Employee expressed remorse for his misconduct but maintained that the penalty imposed was too harsh. Hence, he asked that he be reinstated as an FF/EMT.¹¹

⁸ *Employee v. D.C. Fire & Emergency Medical Services Department*, OEA Matter No. 1601-0050-23R25, *Opinion and Order on Petition for Review* (January 16, 2025).

⁹ *Briefing Order* (February 19, 2025).

¹⁰ *Agency's Remand Brief* (March 3, 2025).

¹¹ *Employee's Brief on Remand* (April 11, 2025). In response, Agency filed a motion to strike Employee's brief on April 15, 2025. It claimed that Employee's filing failed to address the issue outlined in the AJ's remand order, and it opined that he presented material which was irrelevant and inflammatory. Agency clarified that Employee was not in

The AJ issued an Amended Initial Decision on Remand on May 30, 2025.¹² In measuring whether Agency's termination action was taken in accordance with the 2012 DPM and Article VII, Section 2 of the Order Book, the AJ held that while Employee's misconduct on December 30, 2020, and March 14, 2021, occurred while he was off duty, his actions nonetheless adversely and materially affected Agency operations. She assessed that Employee was in possession of a loaded handgun; he failed to inform officers that he was in possession of the weapon; and he acted in a disorderly manner when resisting arrest during the March 14, 2021, incident. Thus, she ruled that Employee's actions directly conflicted with Agency's mission and core values of bravery, accountability, safety, and integrity. The AJ further noted that Article VII did not require a nexus between Employee's conduct and his duties as an FF/EMT. As such, she held that Agency met its burden of proof in establishing the charges of any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law and neglect of duty. Finally, she concluded that termination was within the range of penalties permitted by law. Consequently, Employee's removal was upheld on remand.¹³

Employee filed a Petition for Review with the OEA Board on June 5, 2025. He presents many of the same arguments previously submitted to the AJ. Employee further espouses that his petition should be granted because the AJ's rulings are not based on substantial evidence; new and material evidence is available that was unavailable when the record was closed; and the AJ did not address all issues of law and fact properly raised on appeal. According to Employee, the AJ erred

approved leave status on December 30, 2020, or March 14, 2021. It further opined that Employee's conduct violated Article VII of the Order Book's definition of "employment related." Therefore, Agency again asked that the termination action be upheld. *See Agency's Motion to Strike or Alternatively, Agency's Reply Brief* (April 15, 2025).

¹² The AJ first issued an Initial Decision on Remand on April 30, 2025, dismissing Employee's appeal for failure to prosecute. The AJ's decision provided that Employee failed to submit a physical copy of his brief as of the date of issuance of the Initial Decision on Remand. Upon discovering the administrative error, an amended decision was issued to include consideration of Employee's brief. *See Initial Decision on Remand* (April 30, 2025).

¹³ *Initial Decision on Remand* (May 30, 2025).

in concluding that he failed to mail a physical copy of his legal brief in response to the February 19, 2025, briefing order. Accordingly, he believes that the matter should be remanded again for the AJ to reconsider his substantive claims because his arguments were not considered in her remand decision. Employee also requests that the Board discipline the AJ for failing to render a decision on the entire record.¹⁴

In response, Agency asserts that Employee's petition to the Board was untimely under OEA Rule 637.2. It submits that he offers no compelling basis for disregarding his duty to file a petition for review one day beyond the deadline. Agency highlights that while Employee's courtesy email filing of his brief on remand was not considered in the April 30, 2025, remand decision, the AJ corrected the administrative mistake and rendered an Amended Decision on Remand which considered Employee's substantive arguments. Consequently, it opines that the Amended Decision on Remand is based on substantial evidence.¹⁵

New and Material Evidence

A Petition for Review may be granted pursuant to OEA Rule 637.7 if the petitioner can sufficiently demonstrate that new and material evidence is available that, despite due diligence, was not available when the record closed. Employee proffers that the AJ's failure to consider his remand brief constituted a dereliction of duty. By way of background, the AJ first issued an Initial Decision on Remand on April 30, 2025, dismissing Employee's appeal for failure to prosecute. To support her decision, the AJ provided the following: Employee failed to submit a physical copy of his brief on remand to OEA no later than April 18, 2025; he was issued an Order for Statement of Good Cause on April 4, 2025, as a result; Employee responded via email with an attached courtesy copy of his brief on April 11, 2025, informing the AJ that a physical copy was forthcoming; and

¹⁴ *Petition for Review* (June 5, 2025).

¹⁵ *Agency's Opposition to Petition for Review* (June 9, 2025).

Employee failed to submit a physical copy of the brief as of the date of issuance of the Initial Decision on Remand.¹⁶ Upon being notified that Employee's physical brief was not recorded due to an administrative mistake, the AJ cured the error and issued an Amended Initial Decision on Remand on May 30, 2025. Her ruling included a consideration of Employee's response brief. Thus, Employee has not satisfied the requirements for granting his petition based on a violation of OEA Rule 637.7 because his filing is not considered new or material evidence. Accordingly, a remand for additional adjudicated is unwarranted.

Cause

Pursuant to OEA Rule 631.1, 6-B DCMR Chapter 600 (December 27, 2021), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, Article VII, Section 2 of Agency's Order Book defines an "employment-related act or omission" as "an act or omission, occurring during a time that the member was other than on duty, and which adversely and materially has affected, or is likely to affect, the efficiency of government operations or the member's performance of his or her duties." Further, in *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0375-10, *Opinion and Order on Petition for Review* (June 9, 2015), the OEA Board held the following:

"Because Article VII, Section 2 exists, this Board does not believe that the requirement for a nexus to Employee's position is needed. This section specifically covers incidents that occurred while an employee is off duty that affects Agency's operation or Employee's performance of her duties."

¹⁶ See *Initial Decision on Remand* (April 30, 2025).

On remand, the AJ provided a thorough analysis outlining why Agency satisfactorily established how Employee's off-duty conduct on December 30, 2020, and March 14, 2021, materially affected Agency's operations. She further sufficiently identified how his misconduct constituted any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law, and how it established a neglect of duty. Employee's petition to this Board offers no legal arguments to counter the AJ's findings. Consequently, we find that the AJ's conclusions of law are based on substantial evidence,¹⁷ and her findings flow rationally from the evidence. Finally, Employee has established no legal basis for the imposition of sanctions against the AJ. Consequently, we must deny Employee' Petition for Review.¹⁸

¹⁷ 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.

¹⁸ As it relates to Agency's argument that Employee's petition to the Board was untimely, in *Baldwin v. D.C. Office of Employee Appeals*, 226 A.3d 1140 (D.C. 2020), the D.C. Court of Appeals held that it is not enough that legislatures articulate a deadline using mandatory language but that the legislature must plainly mean for noncompliance to have consequences. Similarly, in *Teamsters Local Union 1714 v. Public Employee Relations Board*, 579 A.2d 706 (D.C. 1990), the D.C. Court of Appeals held that the general rule is that a statutory time period is not mandatory unless it expressly requires agency to act within a particular time period and specifies a consequence for failure to comply. The Court reasoned that if it is determined that a statutory provision is not mandatory, then "... the interpreting agenc[y] must ... engage in a balancing test to determine whether any prejudice to a party caused by agency delay is outweighed by the interest of another party or the public in allowing agency to act after the statutory time period has elapsed." OEA Rule 637.2 states that "any party to the proceeding may serve and file one (1) original and one (1) copy of a Petition for Review of an Initial Decision with the Board within thirty-five (35) calendar days of issuance of the Initial Decision." The rule does not provide for a consequence for noncompliance and Agency has not established that it was prejudiced by Employee's late filing. Agency was provided with an opportunity to respond, and this Board finds no compelling reasoning for dismissing Employee's appeal on this basis.

ORDER

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

FOR THE BOARD:

Dionna Maria Lewis, Chair

Arrington L. Dixon

Lashon Adams

Jeanne Moorehead

Pia Winston

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.