

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

Alphonso Bryant,)	
Herbert L. Douglas,)	
Shantell Hatton,)	
Lowanda Hinton-Saunders,)	Case Numbers: 1601-0031-08,
Lorenzo Jennings,)	1601-0032-08, 1601-0033-08,
Darryl Love,)	1601-0034-08, 1601-0035-08,
Dionne Makins,)	1601-0036-08, 1601-0037-08,
Lachone Stewart, and)	1601-0038-08, 1601-0039-08
Cynthia Washington,)	
Employees,)	
)	Joseph E. Lim, Esq.
v.)	Senior Administrative Judge
)	
Department of Corrections)	Date of Issuance: June 22, 2009
Agency)	

Attorneys Rorey Smith, Kevin J. Turner, Ross Buchholz, Agency Representatives
Attorneys J. Michael Hannon, and J. Scott Hagood, Employee Representatives

INITIAL DECISION

INTRODUCTION

On January 14, 2008, Employees appealed from Agency's (Department of Corrections or DOC) final decision, effective December 17, 2007, removing them from their positions as Correctional Officers at the D.C. Jail for "negligence," or "malfeasance." Employees were accused of negligently allowing two prison inmates to escape. Employees deny doing anything improper, asserting that they followed standard operating procedures.

After several postponements requested by both parties, I held prehearing conferences on June 27, 2008, and September 26, 2008. I then presided over a hearing on December 8, 10, and 12, 2008. The record 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 Agency has proven, by a preponderance of the evidence, that Employees committed the acts of which they are accused.
2. Whether Employees's actions constituted cause for taking an adverse action.
3. If so, whether Agency's penalty was appropriate under the circumstances.

BACKGROUND

Undisputed Facts gleaned from both testimonial and documentary evidence produced at trial.

The Central Detention Facility (CDF) located at 1901 D Street, SE, Washington, D.C., is the larger of the two correctional institutions comprising the Agency, the second being the Central Treatment Facility which is directly adjacent to it. The CDF has a design capacity of 2,498 inmates and a staffing complement of 909, 720 of whom are uniformed personnel.

The complex is a three story building comprised of three modules; two inmate housing modules and an administrative module. All three modules are connected by circulation corridors on each floor. There are nine housing units located in each housing module. The housing units are on three floors in each module. Although the administrative module is structurally attached to both housing unit modules, access to the administrative module can only be gained through secured entrances located on the ground level and the first, second, and third floors. The administrative module houses the Warden's suite, staff entrance, the Visitor's Hall, the Officers' Dining Room, the Records Office, and various other administrative support entities.

The CDF complex is bordered by a residential community comprised of brick row houses and apartment dwellings on the west side. The Old Congressional Cemetery is located to the immediate south and the D.C. General Hospital grounds to the immediate east of the facility. The complex is also adjoined to the Corrections Treatment Facility to the east by a secured third level corridor.

Although video surveillance cameras were strategically positioned in each housing unit as well as in the main threshold of the housing unit foyer, there were no surveillance cameras in the circulation corridors or administrative module at the time.

Everyday, correctional officers head to their modular units to conduct a head count of all inmates in their respective cells. Once the count is cleared, the modular unit officer allows inmates who are authorized to move outside their cells to go to their destination, whether it is the infirmary, a work area, dining hall, chapel, visitors' area, etc. Access to each area in the correctional facility is controlled by an officer manning a modular unit or bubble. There is a bubble in every housing unit which controls the movement of the inmates inside the unit. There are three levels in the administrative side, all connected by stairs and elevators. To go outside the jail, an inmate would

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have to pass through the secured door.

With his or her commanding view of the premises via reinforced windows and remote controlled door locks, the correctional officer can control the inmates' movements. For an inmate to go outside their housing unit, they must show a signed pass for the officer to check. The officer in the bubble then presses a button to unlock the door.

Thus, an inmate has to pass through several locked gates controlled by officers whose duty it is to inspect the inmate's movement passes or detail badges. These badges contain the inmate's identity and his or her photo. Movement passes, on the other hand, were simply signed slips of paper without any photo on it that indicate where the inmate is authorized to go. For these passes and badges to work, an officer manning one of the gates must challenge the inmate and inspect them.

On June 3, 2006, at approximately 10:05 a.m., two inmates escaped from the CDF jail. The two escapees, Joseph Leaks and Ricardo Jones, were among the most dangerous offenders housed at the D.C. Jail. Inmate Leaks was awaiting trial in the D.C. Superior Court on a charge of Accessory After the Fact to First Degree Murder While Armed. He also had violated his parole arising from a 1998 conviction for Assault with a Deadly Weapon. Agency contends that Leaks had a prior escape attempt in October of 2005. Ricardo Jones was awaiting trial in the D.C. Superior Court in two cases, one charging Assault with Intent to Kill and a second charging Murder in the First Degree. Leaks and Jones are co-defendants in the murder case. Leaks and Jones are also suspects in an homicidal assault investigation in North Carolina. The escape was widely reported in the press, and brought media attention to both Agency and city administrators.

Subsequent investigation revealed that three weeks prior to the escape, Employee Officer Lorenzo Jennings had witnessed inmate Beachum exiting an unauthorized area. He confiscated the inmate's detail badge and returned him to his cell. During the jail breakout, inmate Jones had used this very badge to gain access to the administrative area of the correctional facility from which the escape was made. Inmate Jones also had a pass to the Infirmary; however, his name was not on the list of inmates scheduled for appointment.

On the morning of June 3, 2006, a correctional officer allowed inmates Jones and Leaks into the second floor of the administrative module or "bubble" after they flashed their detail passes. Without the required supervision, the two men then removed a commercial floor buffer from the supply locker, brought it down the second floor stairwell to the first floor of the administrative module. Once on the first floor, the inmates forced open the outer door of the Warden's suite. They then took the buffer and forced open the Warden's inner office door by ramming the 80-pound commercial buffer against it several times.

Once inside the office, the inmates discarded their orange prison issued jumpsuits and changed into dark navy blue inmate issued jumpsuits complete with a baseball cap and sunglasses.

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Once dressed, both inmates approached the window located directly above a canopy used to shield the general public entering the Visitor's Hall from inclement weather and shattered the security glass window by repeatedly pummeling the commercial floor buffer against it.

Both inmates then jumped out through the broken window, fell on the canopy thereby breaking their fall, slid off and landed on the pavement. They then ran to the street in a northeast direction towards the D.C. Armory Metro Station as there was no perimeter fencing, no surveillance cameras, no security walls or razor wire at that spot.

A correctional officer, while reporting for duty, witnessed the inmates escaping, and pursued the two escapees on foot until he lost sight of them. The officer then returned to the D.C. Jail to report the escape. An off-duty female police officer also gave chase and was able to give other responding police a physical description of the escapees along with their last known direction of travel.

On June 4, 2006, the two escapees were recaptured without incident. Director Brown announced that as a result of the escape, the Agency evaluated its operation and made immediate improvements. An immediate investigation of the jail escape was also made.

On June 5, 2006, Director Devon Brown issued written notification to Employees Alphonso Bryant, Herbert Douglas, Shantell Hatton, Lowanda Hinton-Saunders, Lorenzo Jennings, Darryl Love, Dionne Makins, Lachonne Stewart, and Cynthia Washington, putting them on paid administrative leave pending further investigation of the escape. The investigation concluded that negligence and misconduct committed by Employees' contributed to the escape. The consensus was that the escape was neither opportunistic nor spontaneous but rather the outgrowth of a calculated, deliberate plan, arranged and orchestrated with the assistance of others. To aid in their escape, Inmate Leaks used his detail pass while Inmate Jones used an unauthorized infirmary movement pass. Accordingly, on June 26, 2006, Director Brown summarily removed Employees from their positions pursuant to DPM (District Personnel Manual) Chapter 16 Part 1 § 1617. On August 24, 2006, Employees' were provided written notice of their summary removals.

After the summary firings, the Agency then entered into a Memorandum of Understanding (MOU) with the Office of Administrative Hearings (OAH). Pursuant to the MOU, a Judge of the OAH would conduct the administrative hearings required in these cases consistent with Chapter 16 of the D.C. Personnel Manual (DCPM) and the Collective Bargaining Agreement between Agency and union (CBA), and as the Agency Employees were advised in their written notices of August 24, 2006. Section 1612.2 of the DCPM requires that an "administrative review shall be conducted by a hearing officer." 6 DCMR 1612.2.

The OAH issued a Report and Recommendation in each case on December 11, 2006, concluding that the summary removals could not be sustained and recommending that the Employees

be returned to work.

When Director Brown failed to issue a final decision, Employees filed a Petition for Writ of Mandamus with the District of Columbia Court of Appeals on March 12, 2007, to compel Brown to return them to work. Four days later, Agency rescinded the proposals for Summary Removal of the Employees, thereby avoiding a decision by the District of Columbia Court of Appeals.

When Employees reported to Agency headquarters in March 16, 2007, they were given a second letter putting them all on paid administrative leave, and served with new notices of proposed termination based on the same charges and specifications that were cited in the summary removal proceedings. By a letter dated March 15, 2007, Employees were notified by Deputy Warden Waldren of a proposal to remove them from their positions as Correctional Officers for “negligence in performing official duties, including failure to follow verbal or written instructions,” or for “malfeasance, defined as unjust conduct or performance of some act which the employee had no right, or which he or she had contracted not to do.”

After receiving recommendations from the Hearing Officer appointed to consider the proposed adverse actions, Director Devon Brown issued final notices to Employees informing them they would be removed from their positions effective December 17, 2007. The effective date of the termination was subsequently amended to January 16, 2008. Thereafter, Employees appealed their terminations to the Office of Employee Appeals.

SUMMARY OF EVIDENCE, ANALYSIS, AND FINDINGS OF FACT

Agency Charges Employees Alphonso Bryant and Darryl Love with Negligent and Improper Classification of Inmate Leaks for Work Detail.

Undisputed facts:

Once an inmate is admitted into the correctional facility, a Correctional Treatment Specialist will determine his or her eligibility for work detail. Correctional treatment specialists classify inmates within 72 hours after arrival at the facility, and reclassify them every 60 days. These reclassifications of security status are conducted to make security status changes based on, but not limited to, an inmate’s behavior, any additional charges incurred, and any disciplinary reports available. As a matter of procedure, inmates are classified every 60 days, a change from a prior 90-day reclassification requirement.

The custody levels are minimum, medium, maximum. Minimum and medium security inmates are eligible for work detail, maximum security inmates are not. A minimum custody inmate may work on an outside detail such as a landscaping detail. Medium custody inmate can only work inside the jail but outside his housing unit in areas like cleaning, receiving and discharging,

electrical, plumbing, laundry detail.

Using NIPS (non-industrial pay scale) post order, PRIMS (Pretrial Realtime Information Management System), and JACCS (Jail and Community Correction System), which are computerized databases of the particular inmate's information such as convictions, outstanding warrants, detainers, separation orders, medical flags, custody level, housing unit, etc., the specialist would classify an inmate as being either eligible or ineligible for work detail.

PRIMS gives the criminal history of the inmate. JACCS has the same information as the institutional file. A separation order is an order issued by a judge which informs prison officials that an inmate must be kept separate from another inmate with whom he or she may have a grudge. Another reason for a separation order would be for security or to keep co-conspirators in a crime apart. There was a separation order mandating that escapee Inmate Leaks be kept away from escapee Inmate Jones.

NIPS post order states that the following are ineligible for work detail: 1] a convicted felon who is sentenced to more than five years; 2] inmates with a separation order may not be assigned to work detail; 3] a parole violator with more than two years before being scheduled for release; 4] an inmate with an outstanding detainer.

Alphonso Bryant

As a Correctional Treatment Specialist, Officer Bryant's job was to screen inmates to check their eligibility for work detail. He must check both computer records and institutional paper files to screen out felons, escapees, parole violators, and inmates with separation orders. Agency accuses Officer Bryant of negligently failing to note Inmate Leaks' history of attempted escapes. Instead of designating Leaks as high security, Employee Bryant categorized Leaks as medium security, thereby allowing Leaks to be assigned to work detail.

Darryl Love

As a CTS (Correctional Treatment Specialist), Officer Love's job required him to conduct a custody reclassification of inmates into custody levels of low, medium, and high security. Agency accuses Mr. Love of failing to note Inmate Joseph Leaks' history of attempted escapes and of misclassifying Leaks as medium custody. This misclassification allowed Leaks to secure work on an Off Unit Detail, which in turn, made it easier for him to carry out his escape.

Testimonial and Documentary Evidence Presented at the Hearing:

Deputy Warden for Support Services Leona Bennett testified as follows. (Tr. II, Pgs. 432 – 495; Tr. III, Pgs. 749-789). Bennett was the direct supervisor of Employees Bryant and Love and

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spoke about Agency inmate classification procedures and record keeping. As part of the investigation, Bennett reviewed the classification work done on Inmate Leaks by Employees Alphonso Bryant and Daryl Love by using Agency's Technical Reference Manual for inmate classification (Agency Exhibit 61), Post Order Non-Industrial Inmate Pay System (Agency Exhibit 10), and the Institutional Supplement (Agency Exhibit 11).

Bennett found that Employee Bryant was the case manager that cleared the inmate for detail placement. Her examination of Employee Bryant's classification of Inmate Leaks revealed a lot of mistakes. Bennett testified that an inmate with more than five years remaining on his sentence is not eligible for work detail. Leaks had 12 years remaining on his sentence. An inmate with a history of escape should have been classified as maximum security and thus, ineligible for detail. Leaks had a history of attempted escape. An inmate with a detainer for being a parole violator with two criminal offenses is also ineligible for work detail. Considering the severity of Leaks' current offenses, prior convictions of violence with a gun, escape attempts, separation order, she testified that Employee Bryant should have rated Leaks as maximum security risk with a score of 11 instead of a medium security risk with a score of 8.

Bennett opined that when there is a separation order between two inmates and the JACCS data indicates that the other inmate is no longer in jail, the correctional treatment specialist should double check that by doing an actual head count. She concluded Employee Bryant did not follow proper procedures as mandated by their technical manual for classifying inmates for work detail.

Looking at Employee Love's classification work, Bennett also concluded Love improperly classified Inmate Leaks. Despite knowing someone else classified Leaks as maximum custody, Love classified Leaks as medium security. She said Inmate Leaks should not have been classified as eligible for work detail because he had a detainer, a history of escape, pending charges, and he was serving 12 more years because he violated parole.

Bennett said that a separation order indicates an attachment. Attachment identifies the inmates to be separated. If the institutional record on an inmate is missing, then the Correctional treatment specialists should try to locate the missing file in order to do his or her job properly. The specialist should also notify his or her supervisor that the file is missing. It is his job to secure the file. She agreed that points are given only if there is criminal conviction. But an attempted escape gets five points. Accessory to murder gets a point. Bennett insisted that all of this information is available in the databases.

Wanda Patten testified as follows. (Tr. III, Pgs. 870 - 942). Patten was the Head of DOC Office of Internal Affairs and was in charge of the investigation following the jail escape. She verified Bryant's account that JACCS system indicated that Inmate Jones was not in D.C. Jail. Her investigation revealed that Employee Bryant did not check further into the separation order and that Employee Love did not consider Leaks' parole violation charge.

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Officer Cynthia Washington testified (Tr. I, Pgs. 187 – 250; Tr. III, Pgs. 988 - 990) that SE1 inmates were either low or medium security as maximum security inmates are housed on the third floor. In addition, maximum security inmates are not eligible for work detail and must always be accompanied by an officer if they were to be allowed outside the housing unit. It was the C and P (classification and parole) people who are responsible for classifying the inmates.

Agency Director Devon Brown testified as follows. (Tr. II, Pgs. 315 – 427). Brown stressed that Leona Bennett is the expert in inmate classification. He said Leaks should have been classified as maximum security. The presence of a separation order coupled with the information that inmate is no longer in jail is a discrepancy that should have been investigated by checking with his supervisor. If an institutional file on an inmate was missing, officer should check with the records office to locate it.

Director Brown testified that he was the Deciding Official and *de facto* Proposing Official in the instant matters. He has served in a variety of positions in the prison system. He testified that a prison break is a serious breach of the community's public safety and results immediately in a prison lockdown, where all inmates are confined to their cells. Brown testified that the escapees were maximum security risks.

Director Brown had read the investigative report made by Chief of Internal Affairs Wanda Patten and considered the recommendation of Dr. Lesansky, who conducted the agency hearing into the allegations against Employees. In deciding upon the ultimate penalty of termination, Brown said he considered all the Douglas Factors.

Employee Alphonso Bryant testified as follows. (Tr. I, Pgs. 250 – 304; Tr. III, Pgs. 980 - 988). Employee Bryant worked as a Correctional Treatment Specialist since 1989. His job required him to determine the eligibility of inmates for work detail. He was the only Correctional Treatment Specialist responsible for assigning inmates to permanent details. As the responsible case manager, Mr. Bryant performed routine re-evaluations and re-classifications of the inmates assigned to his section. At the time of the escape, Mr. Bryant was also responsible for processing inmates upon intake into the jail and preparing halfway house reports.

Employee Bryant testified that he did not use Inmate Leaks' institutional file because he did not have it at the time. He admitted it was his duty to review the file. He claimed that the JACCS and PRIMIS had no info on the escape attempt at the time he reviewed Leaks' record, so he wrote "yes" on Inmate Leaks' eligibility for off-unit and outside detail.

Employee Bryant insisted that at the time he was reviewing Leaks' file, he did not have information that Inmate Jones was still housed in CDF. Although he was aware of the separation order on Inmate Leaks, the JACCS system had indicated that Inmate Jones had been released. Based

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on that information, Bryant stated that he could and did assign Inmate Leaks to work detail. He added that he had no obligation to double check the JACCS data and that it was always difficult to find records.

Later in his testimony, Employee Bryant claimed that he did not have Leaks' separation order because if he did, he would not allow Leaks to have a work detail. Besides, he pointed out, that he only recommends an inmate for detail, while it was the deputy warden who makes the final decision. Again he defended himself by blaming JACCS for being wrong when it said Jones was out of jail. He added that the NIPS coordinator, Sgt. Johnson, and Deputy Warden DuBose had earlier given him outstanding ratings in his performance evaluations.

Employee Darryl Love testified as follows. (Tr. III, Pgs. 962 – 979). As a correctional treatment specialist for 19 years, Employee Love worked in the Classification and Parole Division. His supervisor was Leona Bennett. He disagreed with his superior's testimony that his classification was erroneous. Mr. Love insisted he was not negligent in performing the duties of his job nor did his conduct contribute to the escape of inmates Joseph Leaks and Ricardo Jones. In fact, he said that after the jail escape, Bennett had left a message saying that he had classified Leaks properly and that Bennett even told people at a party that he had classified Leaks properly. He was taught that only if an inmate was convicted of escape should the inmate be given points.

Employee Love reclassified inmate Leaks on March 11, 2006 and May 15, 2006. Inmate Leaks' initial classification was done when he was processed through intake at the D.C. Jail. Though Agency contends that inmate Leaks should have been classified as a "high" custody inmate, Mr. Love rated inmate Leaks as a "medium" custody inmate. In each of the reclassifications he performed, Mr. Love used an uncertified "Technical Reference Manual" (Agency Exhibit 61) that he was mandated to use by D.C. Jail officials. The "Technical Reference Manual" replaced a former certified Bureau of Prison classification manual which Mr. Love and all Correctional Treatment Specialists used from 1988 until the new "Technical Reference Manual" was implemented in March 2004. He said he was given only a one hour training session on the use of the manual. Most of his instruction came from a program statement issued in March 2004, along with the manual.

Employee Love said he applied the charges and the conviction summaries set out for inmate Leaks in the JAACS and PRISM systems to the criteria in the Manual. When reclassifying inmates, a CTS should have access to information from the D.C. Jail's JAACS system, the PRISM system and an inmate's paper file. However, inmates' paper files are often lost and unavailable to CTSs when they are conducting reclassifications. Inmate Leaks' paper file was unavailable on both occasions that Mr. Love reclassified him. According to the criteria in the "Technical Reference Manual," inmate Leaks' reclassification as a medium security inmate was correct.

Employee Love's direct supervisor, Leona Bennett, had access to all reclassifications and as a matter of procedure was supposed to make weekly checks of reclassifications to ensure accuracy. He

alleged that Ms. Bennett failed to review his work. In fact, Bennett reviewed Leaks' classifications only after the inmates Leaks and Jones escaped.

Analysis and Findings of Fact on Employees Bryant and Love

Both Employees Bryant and Love insisted that their classification of Inmate Leaks as medium security and therefore eligible for work detail was correct based on the data they had at the time. Although they were aware there was a separation order, they said the paper file was missing. They disagreed with their superiors' testimony that they had a duty to track down the paper file and to do a head count in cases of discrepancy regarding the presence or absence of an inmate they had a separation order on. Lastly, they blamed their supervisor for not checking their work and passed on the ultimate responsibility for correct inmate classification to the deputy warden.

I find the Agency witnesses to be more credible than Employees Bryant and Love. There were too many red flags (lengthy and violent criminal history, escape attempt, violation of probation, length of sentence remaining, the presence of a separation order, the fact that Leaks was initially rated as a maximum security risk, etc.) even in the computer databases readily available on Inmate Leaks for these Employees to justify rating Leaks as eligible for work detail. Even if the data on Inmate Jones being released were true, any one of the other factors should have alerted them that Leaks should not be placed on detail. Instead, they were not diligent enough in their work to verify their data and properly classify Leaks.

I find that CTS such as themselves have the duty to locate a missing institutional file and a duty to verify the presence or absence of an inmate when there is a separation order. I therefore find that Employees Bryant and Love were negligent in their job.

Agency Charges Employee Lorenzo Jennings with Failure to Account for Confiscated Inmate Pass and Failure to Prepare Disciplinary Report

Undisputed facts:

Three weeks prior to the escape, Environmental Officer Jennings was on his way to get the inmates in his charge at approximately 6:30 a.m. At this time, Officer Jennings witnessed inmate Carleton Beachum exiting the staff bathroom unsupervised. Officer Jennings immediately questioned inmate Beachum as to why he was in the bathroom unsupervised. Inmate Beachum, who was assigned to the Laundry detail, responded that Officer Hudson (the officer responsible for Beachum's detail) left inmate Beachum in the hallway to get the others on the detail from the North One housing unit.

While inmate Beachum was waiting for Officer Hudson to return, he claims he had to go to the bathroom to "look at himself" in the mirror. Officer Jennings knows there is no mirror in the

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staff bathroom and that inmate Beachum was lying to him. Officer Jennings performed a complete shake down of inmate Beachum; however, Officer Jennings found no contraband.

As inmate Beachum was insubordinate and in the staff bathroom without supervision, Officer Jennings sent inmate Beachum back to his housing unit and confiscated Beachum's badge. This identification card was later used by Inmate Ricardo Jones to aid in his escape.

Lorenzo Jennings

Agency accuses Employee Jennings of failing to prepare the required disciplinary report and personnel form to terminate Inmate Beachum from his environmental detail. Agency also accuses Mr. Jennings of failing to properly account for the confiscated identification card by not turning it in to his superiors.

Testimonial and Documentary Evidence Presented at the Hearing:

Employee Lorenzo Jennings testified as follows. (Tr. II, Pgs. 675 – 712; Tr. III, Pgs. 1019 - 1029)

Officer Lorenzo Jennings reported directly to Captain Holmes, the Environmental Squad Supervisor. As such, Officer Jennings was responsible for managing the inmate work details for the environmental squad. These inmates were assigned to perform regular cleaning duties throughout the jail. Officer Jennings took his instruction directly from Captain Holmes.

He confiscated laundry detail ID with photo from Inmate Beachum. He admitted he did not make a disciplinary report about the confiscation, but said he was not required to do so. Employee Jennings testified that there was no standing order to make a disciplinary report whenever he confiscates an inmate ID, nor was he ever trained to make a report whenever an inmate violates a rule, order or regulation. He asserted that a report is required only if he confiscates contraband. Jennings insists that although a disciplinary report can be generated, it is not required. The issuance of a disciplinary report is within the full discretion of the correctional officer. Officer Jennings utilized his discretion and confiscated inmate Beachum's badge, thus removing him from detail work.

Officer Jennings testified that he reported this incident to Captain Holmes and in the presence of Employee Douglas, he discussed making a report with Captain Holmes. He and the Captain decided not to make a report. Jennings blames Captain Holmes for his not writing the report.

A couple of days after Jennings confiscated the ID, he handed it to Captain Holmes by setting it down on Captain Holmes' desk. Officer Herbert Douglas was present at the meeting in which Officer Jennings gave inmate Beachum's badge to Captain Holmes. The Captain was eating during the brief meeting in which Officer Jennings submitted inmate Beachum's badge. Captain Holmes did

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not take the badge in his hand; the Captain ordered Officer Jennings to place Beachum's badge on the corner of the Captain's desk. Jennings claimed he later had a conversation with Captain Holmes whereby Holmes admitted receiving the pass from him but could not find it.

Jennings added that Homes should turn in all confiscated passes and surplus inmate identification badges but instead keeps them in his desk drawer. He does not know how Leaks got Beachum's ID.

Officer Herbert Douglas testified as follows. (Tr. II, Pgs. 496 – 546; Tr. III, Pgs. 1008 - 1019)

Douglas testified that he did see Employee Jennings hand over a confiscated pass prior to the jail escape to Captain Holmes. Holmes was busy with the computer, and instructed Jennings to put the pass on his desk. Holmes kept a stack of these used environmental passes in his desk drawer, and had a stack of passes in his hand. He was supposed to deliver them to the NIPS coordinator to be destroyed.

Captain David Holmes testified as follows. (Tr. III, Pgs. 1057 – 1117)

Holmes was Lorenzo Jennings' supervisor, and denied receiving Inmate Beachum's confiscated pass from Officer Jennings and claimed he never ever saw the pass. He admitted that he had several environmental passes in the environmental office placed there by environmental officers, but could not recall how many. Periodically he would either shred or give these discarded passes to NIPS. Holmes also denied conversing with Jennings about a confiscated pass or about writing up a disciplinary report.

Sharon Cain-Smith testified as follows. (Tr. III, Pgs. 837 - 868)

Lieutenant Smith agreed that it is discretionary to write a disciplinary report on an inmate. They were trained to do progressive discipline. An officer has the discretion of either writing up an inmate who went to an unauthorized area or decide on a lesser punishment. This was taught to them at the academy. But she agreed that an inmate in a restricted area should be written up. She added that she would give the confiscated pass to either the detail supervisor or NIPS coordinator.

Pamela Ann Chase testified as follows. (Tr. III, Pgs. 789 – 837)

Sergeant Pamela Chase, a union chairperson, stated that a correctional officer has the discretion on whether to write up inmate infractions. They use progressive discipline such as giving additional duties or a lockdown. She noted that is established procedure for maintaining control. She admitted that she is not fully familiar with all the rules, orders, and regulations of the Agency despite the fact that she was a long-time trainer of correctional officers. She admitted that, as a correctional officer, she was required to be familiar with them.

If an inmate was found to be in an unauthorized area, the officer is duty-bound to write up a disciplinary report. The only way to remove an inmate from a work detail is to write a disciplinary report. However, if a superior officer tells the confiscating officer to let it go and not write up a report, then the confiscating officer must follow orders as it is not a rule mandated by law.

Hal Washington testified as follows. (Tr. III, Pgs. 942 - 961)

A retired correctional officer, Hal Washington is married to Employee Cynthia Washington and has worked for Agency for 20 years. He testified that it was an established policy for correctional officers to use progressive discipline in dealing with recalcitrant inmates.

Officer Cynthia Washington testified (Tr. I, Pgs. 187 – 250; Tr. III, Pgs. 988 - 990) that in her 20 years of service, she wrote only about 20 DRs because she relied on progressive discipline.

Analysis and Findings of Fact on Employee Jennings

OEA Rule 629.3, 46 D.C. Reg. 9317 (1999) provides that “[f]or appeals filed on or after October 21, 1998, the agency shall have the burden of proof, except for issues of jurisdiction.” In accordance with OEA Rule 629.1, *id.*, the applicable standard of proof is by a “preponderance of the evidence.” OEA Rule 629.1 defines a preponderance of the evidence as “[t]hat degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.”

Employee Jennings was charged with failing to prepare the required disciplinary report and personnel form to terminate Inmate Beachum from his environmental detail. Jennings himself admits that he never did prepare the report but asserts that his supervisor, Captain Holmes, had decided that he need not write the report on confiscating Beachum’s pass.

The various witnesses, whether presented by Agency or Employee, are nearly unanimous in their testimony that if an inmate was caught in an unauthorized area, a disciplinary report about it is mandated. Witness Chase agrees that a subordinate must follow his superior’s decision regarding the writing of a report. Thus, the question is, did Captain Holmes excused Jennings from writing the report?

Captain Holmes denies having any conversation with Jennings about a confiscated pass, much less having made a decision not to order a write up on the incident.

Agency also accuses Employee Jennings of failing to properly account for the confiscated identification card by not turning it in to his superiors. Witness Douglas claims he did see Employee

Jennings having a conversation with Holmes and handing over a confiscated pass to Holmes prior to the jail escape.

Employee Jennings' credibility is directly pitted against Captain Holmes. However, Jennings had a credible witness in the person of Officer Douglas to support his version. Holmes had none. No evidence was ever presented to demonstrate a motive or bias for Officer Douglas to support Jennings' version. On the other hand, Captain Holmes has a natural motive for denying that he was remiss in not properly disposing of the confiscated pass or in ordering his subordinate not to write up a report. At times, Holmes was surly and evasive.

Based on their demeanor, I find Employee Jennings and Officer Douglas to be more credible than Captain Holmes. I therefore find that Agency failed to prove, by a preponderance of the evidence, that Employee Jennings failed to turn over the confiscated pass to Holmes. I further find that Holmes instructed Employee Jennings not to write a report on the incident.

Agency Charges Employee Herbert Douglas with Failure to Properly Supervise Escapee Leaks' Work Detail

Herbert L. Douglas

Environmental Officer Douglas was in charge of Inmate Leaks' work detail. Correctional Officers are responsible for maintaining accountability, sight and count for all inmates in their area of responsibility. Agency accuses Employee Officer Douglas of leaving Inmate Leaks and the other inmates on the work detail unattended after Leaks told Douglas to leave. Inmate Leaks then used the buffer from the supply locker that Employee Douglas left unsecured to break the door and windows, thereby allowing them to escape.

Testimonial and Documentary Evidence Presented at the Hearing:

Benjamin Collins testified as follows. (Tr. II, Pgs. 548 – 647)

Collins was the Senior Criminal Investigator in the DOC Office of Internal Affairs and was in charge of the investigation following the jail escape. He and his team produced the investigative report which was relied upon by management in disciplining the Employees. (See Agency Exhibit 43). Collins was the investigator who interviewed Escapee Leaks. To get Leaks to talk, he told him he won't go back to DC jail.

According to Inmate Leaks, Douglas took his hundred dollar bribe to be included in Douglas' work detail, and then he asked Employee Douglas to leave the detail area, essentially leaving him unsupervised. That was when Leaks took a big buffer to use in breaking down a door. According to

Leaks, Douglas supplied him a knife. He confirmed the location of knife per Leaks but not who put it there.

During his interview, Employee Douglas admitted that he did leave his detail crew working simultaneously on different floors. Collins never asked Employee Douglas about Leaks' bribing allegation.

Wanda Patten (Tr. III, Pgs. 870 - 942) was Investigator Collins' supervisor and essentially confirmed Collins' testimony.

Lieutenant Sharon Cain-Smith testified (Tr. III, Pgs. 837 - 868) that in 2006, Captain Holmes gave out temporary work detail passes to inmates to spruce up the facility. She is not aware of any directive that states that an environmental officer must physically be with all the inmates he or she is supervising.

Sergeant Tyron Jenkins testified (Tr. III, Pgs. 942 - 959) that he was supervising environmental details on weekends for Captain Holmes. Captain Holmes instructed him against his better judgment to take inmates even without the proper environmental detail passes. He said passes without an ID photo were invalid and that inmates had to be approved for detail work by NIPS. He also objected to having the inmates work on different sites, as he could not monitor them constantly. However, Holmes threatened to remove him from environmental duty if he failed to comply. He said Holmes knew Leaks from the prior Lorton facility. Jenkins complained to management but the warden overruled him.

Employee Herbert Douglas testified as follows. (Tr. II, Pgs. 496 – 546; Tr. III, Pgs. 1008 - 1019).

Officer Herbert Douglas has worked with the DC DOC for 15 years. Officer Douglas had prior experience with managing a detail on the "Environmental Squad" at the Lorton facility. Employee Douglas had just started working environmental detail for about four months. Officer Douglas' detail was to clean the jail, and to assist in getting the facility ready for accreditation.

Captain Holmes was Officer Douglas' immediate supervisor, and during the period before the escape, the Captain was responsible for the environmental work details at the D.C. Jail and was tasked with properly preparing the facility for accreditation. Getting the facility clean was at the top of Captain Holmes' priority list. He relied upon Officer Douglas and the other officers in his charge to assist him in successfully meeting this goal.

As the environmental detail supervisor, he would pick up the work passes from the bubble and then collect his detail crew of inmates. Then, Officer Douglas would get the inmates situated in the area to which they were assigned for the day. If supplies or equipment were needed, it was accepted practice that either Officer Douglas or the inmates would get the supplies or equipment.

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1601-0037-08, 1601-0038-08, 1601-0039-08

At that point, Captain Holmes instructed him to put the work details on their job sites and go from area to area to check on them. His work detail was assigned to different sites by Captain Holmes, with only two officers assigned to monitor them. Thus, Officer Douglas “floated” from inmate group to inmate group. Captain Holmes explicitly instructed Officer Douglas not to micromanage the work details. Instead, Officer Douglas was told to “float” from group to group to ensure that all inmates were adequately performing their assigned tasks. Detail inmates were often left unsupervised because they were at a “low” or “medium” custody level. This is an accepted practice throughout the jail among officers, administration and inmates. Officer Douglas was instructed by Captain Holmes not to “stand over inmates” because if he stood in one area with all the inmates, the rest of the facility would not be cleaned.

Because he wanted the jail to pass accreditation, Captain Holmes took inmates formerly housed at Lorton to work detail, even if not allowed because they were maximum security risks and given temporary passes with no photo on them. On the day of escape, Captain Holmes was not on duty.

Employee Douglas admitted that he would leave them at their respective work sites. When asked what would stop an inmate from walking out of a work area when he was not around, Douglas said there was supposed to be an officer inside the bubble who kept watch from above the floor. Douglas understood that he was not supposed to leave the inmates unattended, but believed he had to follow his superior Captain Holmes’ direct order. Officer Douglas almost always had to move between floors to check on detail inmates, leaving all of the other inmates in his charge unsupervised.

Captain Holmes had justified the practice by remarking that this is a jail and the inmates have nowhere else to go; therefore, Captain Holmes indicated that it was not an issue to leave the inmates unsupervised while they were doing their detail work. Captain Holmes added that it was also the way they always did it, to leave inmates on three different levels and in different areas to finish cleaning. Thus, he blamed Captain Holmes for his leaving the inmates unguarded.

At the end of the work day, he would escort his crew back to their cells and return the passes to the bubble. His detail worked all three levels of both the administrative and jail sides of the D.C. Jail. He had escapee Joseph Leaks on his detail for about 6 months. On June 3, 2006, he gathered his detail as usual from their respective cells and escorted them to the equipment room to get their work equipment. Because of Captain Holmes’ order, he no longer locked the equipment room.

Employee Douglas assigned Leaks to clean the hallways and bathrooms on the administrative side. He left Leaks working. When he came back 10 to 15 minutes later, Leaks was nowhere to be found. He asked Inmate Rashid about Leaks’ whereabouts and then announced a lockdown through the personnel address system. He determined that Leaks went down the steps on the administrative

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1601-0034-08, 1601-0035-08, 1601-0036-08,
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side and through an unlocked door towards the warden's office. The door was unmanned and kept unlocked because it was determined that it would be a fire hazard for it to be locked. He said the program statement for accountability for inmates was not in place until after the jail escape even though the effective date was July 1, 2004 (Agency exhibit 5).

Officer Douglas has seen Inmate Leaks at Lorton maximum security before. He denied taking a bribe from Leaks, helping Leaks escape or procuring for him a knife or even having a conversation with Leaks about a planned escape.

Captain David Holmes testified as follows. (Tr. III, Pgs. 1057 – 1117)

Captain Holmes was Lorenzo Jennings' supervisor, and said that the correctional officer in charge of environmental detail must be able to oversee the inmates activities at all times. However, he said that Agency allows the officer to place the inmates he is supervising on different floors on the housing or cell block side as that side is the secure side. He stated that, as per Agency order, this practice is not allowed on the less secure administrative side. Holmes admitted that he had temporary detail inmates and that some of their IDs had no photos on them.

Analysis and Findings of Fact on Employee Herbert Douglas

Agency accuses Employee Officer Douglas of leaving Inmate Leaks and the other inmates on the work detail unattended after the escapee Leaks told Douglas to leave, thereby knowingly allowing Leaks to execute his prison escape. Agency also accuses Employee Douglas of giving a knife to Leaks. These accusations rest entirely on escapee Leaks' hearsay allegation. It appears that Agency never bothered to question the credibility or motives of the escaped criminal in accusing his prison guards of conspiring in his jail escape. Leaks did not testify; thus, I cannot judge his credibility or the truth of his allegations. In addition, Leaks is a convicted felon who has repeatedly committed many violent crimes. (See Agency Exhibit 39). Thus I cannot credit Leaks' account. I find that Agency failed to prove Employee Douglas intentionally allowed Leaks to escape.

As for Agency's charge that Employee Douglas regularly left his detail unattended in violation of his duty to keep a constant watch over his charges, Douglas readily admits to this charge. Douglas defends his actions, however, by explaining that he did so only on the direct orders of his superior, Captain Holmes. Douglas points out that their command structure is quasi-military, that he is duty-bound to obey his supervisor's direct order. He also alleges that Captain Holmes often improperly assigned unscreened inmates to work his environmental detail because of management pressure to get the facility cleaned.

Supporting Employee Douglas' version are Lieutenant Sharon Cain-Smith and Sergeant Tyron Jenkins. In addition, Captain Holmes himself admitted on the stand that he sanctioned placing inmates on different floors, albeit only on the housing side of the facility, and of using inmate

crews without the proper IDs.

I find their testimonies to be credible, and since Agency cannot fault its employee for following a supervisor's order, I therefore find that Agency failed to substantiate its negligence charge against Employee Douglas.

Agency Charges Employee Lachone Stewart with Aiding and Abetting the Prison Escape

Lachone Stewart

Agency accuses Officer Stewart of malfeasance. Specifically, Agency asserts that Officer Stewart befriended and then provided the two inmates with blue DOC uniforms. This enabled the two inmates to exchange their orange prison garb with the navy blue uniforms and aided their escape.

Testimonial and Documentary Evidence Presented at the Hearing:

Benjamin Collins testified as follows. (Tr. II, Pgs. 548 – 647)

Collins was the Senior Criminal Investigator in the DOC Office of Internal Affairs and was in charge of the investigation following the jail escape. He and his team produced the investigative report which was relied upon by management in disciplining the Employees. (See Agency Exhibit 43.) According to Inmate Leaks, he had Employee Stewart's assistance in his escape from prison. Employee Stewart had befriended Inmate Leaks and would bring food and contraband to him. Inmate Rashid corroborated this when he said he saw Stewart and Leaks talking and saw Stewart with a large woman's bag in her hand.

Collins admitted that the charges against Employee Stewart rest on the credibility of Inmate Leaks. He admitted that he did not interview Stewart to ask her about Leaks' allegations. He recommended improvements to jail security.

Employee Lachonne Stewart testified as follows: (Tr. I, Pgs. 148 - 187)

Officer Corporal Lachonne Stewart went from her midnight shift in the detail block to the North One detail for her overtime assignment. She denied discussing escape with either Inmate Jones or Inmate Leaks or of assisting their escape in any way. Officer Stewart categorically denied Inmate Mohammed Rashid's allegation that she had a large bag outside the women's locker room while talking to Inmate Leaks. She said she had nothing to do with the alleged blue jumpsuits that the escapees used and pointed out that these are procured only by male officers working at the Male Receiving & Discharge unit.

Officer Stewart said that Internal Affairs never interrogated her or tried to get her side of

the allegations.

Analysis and Findings of Fact on Employee Lachone Stewart

Again Agency management made the decision to suspend and then ultimately terminate Officer Stewart solely on the word of a convicted felon with a rap sheet several pages long. Agency never bothered to question the employee adversely affected in this action or get her side. At the hearing, Agency again relied on the hearsay statement of the convicted felon and escapee Leaks to prosecute its flimsy case against Employee Stewart. It is shocking that Agency management is perfectly willing to destroy the career of a longtime employee based on a career criminal's tale. I therefore find that Agency failed to produce any credible evidence against Employee Stewart and find that Stewart is innocent of the charges against her.

Agency charges Employee Lowanda Hinton Saunders with Negligence for Failure to Verify the Detail Pass of Escapee Jones

Lowanda Hinton-Saunders

Agency accuses Employee Lowanda Hinton Saunders of negligently failing to verify the detail identification pass of Inmate Jones and allowing Jones to exit through the Administrative Two door onto the second floor of the administrative module. Agency asserts that a closer scrutiny of the pass would have showed that the photo on it was that of Inmate Beachum, not Inmate Jones. Inmate Jones subsequently removed a buffer from the Administrative Two supply room and used it to knock out a window in the Warden's office to make their escape.

Testimonial and Documentary Evidence Presented at the Hearing:

Employee Lowanda Hinton Saunders testified as follows. (Tr. II, Pgs. 648 – 675)

Officer Lowanda Saunders was responsible for the Administrative Two Door separating the jail side of the building from the administrative side. In addition to being responsible for this post, Officer Saunders was tasked with patrolling the immediate surrounding area, including the visiting hall. As an Admin Two Officer, part of her duties was to escort inmates to the visitors' hall for legal visits from their attorneys. Thus, she was not at her post all the time.

Regarding Agency's charge that she let Inmate Jones through her door without properly checking Jones' ID badge, Saunders testified that she does not recall Inmate Jones passing through her door. She replied that the only inmate she recalled allowing through the door that day was a guy named Mohammed who was trying to transport a refrigerator.

Officer Lowanda Saunders explained that on the day of the escape, Officer Herbert Douglas

approached her post accompanied with his environmental detail (which included inmate Leaks). Mohammed, one of the inmates assigned to the Officer Douglas' detail, arrived at her post with a refrigerator that had just been cleaned. After Officer Hinton-Saunders completed her inspection of the refrigerator for contraband, Officer Douglas indicated he was ready to take his detail through to the administrative side of the building. Officer Hinton-Saunders unlocked the door for Officer Douglas and his detail, at which point, they all went through to the other side of the facility. Officer Hinton-Saunders admitted that she did not review the badges of the inmates with Officer Douglas on the morning of the escape. As per the customary practice at the facility, she relied on her fellow Officer Douglas to make sure people passing through the gate with him were authorized. This was the last contact Officer Hinton-Saunders had with the detail.

Employee Saunders asserted that she was not responsible for verifying the detail badges for the inmates in the care of another officer. She merely followed the pattern and practice of the jail everyday of her employment with the Agency. She added that this was the first time she had ever worked that post, and that she had not been trained for that post, as she normally work in Female Receiving & Discharge. Lastly, Officer Saunders pointed out that she was not the only officer with keys to the Administrative Two Door for which she was responsible that day, as other officers escorting inmates through that gate also have a key.

Wanda Patten testified as follows. (Tr. III, Pgs. 870 - 942)

Ms. Patten, the head of Agency's Office of Internal Affairs, testified that her investigation could not determine whether Officer Saunders let inmates through the gate or whether Douglas escorted inmates through gate. She said she was aware that someone higher up overruled objections to having inmate Leaks on paint detail.

Tyron Jenkins testified as follows. (Tr. III, Pgs. 942 - 959)

Sergeant Tyron Jenkins testified that despite his objections, Captain Holmes had him take inmates even without the proper environmental detail passes. He said passes without an ID photo were invalid and should not have been used. Jenkins also supported Saunders's assertion that an officer did not need to check the passes of inmates going through a door if they are escorted by another officer.

David Holmes testified as follows. (Tr. III, Pgs. 1057 - 1117)

Captain Holmes testified that an officer manning the Admin Two door cannot leave the post to be monitored by floor control unless directed to do so by a supervisor. However, he admitted that he used unauthorized temporary detail inmates and that some of their IDs had no photos on them.

Officer Lachonne Stewart testified as follows: (Tr. I, Pgs. 148 - 187)

Corporal Lachonne Stewart stated that an inmate with an environmental pass means that inmate is on cleaning detail and can go anywhere in the jail. She said that there is a bubble in every housing unit which controls the movement of the inmates inside the unit. There are three levels in the administrative side, all connected by stairs and elevators. To go outside the jail, an inmate would have to pass through the secured door. Once they sign an inmate out on an infirmary pass, the inmate goes over to the administrative side and is not monitored by officers at the housing side.

Pamela Ann Chase testified as follows. (Tr. III, Pgs. 789 – 837)

Officer Chase used to man the Admin Door Two. At that post, she controlled the traffic going to and from the visiting hall area, and sometimes escorts inmates from housing to the visitors hall. An inmate on detail can go through the door only when accompanied by an environmental officer, so she was not required to examine inmate passes. It is the responsibility of the accompanying officer. Besides, not all work detail passes had a photo ID.

Since control of traffic access to the door was also with the floor control officer, she can leave the post temporarily to escort inmates to the visitor's hall. Because the floor control officer in charge of the area also controls access through the gate, an inmate may just wave his pass at a distance and the control officer would open the gate. Chase asserted that even today, inmates with call-out passes often proceed unescorted on the admin side to get to the infirmary.

Sharon Cain-Smith testified as follows. (Tr. III, Pgs. 837 - 868)

Lieutenant Smith stated that, despite a post order stating an inmate must pass through a metal detector before entering the administrative level, there are no metal detectors at administrative module two.

Analysis and Findings of Fact on Employee Lowanda Hinton-Saunders

Employee Saunders readily admits to Agency's charge that she failed to verify escaped Inmate Jones' ID pass. She defends herself by stating that, together with other inmates on the environmental detail, Inmate Jones was accompanied by Officer Douglas and that it was the standard practice at the Agency for officers to rely on the officer escorting inmates to verify that the inmates had the proper authorization to move within the facility. Several witnesses supported Employee Saunders' contention, and Agency did not present any witnesses to rebut this. In addition, the witnesses stated that Captain Holmes often used inmates without photo IDs in his detail.

The Post Order for Administrative Module Two, Section V 2d (Agency Exhibit 62) simply states that "The Administrative Officer shall check all inmates' callout passes and shall sign the pass when appropriate... Any unescorted inmates outside of the housing unit shall have validated pass in

his/her possession at all times, in addition to having an armband on.” The Post Order for Southeast Housing Unit (Agency Exhibit 7) Section V. 8a states “All inmates entering or exiting the housing unit shall be searched with the hand-frisker for contraband. Officers will utilize the hand-held frisker to scan all inmates entering and leaving the cellblock...” Section V. 11a of the same order states “All inmate movement in and out of the unit, **except** for supervised group movement or under officer escort, shall be controlled by call out pass. (Emphasis marked on original document.) The identity of all inmates exiting the unit shall be verified by the Control Module Officer using the picture on the 3x5 wing card.”

Indeed, both the post orders and the testifying witnesses appear to support Employee Saunders’ contention that, whenever inmates are escorted by a correctional officer, the identity of these inmates need not be re-verified by the officer manning the gate. Considering that Employee Saunders has not been demonstrated to disobey a post order; and considering that she has simply followed the accepted common practice of her fellow officers, I find that Agency has failed to prove Employee Saunders was negligent in any way.

Agency charges Employees Shantell Hatton, Dionne Makins, and Cynthia Washington with Negligence in Issuing an Unauthorized Movement Pass to Escapee Jones.

Shantell Hatton

Agency accuses Officer Hatton of negligently issuing a Movement Pass to Inmate Ricardo Jones which would have allowed him to go to the infirmary despite the fact that Jones was not scheduled to go to the infirmary nor was he experiencing a medical emergency. Ms. Hatton thus allowed Inmate Jones to go out the door of the Southeast One housing unit and make his jail escape on June 3, 2006.

Dionne Makins

Officer Dionne Makins was assigned to the Southeast One housing unit together with Officer Washington and Officer Hatton. Agency also accuses Makins of failing to ascertain whether Inmate Jones was entitled to an infirmary pass and allowing him to exit the unit.

Cynthia Washington

Officer Cynthia Washington worked at the Southeast One housing unit. Her job required her to account for and limit the movement of the inmates in the housing unit to authorized areas only. Agency accuses Officer Washington of negligently issuing a pass to Inmate Jones to go to the infirmary despite the fact that Jones was not scheduled to go to the infirmary nor was he experiencing a medical emergency.

Testimonial and Documentary Evidence Presented at the Hearing:

- a. Employee Dionne Makins testified as follows: (Tr. I, Pgs. 57 – 92, Tr. 3, Pgs. 990 - 1008)

Sergeant Makins was assigned as the Officer in Charge of the Southeast One (SE1) housing unit, and regularly worked the 7:30 a.m. to 4:00 p.m. shift together with Employees Officer Shantell Hatton and Officer Cynthia Washington inside the SE1 bubble Tuesday through Saturday. Employee Makins made the infirmary passes that Saturday, June 3, 2006,. These passes are generally issued based on phone calls from the infirmary or other offices in the Agency, as well as their own knowledge of which inmates were ill that day. On weekends, there was no list of inmates going to the infirmary. Instead, the infirmary staff would simply call the bubble and ask for an inmate to be sent in. There were two phones in the office or “bubble” where she worked.

In a typical day, they had to write out 25 or more passes. To save time and because they were short-handed, Employee Makins wrote 10 extra passes that day and wrote in the date, the housing unit, and her signature. She said there was nothing to prohibit the pre-signing of passes and that was the usual daily practice. When asked why she pre-signed passes when they usually issue only about 22 passes a day, Makins repeated that she believed it would save time and that there was no official prohibition against resigning passes. Further, it was an established practice.

Sergeant Makins completed five passes for the inmates to go to the infirmary. None of these was for inmate Ricardo Jones. As Sergeant Makins was the regularly assigned Officer in Charge of SE1, she knew of those inmates who normally required medical care. Four of the five passes she completed were for those inmates. The fifth infirmary pass was for an inmate who Sergeant Makins suspected was being assaulted by his cellmate. Upon completing these five passes, she and Officer Washington began walking the floor.

The next order of business for the unit is the first morning count of the inmates. This number is to correspond with the count from the previous shift. Officers Hatton and Washington (the second officer assigned to SE1 for that shift) assisted Sergeant Makins with the count that morning. The count matched; all inmates were present and accounted for at the beginning of Sergeant Makins' shift. Sergeant Makins called the Command Center to inform them that the morning count of 145 inmates matched the previous count.

There are a number of tasks to be performed while working on the floor. The officers have to inspect all of the windows and bars. In addition, they must perform an environmental inspection. This requires checking all of the toilets, faucets and lights. An inventory must be performed and all equipment must be checked to ensure it is in proper working order. It is at this time that the cell doors are opened for the inmates to leave for work details, to go to the Department for which they have a pass and for groups of inmates to be released for indoor recreation.

Once the inmate is released from the housing unit, he is unsupervised and left on his honor to report to the area for which he has a pass. The inmate must be released by Floor Control personnel to move about freely in the jail. However, all an inmate needs to do is flash a pass and he will be released. There is no way to track an inmate once he is released from the housing unit. It is not uncommon for inmates to leave at the beginning of an officer's shift and not return until the end of the shift or later. There is no pattern or practice of issuing an alert for that inmate until he has missed the next scheduled count.

Employee Makins testified that she does not know if Inmate Jones was authorized to go to the infirmary, but she insisted that when he presented himself to her, he already had a pass. She was adamant that she did not hand the pass to Jones and that the pass could only have come from either Hatton or Washington. Makins testified that Hatton had confided to her later that she had written the pass for Jones. (Tr. 3, pg. 1001.) She did not ask Hatton why she gave a pass to Jones.

After news of the escape, Sergeant Makins followed the order to put the jail on lockdown. Makins also told Hatton to write out a new movement sheet to reflect the fact that Jones had not returned.

Employee Makins said Inmate Jones had waived a pass and told Makins that he needed to go to the infirmary. She glanced at the pass without reading it and ordered Inmate Jones to have Employee Hatton sign him out of the unit on the inmate movement sheet. Makins said there was no rule or order that she had to examine an inmate's pass or confirm that an inmate needed to go to the infirmary.

But under cross-examination, Makins agreed that the orders required officers to verify the identity of all inmates by using the photo in the pass and to keep an accurate running count of all inmates in the unit. The Post Order for Administrative Module Two (Agency Exhibit 62) Section V.2c and 2d states that the Administrative Officer assists the Floor Control Officer by checking an inmate's ID armband or callout pass.

b. Employee Shantell Hatton testified as follows: (Tr. I, Pgs. 92 – 143)

Employed with Agency since 1995 as a Correctional Officer, Corporal Hatton was also assigned to the Southeast One (SE1) housing unit on June 3, 2006. Together with Sergeant Dionne Makins and Officer Cynthia Washington, they worked in the bubble. She described the bubble as a Plexiglas enclosed office where they control the opening and closing of the inmate cells as well as make phone calls and do their paperwork.

As the most junior officer on duty that day, Officer Hatton followed exactly the orders of the Officer in Charge, Sergeant Makins. At the beginning of her shift she counted each inmate and reported the count to the control center. In addition, Officer Hatton assisted the other two officers in

their task of preparing to get those inmates housed in SE1 to the proper destination, i.e., the visiting hall, infirmary, work detail, religious services, etc. It is routine for “call out” passes to be issued for the various departments within the jail, given to the inmate, and the inmate released from the housing unit to go unsupervised to the department for which the pass was issued.

Escapee Ricardo Jones was an inmate at SE1. The procedure for an inmate who needed to go for medical attention was that the infirmary would call the bubble and ask them to put the inmate on a movement sheet and assign a signed pass to the inmate. Officers answering these calls assume that the caller is legitimate; that the caller really does work for the infirmary. Another method would be for the officer to put the inmate’s name on a call-out sheet in situations where the officer himself or another officer on the floor sees that an inmate needs medical attention. There are many reasons for an inmate to obtain a pass for the infirmary. These passes are issued for emergency or regular medical care. Correctional officers have discretion to issue infirmary passes for urgent care or inmate distress. However, the much more common way in which a pass is issued is as a result of a telephone call from the infirmary to the housing unit.

Hatton explained that before she or another officer in the bubble lets an inmate out of the unit, they look at the pass that the inmate has and match it to the number on his arm band, as well as note which cell the inmate came from and where the inmate’s destination is. She testified that she followed this procedure for Inmate Jones that day.

Hatton does not recall how Inmate Jones got a pass for the infirmary but was emphatic that she was not the author of any pass that day. She said it was Sergeant Makins who wrote out Jones’ pass and she handed it to Jones after signing it and having Officer Washington initial it.

Officer Hatton was responsible for tracking inmates scheduled whereabouts on the movement board, which is a piece of paper that records which inmates are in or out of the housing unit. Officer Hatton made the appropriate entries and the inmates were sent on their way. Later that morning, Hatton made a count of the inmates in SE1 and realized that Inmate Jones was missing. So Hatton made a second movement sheet to correct the first movement sheet which mistakenly indicated that Inmate Jones had come back in. Hatton insisted that she made the correction before she even knew of the escape.

Later Hatton contradicted herself and testified that it was during lockdown that she mistakenly wrote Jones in. The officers in SE1 followed the proper procedures immediately upon hearing of the lockdown. Officer Hatton collected passes from any inmate who still had one. Officer Hatton then logged all of the inmates back into the unit on the Movement Sheet, including Ricardo Jones. Then, Officers Hatton and Washington performed a cell by cell search of the housing unit.

Immediately upon reaching the cell of inmate Jones, Officer Hatton realized inmate Jones had not yet returned from the infirmary. Officer Hatton reported this to Sergeant Makins as well as her

clerical error on the Movement Sheet. Sergeant Makins then instructed Officer Hatton to correct the report. Once she realized her error, Employee Hatton made a corrected movement sheet and threw the first one away.

Employee Cynthia Washington testified as follows. (Tr. I, Pgs. 187 – 250; Tr. III, Pgs. 988 - 990)

On June 3, 2006, Officer Washington had just finished her midnight shift and began her overtime shift at 8:00 a.m. in the SE1 bubble together with Employees Hatton and Makins. The regular manpower component for each unit was four, but they were short on staff that day so she was drafted for overtime. She does not recall receiving any calls from infirmary but she pre-made blank movement passes. She did initial the pass for Inmate Jones and then handed the pass to Employee Hatton for signature. The pass was then handed back to Jones and they let him out of SE1. Washington insists that she does not have to initial the pass but she does so to indicate that the pass has been presented to her. She also testified that so long as she knows that the inmate has an authorized reason to go outside his or her unit, she will sign the pass.

When asked if she would initial a pass presented by an inmate even if it had no signature, Washington admitted she may have, as she was really tired that morning. (Tr. I, Pgs. 223) Asked how she knew that Inmate Jones was authorized to have a pass, Washington testified that Sergeant Makins had told her that Jones had to go to the infirmary.

Officer Pamela Ann Chase testified (Tr. III, Pgs. 789 – 837) that an infirmary official will call the individual housing unit an inmate was incarcerated in and the responding officer in the bubble will then write a call-out pass and hand this pass to the inmate so that the ailing inmate can go to the infirmary. She said that an officer has no duty to call back infirmary to confirm request. Chase noted that other officers in the jail, such as the Classification and Parole Unit or the Chaplin's Office, can call to the bubble and ask the responding officer to issue a pass for an inmate for various purposes, such as a social visit.

Since the floor control officer in charge of the area controls access through the gate, an inmate may just wave his pass at a distance and the control officer could open the gate. Chase said that even today, inmates with call-out passes often proceed unescorted on the admin side to get to the infirmary.

Investigator Wanda Patten testified (Tr. III, Pgs. 870 - 942) that on weekends, only the infirmary staff makes the list of inmates going to infirmary. Her investigation could not reveal how inmate Jones got an infirmary pass, but concluded that it had to come from either Makins, Washington, or Hatton.

Agency Director Devon Brown (Tr. II, Pgs. 315 – 427) insisted that Correctional Officers in the bubble had the duty to verify the legitimacy of a call for an inmate to go to the infirmary.

**Analysis and Findings of Fact on Employees Shantell Hatton,
Dionne Makins, and Cynthia Washington**

While Employees Hatton, Makins, and Washington contradicted each other as to who the author was of the infirmary pass for escaped Inmate Jones, the burden of proof regarding the charges against these employees still rested upon the Agency. Agency had charged them with improperly issuing a movement pass for inmate Jones to go to the infirmary. According to the Agency, the pass was improper because Jones was not on schedule to go to the infirmary.

To meet its burden of proof, Agency had to prove that first, no one at the infirmary or at the Agency's other units had authorized Inmate Jones to visit the infirmary. Second, despite this lack of authorization, Employees Hatton, Makins, and Washington individually and collectively failed to double-check and ascertain that Inmate Jones had authorization before issuing him his infirmary pass. Lastly, Agency had to establish exactly who among the three employees signed or co-signed the pass, and who handed it to Inmate Jones.

To prove its charges, Agency had to meet its burden of proof on each and every element of its charges. Here, Agency failed to prove a single one. Thus, Agency failed miserably in meeting its burden of proof. It failed to present any witness, either from the infirmary or from other units at the correctional facility, who would testify that he or she did not call for Inmate Jones to visit the infirmary. Agency even failed to present a list of authorized inmate visitors to the infirmary to show that Inmate Jones was not on there. Lastly, Agency could not even establish which among the three accused employees did what negligent act. Accordingly, I find that Agency has failed to prove that Employees Hatton, Makins, and Washington were negligent.

ANALYSIS AND CONCLUSION

Whether Agency has proven, by a preponderance of the evidence, that Employees committed the acts of which they are accused.

Based on my findings of fact, I conclude that Agency proved its case of negligence only against Employees Alphonso Bryant and Darryl Love.

However, based on my findings of fact with regards to Employees Herbert Douglas, Shantell Hatton, Lowanda Hinton-Saunders, Lorenzo Jennings, Dionne Makins, Lachonne Stewart, and Cynthia Washington, I have concluded that Agency has failed to prove its charges against these seven of the nine employees it had terminated.

Indeed, it is troubling to realize that Agency is perfectly willing to destroy the long careers of these employees based on weak evidence and sloppy investigation. In the case of two of these

employees, management even based its entire case solely on the hearsay statement of a notorious criminal repeat offender – one of the escapees himself!

And in prosecuting Agency's case, counsel must keep in mind that they stand in the shoes of a prosecutor. To be a prosecutor requires commitment to absolute integrity and fair play; to candor and fairness in dealing with adversaries and the courts; to careful preparation, not making any assumption or leaving anything to chance; and to never proceeding in any case until convinced of the guilt of the accused or the correctness of one's position. To be a prosecutor demands unusual personal qualities- promptness; dependability; precision; thoughtfulness; decency; personal courage and conviction. Counsel must remember that their client is not Agency's management, but the citizens of the city of Washington. The ultimate goal is to keep good employees and punish only those who are remiss in their duty to the citizenry.

Whether Employees Alphonso Bryant's and Darryl Love 's actions constituted cause for adverse action

D.C. Official Code § 1-616.51 (2001) requires the Mayor, for employees of agencies for whom he is the personnel authority, to “issue rules and regulations to establish a disciplinary system that includes”, *inter alia*, “1) A provision that disciplinary actions may only be taken for cause; [and] 2) A definition of the causes for which a disciplinary action may be taken.” The agency herein is under the Mayor's personnel authority.

On September 1, 2000, the D.C. Office of Personnel (DCOP), the Mayor's designee for personnel matters, published regulations entitled “General Discipline and Grievances” that meet the mandate of § 1-616.51. *See* 47 D.C. Reg. 7094 *et seq.* (2000). Section 1600.1, *id*, provides that the sections covering general discipline “apply to each employee of the District government in the Career Service who has completed a probationary period.” It is uncontroverted that Employees Alphonso Bryant and Darryl Love fall within this statement of coverage.

Section 1603.3 of the regulations, 47 D.C. Reg. at 7096, sets forth the definitions of cause for which a disciplinary action may be taken. Pursuant thereto, cause has been defined at 47 D.C. at 7096, §1603.3 as follows:

[A] conviction (including a plea of *nolo contendere*) of a felony at any time following submission of an employee's job application; a conviction (including a plea of *nolo contendere*) of another crime (regardless of punishment) at any time following submission of an employee's job application when the crime is relevant to the employee's position, job duties, or job activities; any knowing or negligent material misrepresentation on an employment application or other document given to a government agency; any on-duty or employment-related act or omission that the employee knew or should

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1601-0037-08, 1601-0038-08, 1601-0039-08

reasonably have known is a violation of the law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious. This definition includes, without limitation, unauthorized absence, **negligence**, incompetence, insubordination, misfeasance, malfeasance, the unreasonable failure to assist a fellow government employee in performing his or her official duties, or the unreasonable failure to give assistance to a member of the public seeking services or information from the government. [*Emphasis added.*]

Given the exhibits and testimony presented at the evidentiary hearing by the Agency, there is sufficient evidence on the record to support a finding, and then a conclusion, that the Agency's action of charging the Employees Alphonso Bryant and Darryl Love with Neglect of Duty is supported by the preponderance of evidence. *Black's Law Dictionary*, 7th Edition at P. 1055 (1999), defines the term "neglect" as, "the omission of proper attention to a person or thing, whether inadvertent, negligent, or willful; the act or condition of disregarding." Based upon this record, I conclude that Employees Alphonso Bryant's and Darryl Love's actions and inactions, demonstrate that they neglected their duty, in that they failed to give proper attention to several major, critically significant functions of their position. Therefore, as supported by the preponderance of the evidence, the Agency had cause to take an adverse action, and to impose disciplinary action, which resulted in Employee's termination.

Whether the penalty of removal for Employees Alphonso Bryant and Darryl Love was appropriate.

The role of this Office, when reviewing the penalty imposed by an agency is to ensure that "managerial authority has been legitimately invoked and properly exercised." See *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (DC 1985), and *Employee v. Agency*, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C. Reg. 2915 (1985). Only in the case of an abuse of that discretion would modification or reversal of an agency imposed penalty be warranted. The penalty must be based upon a consideration of relevant factors. See *Employee v. Agency*, OEA Matter No. 1601-0012-82, 30 D.C. Reg. 352 (1983). This Office will leave an agency's penalty "undisturbed" when "the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment." *Employee v. Agency*, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C. Reg. 2915, 2916 (1985).

Here, there was a potential danger to the public stemming from these Employees' negligence in classifying these particular inmates for work detail because such inmates have greater freedom to move outside the confines of their cell. In addition, Agency Director Brown gave an uncontested testimony that he carefully considered the Douglas factors in coming up with the appropriate penalty

for these offenses. *See Stokes v. District of Columbia*, 502 A.2d 1006, 1010, for a discussion on the Douglas factors.

The District government's Director of Personnel has issued amendments to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (the "CMPA"), as amended, including to Chapter 16, General Discipline and Grievances, now incorporated into the DPM, which reestablished a table of penalties for designated offenses.¹

Although the provisions of this new document has no direct bearing upon the outcome of the matter at bar, I take administrative notice that termination and removal from a job position is a permissible penalty for Agency's proving the charge of neglect of duty, *even if it is the first offense*. (Emphasis added by the AJ). Accordingly, the penalty is permitted by existing regulations.

ORDER

As for Employees Alphonso Bryant and Darryl Love, it is hereby ORDERED that Agency's action removing them is upheld.

As for Employees Herbert Douglas, Shantell Hatton, Lowanda Hinton-Saunders, Lorenzo Jennings, Dionne Makins, Lachonne Stewart, and Cynthia Washington, it is hereby ORDERED that:

1. Agency's decision to remove these Employees from their position is REVERSED.
2. Agency is directed to reinstate these Employees, issue them the back pay to which they are entitled and restore any benefits they lost as a result of the removal, no later than 30 calendar days from the date of issuance of this Decision.
3. Agency is directed to file with this Office documents within 45 calendar days to reflect its compliance with the directives of this Decision.

¹ Effective April 25, 2008, the Director, D.C. Department of Human Resources (DCHR), with the concurrence of the City Administrator, issued new regulations on employee discipline and grievances, codified at Title 1, Chapter 6, Subchapter XVI, General Discipline and Grievances. This subchapter amends the prior Subchapter XVI by establishing a Table of Appropriate Penalties for certain enumerated offenses. In both the prior and current sections of 1603, *Definition of Cause: General Discipline*, of the Subchapter, Neglect of Duty (Sec. 1603.3(f)(3)), is included in the definition of the causes for which disciplinary action may be taken. The new section 1619, *Table of Appropriate Penalties*, provides that the disciplinary penalty available to the Agency upon a determination that cause has been established, includes the imposition of reprimand to removal, for the first offense of neglect of duty.

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1601-0037-08, 1601-0038-08, 1601-0039-08

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge