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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of:	)	
	)	
COLLINS THOMPSON,	)	OEA Matter No. 1601-0219-04
Employee	)	
	)	Date of Issuance: November 13, 2008
	)	
	)	
D.C. FIRE AND EMERGENCY	)	
MEDICAL SERVICES,	)	
Agency	)	
_____	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Collins Thompson (“Employee”) worked as a Support Services Assistant at the D.C. Fire and Emergency Medical Services (“Agency”). His duties included driving an Agency motor vehicle to perform several job functions. Between April 25, 2000 and August 18, 2003, Employee was involved in approximately six accidents while driving an Agency mail car.<sup>1</sup> On August 6, 2004, Employee received a notice of removal from Agency. The cause of action was incompetency; Agency found that Employee failed to perform an essential function of his position.<sup>2</sup>

<sup>1</sup> After each accident Employee completed requalification training at the Training Academy and was reinstatement to drive the mail car.

<sup>2</sup> *Petition for Appeal*, p. 6-7 (September 15, 2004).

On September 15, 2004, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). He alleged that although his position required him to make mail deliveries, the majority of his work consisted of office duties. He also provided that his performance evaluations showed that he was a good employee who should not be allowed to drive. However, he argued that he should not have been terminated, but in the alternative – adjustments should have been made to his position so that driving was no longer a requirement.<sup>3</sup>

Agency filed its Response to Employee’s Petition for Appeal on November 15, 2004. It argued that Employee was responsible for driving an Agency vehicle on an established mail route to pick up and deliver mail to various Agency locations.<sup>4</sup> Agency also highlighted each of the accidents in which Employee was involved.<sup>5</sup> It claimed that Employee’s last accident possibly resulted in serious injury or death to the occupants. Therefore, Employee was denied recertification training. Agency found that Employee’s poor driving skills were detrimental and a potential liability.<sup>6</sup> Therefore, it found that the penalty was appropriate and requested that its decision be upheld.

The OEA Administrative Judge (“AJ”) held a hearing on October 4, 2005, where both parties stipulated that Employee was involved in six auto accidents. However, they

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<sup>3</sup> *Id.* at 4.

<sup>4</sup> Agency provided that Employee’s position description stated that he “drives the Department’s motor vehicle to provide transportation for the staff and provides delivery services of official personnel information, correspondence, and other documentation to and from other District Government offices and agencies.” He was also required to have “knowledge of traffic and vehicle regulations,” as well as, the “ability to operate a motor vehicle.” *Respondent’s Response to the Appellant’s Petition for Appeal*, p. 5 (November 15, 2004).

<sup>5</sup> As previously noted, after each accident Employee was sent to driver requalification training. *Id.* at 4.

<sup>6</sup> As justification for the cause of action taken against Employee, Agency relied on Employee’s six accidents since his date of hire and that he had three points against his license for speeding. *Id.* at 5.

disagreed on whether Employee's removal was taken for cause and appropriate under the circumstances.<sup>7</sup> The AJ held that an agency meets its burden of proof when an employee admits to the factual allegations of the charge against him. Employee admitted that he was involved in six accidents, therefore, it was the AJ's determination that Agency's action was taken for cause.<sup>8</sup>

The AJ also found that Employee's removal was appropriate under the circumstances. The AJ provided that Agency afforded Employee several opportunities to improve his driving record by repeatedly reinstating him after he completed driving training. She also found that irrespective of Agency's willingness to reinstate Employee's driving duties, Employee's unsafe driving record was the true cause of his removal. Therefore, there was no error in judgment by Agency, and Employee's removal was upheld.<sup>9</sup>

On March 3, 2006, Employee filed a Petition for Review. He argued that the AJ did not have complete knowledge of the facts in his case. He believed that the real reason that he was removed was because he informed the Chief that his secretary was engaging in theft.<sup>10</sup> Employee admitted that he had a bad driving record, but he claimed that three of the accidents were weather related; one was caused by another driver; and one occurred because he felt sick and should not have been driving.<sup>11</sup>

Employee does not take issue with the AJ's decision that Agency's action was

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<sup>7</sup> *OEA Hearing Transcript*, p. 7 (October 4, 2005).

<sup>8</sup> *Initial Decision*, 9 (February 13, 2006).

<sup>9</sup> *Id.*, 10-11.

<sup>10</sup> In the memorandum issued by Employee, he provided that the Chief's secretary sent him on personal errands for her; that she mailed personal packages using the D.C. Fire and EMS postage; and that she asked him to engage in internal theft. Employee does not provide details regarding the claim of internal theft.

<sup>11</sup> *Petition for Review*, p. 1 (March 3, 2006).

taken for cause. He concedes in his Petition for Review that he had a bad driving record. He also does not argue that removal was not an appropriate cause of action. Instead, he argues that the real reason for his removal was because he wrote a letter informing the Chief that his secretary was engaging in theft. This was an argument that he failed to raise in his Petition for Appeal before the OEA Administrative Judge.<sup>12</sup>

It is this Board's belief that Employee was properly removed from his position for cause because of the stipulated six accidents. As Agency provided, Employee's position required him to drive as a part of his duties. Furthermore, Agency's removal was appropriate. Agency could no longer depend on Employee to perform his duties given his poor driving record. It afforded Employee more than enough opportunities to maintain his position by sending him to driving training. However, Employee could not perform an essential function of his job responsibilities despite the training courses. Therefore, it is this Board's opinion that Agency appropriately removed Employee from his position.

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<sup>12</sup> OEA Rule 634.4 provides that "any objections or legal arguments which could have been raised before the Administrative Judge, but were not, may be considered waived by the Board." Therefore, the arguments raised in Employee's Petition for Review regarding the Chief's secretary will not be addressed because they were not presented to the AJ on appeal.

**ORDER**

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

FOR THE BOARD:

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Sherri Beatty-Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns

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