

**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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In the Matter of: )  
)  
JULIUS VILLENA, ) OEA Matter No. 1601-0015-19  
Employee )  
) Date of Issuance: January 13, 2020  
v. )  
) JOSEPH E. LIM, ESQ.  
DEPARTMENT OF ) Senior Administrative Judge  
YOUTH REHABILITATION SERVICES, )  
\_\_\_\_\_  
Agency )  
Julius Villena, Employee *pro se*  
Conner Finch, Esq., Agency Representative

**INITIAL DECISION**

PROCEDURAL HISTORY

On November 30, 2018, Julius Villena (“Employee”), a Youth Development Representative (“YDR”), filed a Petition for Appeal (“PFA”) of Department of Youth Rehabilitation Services’ (“Agency” or “DYRS”) action to remove him from service effective October 5, 2018. Employee’s removal was based on inexcusable neglect of duty, performance deficits, and violation of Agency’s Time, Attendance and Leave Policy. This matter was assigned to me on January 4, 2019. I ordered Employee to address the issue of jurisdiction after noting the untimeliness of his appeal.<sup>1</sup> Employee responded after asking for a continuance and responding to an Order for Good Cause. Employee also established jurisdiction after Agency admitted giving Employee an incorrect address.

After several postponements at the parties’ request, I held a Prehearing Conference on May 23, 2019, and scheduled an Evidentiary Hearing for June 25, 2019. Again, Employee asked for a postponement due to an injury, and the hearing was rescheduled for August 21, 2019. Shortly before the hearing, the parties requested an August 19, 2019, status conference whereby Employee declined the hearing and admitted to Agency’s evidence against him. Instead, the parties submitted briefs on the issue(s) identified. The record is closed.

JURISDICTION

<sup>1</sup> OEA Rule 628.2, 59 D.C. Reg. 2129, states, “The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing.”

This Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.03 (2001).

### ISSUES

- 1) Whether Agency's action to remove Employee was taken for cause; and
- 2) If so, whether the penalty was appropriate under the circumstances.

### STATEMENT OF FACTS<sup>2</sup>

1. On November 3, 2016, Employee slept on his post and left his post unsupervised while using the restroom.
2. On November 13, 2016, Employee left the Youth Services Center and refused mandatory overtime assigned by his supervisor.
3. On April 4, 2017, Employee received a fifteen-day (15) suspension for the misconduct that occurred on November 3, and 13, 2016.
4. On June 24, 2017, Employee watched television at 3:30 a.m. while on duty at a time the television should have been turned off.
5. On March 14, 2018, Employee slept while on duty for over an hour.
6. On March 17, 2018, Employee was approximately ten (10) minutes late for his regularly scheduled shift. Employee's scheduled tour of duty began at 10:45 p.m. Employee arrived at approximately 10:55 p.m.
7. On March 23, 2018, Employee slept while on duty for over an hour.
8. On March 31, 2018, Employee was seven (7) minutes late for his regularly scheduled shift. Employee's scheduled tour of duty began at 10:45 p.m. Employee arrived at 10:52 p.m.
9. On April 1, 2018, Employee received a verbal warning for being late for his regularly scheduled shift on March 17, and March 31, 2018.
10. On April 19, 2018, Employee used a personal cellular phone at his post. Employee was reminded that personal cellular phones are not permitted on post.
11. On April 20, 2018, Employee slept on duty and used his personal cellular phone.
12. On May 19, 2018, Employee was one (1) minute late for his regularly scheduled shift. Employee's scheduled tour of duty began at 10:45 p.m. Employee arrived at 10:46 p.m.

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<sup>2</sup> The statement of facts is excerpted from Agency's Amended Prehearing Statement filed on June 7, 2019, and admitted to by Employee.

13. On May 23, 2018, Employee received verbal counseling for being late on May 19, 2018.
14. On July 4, 2018, Employee was 23 minutes late for his regularly scheduled shift. Employee's scheduled tour of duty began at 10:45 p.m. Employee arrived at 11:08 p.m.
15. On July 18, 2018, Employee received an admonition for being late on July 4, 2018.
16. On August 23, 2018, Agency issued Employee a fifteen (15) day advance written notice of its proposal to remove Employee for cause. The notice gave a detailed account of Employee's misconduct and provided an elaborate explanation of how Employee repeatedly violated Agency's policies for YDRs.
17. On October 9, 2018, the Deciding Official, Krista Scalise, issued a Final Decision terminating Employee effective October 5, 2018. The Final Decision notified Employee of his right to appeal to the OEA or to file a grievance. The Final Decision, however, provided an incorrect address for the OEA.
18. On November 30, 2018, the OEA received Employee's Petition for Appeal.

*Documentary Evidence submitted:*

Agency Tab A: Youth Development Representative job description

Agency Tab B: Employee Conduct Policy.

Agency Tab C: Time Attendance and Leave Policy.

Agency Tab D: Final Written Notice of 15 Day Suspension dated April 4, 2017.

Agency Tab E: June 27, 2017 Notice of Written Counsel re: Insubordination

Agency Tab F: March 2018 Verbal Counseling

Agency Tab G: May 2018 Verbal Counselling for Lateness

Agency Tab H: July 2018 Admonition

Agency Tab I: August 23, 2018, Advance Written Notice of Proposed Removal

Agency Tab J: October 9, 2018, Final Agency Decision on Separation

STATEMENT OF CHARGES AND PARTIES' POSITIONS

*Statement of Charges*

In a letter dated August 23, 2018, Agency notified Employee of a 15-day advance notice of proposed removal from his position based on various charges of "inexcusable neglect of duty, performance deficits, and violation of Agency's Time, Attendance and Leave Policy" in accordance with the District Personnel Manual ("DPM") Chapter 16, §1618.<sup>3</sup> On October 9, 2018, a Notice of Final Decision was issued affirming Employee's removal. The effective date was October 5, 2018.

*Agency's Position.*

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<sup>3</sup> See 6-B D.C.M.R. § 1618.1.

Agency contends that it met its burden of proof in establishing, by a preponderance of evidence, that Employee was properly removed for cause. Agency also contends that Employee's removal was the appropriate penalty under the circumstances. As a Youth Development Representative carrying out Agency's mission of providing court-involved youth the opportunity to become more productive citizens by building on the strengths of youth and their families in the least restrictive, most home-like environment consistent with public safety, Employee's duties included supervising and engaging youth through behavioral management programs that are implemented in the facility. His repeated failure to exhibit behavior congruent with the expectations of his position poses a threat to the safety of youth and staff by repeated tardiness, sleeping on the job, failure to conduct safety checks, violation of Agency policies, and failure to monitor cameras in control. Despite Agency's considerable efforts to counsel Employee and imposition of lesser penalties, Employee failed to improve his work performance.<sup>4</sup>

#### *Employee's Position*<sup>5</sup>

Employee contends that Agency's action was not in good faith and unethical because it was discriminatory in that he was singled out for punishment. Employee alleges that he was the only one monitored on camera and that Agency failed to honor his request to a different work shift despite his hardship letter. Employee also contests Agency's prior disciplinary actions against him, and that Agency violated the Douglas factors. However, Employee did not elaborate on his arguments nor did he proffer any evidence for his assertions.

### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

#### *Whether Agency's Action Was Taken For Cause.*

Employee does not deny any of the charges. In his legal brief, Employee made assertions without elaboration nor did he proffer any evidence to support his positions. Employee's admitted and repeated conduct of repeated tardiness, neglect of duty by sleeping on the job and watching television while on duty, and failure to comply with Agency's policy regarding the use of a personal phone while on duty are all actions clearly prohibited by Agency's written policies and D.C. regulations.<sup>6</sup> Because of Employee's admission, there was never any question that Agency had met its burden of establishing cause for taking adverse action.

#### *Whether the Penalty Was Appropriate Under the Circumstances.*

As noted above, the only remaining issue is whether the discipline imposed by Agency was an abuse of discretion. Any review by this Office of the agency decision of selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.<sup>7</sup> Therefore,

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<sup>4</sup> Agency's Brief in Support of Removal and Prehearing Statement.

<sup>5</sup> Employee's Legal Brief dated September 30, 2019.

<sup>6</sup> See also D.C. Code §1-616.51 (2006 Repl.), 6A DCMR §1607.2 (e) (sleeping or dozing on-duty defined as neglect of duty), 6A DCMR §1607.2 (f) (attendance related offenses).

<sup>7</sup> See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition*

when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that "managerial discretion has been legitimately invoked and properly exercised."<sup>8</sup> When the charge is upheld, this Office has held that it will leave 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."<sup>9</sup>

The record shows that Agency's decision was based on a full and thorough consideration of the nature and seriousness of the offense, as well as any mitigating factors present. In addition, 6B DCMR 1607.2 prescribes removal for first instances of Employee's misconduct. As noted above, the record establishes that Employee's offenses were multiple and repeated. Hence, removal was an appropriate penalty for Employee. For the foregoing reasons, I conclude that Agency's decision to select removal as the appropriate penalty for the employee's infractions was not an abuse of discretion and should be upheld.

### ORDER

It is hereby **ORDERED** that the agency action removing the employee is **UPHELD**.

FOR THE OFFICE:

Joseph E. Lim, Esq.  
Senior Administrative Judge

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*for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994).

<sup>8</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>9</sup> *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).