THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
DIANE COPELAND,	)	
Employee	)	OEA Matter No. 1601-0013-20
	)	
v.	)	Date of Issuance: December 10, 2020
	)	
DISTRICT OF COLUMBIA PUBLIC LIBRARY,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Senior Administrative Judge

Diane Copeland, Employee *Pro-Se*
Grace Perry-Gaiter, Esq., & Monika Taliaferro, Esq., Agency Representatives

INITIAL DECISION[1]

Diane Copeland ("Employee") was terminated from her position of Library Technician with the District of Columbia Public Library ("DCPL" or the "Agency") on November 9, 2019, in accordance with D.C. Mun. Regs. Tit. 6-B, § 1607.2(n)(2019) due to her inability to perform the essential functions of her position. Employee filed her Petition for Appeal with this Office of Employee Appeals ("OEA" or the "Office") on November 26, 2019. The DCPL timely filed its Answer to Employee's Petition on December 30, 2019. On February 6, 2020, an Order Convening a Prehearing/Status Conference ("Order") was issued requiring both parties to submit a Prehearing Statement and to attend a Prehearing/Status Conference. The parties were present for the Prehearing/Status Conference and during it the Undersigned determined that an Evidentiary Hearing was unwarranted. Accordingly, the parties were provided with a briefing schedule through which they provided their arguments in support of their respective positions. After reviewing the documents of record, the Undersigned has determined that no further proceedings are required. The record is now closed.

[1] This decision was issued during the District of Columbia's COVID-19 State of Emergency.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That 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.

OEA Rule 628.2 *id.* states:

> The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Agency's adverse action was taken for cause. If so, whether the penalty was appropriate given the circumstances.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

The following findings of fact, analysis and conclusions of law are based on the documentary evidence as presented by the parties during the course of Employee's appeal process with this Office. Employee's tenure with DCPL started in 2013 in the Career Service as a Library Technician. On April 15, 2017, Employee had a heated encounter with a library patron. After this incident, Employee filed a worker's compensation claim with the District of Columbia Office of Risk Management ("ORM"). Employee's claim was denied. Employee did not report for duty and submitted multiple doctors' notes that generally indicated that Employee was unable to work. Employee appealed her workers compensation claim with the District of Columbia Office of Administrative Hearings "(OAH"). On November 27, 2017, OAH issued a decision dismissing Employee's workers compensation appeal.[2] On March 1, 2018, The Compensation Review Board affirmed the Office of Administrative Hearings dismissal of Employee's appeal.[3] For several months thereafter, Employee did not report for duty. The Undersigned notes that on a monthly basis from July 2018 through March 2019, Employee's doctor submitted updated Doctor's notes

[2] *Copeland v. Office of Risk Management and D C Public Library*, OAH No. 2017 PSWC-00036, (November 27, 2017).

[3] *Copeland v. District of Columbia Public Library and District of Columbia Office of Risk Management*, CRB No. 17-123 (2018).

indicating that Employee was unable to report for duty unless she could work in a position that did not require library patron contact.[4] On June 11, 2019, Employee's manager issued a Notice of Proposed Removal. On September 24, 2019, the Hearing Officer provided an independent review of the proposed termination in accordance with DPM 1614.3(c) and issued a Report and Recommendation recommending removal. On October 30, 2019, the Deciding Official issued her final decision to remove Employee from her position effective November 9, 2019.

DCPL argues that removal is appropriate and notes that it provided Employee with 4,700 hours of leave without pay before it opted to move forward with termination. Agency further notes that no reasonable accommodation can be provided to Employee. Agency notes that an essential function of Employee's position requires her to actively assist library patrons. Further, DCPL is patron oriented and after review, it found that none of its available positions could accommodate Employee's Doctor's requirement that she have no customer contact.[5] D.C. Mun. Regs. Tit. 6-B, § 1607.2(n)(2019) states that an Employee may be removed for "any circumstance that prevents an employee from performing the essential functions of his or position, and for which no reasonable accommodation has been requested or can be made, unless eligible for leave protected under the D.C. Family Medical Leave Act." In her brief, Employee generally asserts that DCPL did not do enough to accommodate her Doctor's mandate that Employee be reassigned to a position that does not have a customer contact requirement.

Upon review, the record is clear that Employee's last position of record has a customer interaction component that is essential. Further, it is also clear that Employee's absence created an undue burden for DCPL necessitating Employee's colleagues having an unnecessarily increased workload due to her absence. Lastly, the Undersigned notes that DCPL made reasonable efforts to accommodate Employee's request that she be reassigned to a position that does not have a patron interaction requirement. DCPL, by the nature of its mission, is a customer-oriented agency and was unable to locate positions that would fit her requirements. Therefore, Employee's removal from service was the only remaining reasonable option. Upon review of the record, I find no procedural or legal fault with Agency's removal action herein. Accordingly, I further find that Employee's removal from service should be upheld.

Appropriateness of the Penalty

When assessing the appropriateness of the penalty, OEA is not to substitute its judgment for that of the agency. *Stokes v. District of Columbia*, 502 A.2d 1006, 1985 (D.C. 1985). The OEA itself recognized in *Employee v. Agency*, 29 D.C. Reg. 4565, 4570 (1982):

> Review of an Agency imposed penalty is to assure that the Agency has considered the relevant factors and has acted reasonably. Only if the Agency failed to weigh the relevant factors or the Agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for this Office to specify how the Agency's penalty should be amended. This office is guided

[4] *See*, Agency's Prehearing Statement pp. 2 – 6 (February 28, 2020).
[5] *Id*. pp. 6 – 9.

> in this matter by the principles set forth in *Douglas v. Veterans Administration, [supra]*.

Although the OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate. *Douglas v. Veterans Administration, supra*, 5 M.S.P.B. at 327-328. The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the [OEA]." *Id.* at 328.

> Selection of an appropriate penalty must . . . involve a responsible balancing of the relevant factors in the individual case. The [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness.
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> *Id.* at 332-333. *See also Villela v. Department of the Air Force*, 727 F.2d 1574, 1576 (Fed. Cir. 1984).

In this case, I find that the relevant *Douglas* factors were carefully considered when the appropriate penalty for Employee was determined. Also, the resulting removal from service for the sustained charge is within the range set forth in the Table of Illustrative Actions. Accordingly, I find that I have no credible justification for setting aside Agency's selected penalty for this matter.

ORDER

It is hereby **ORDERED** that Agency's action of removing Employee from service is **UPHELD**.

FOR THE OFFICE:

/s/ *Eric T. Robinson*
Eric T. Robinson, Esq.
Senior Administrative Judge