

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
LaTisha Porter)	OEA Matter No. 1601-0115-07
Employee)	
)	Date of Issuance: May 28, 2010
v.)	
)	Joseph E. Lim, Esq.
District of Columbia Fire and)	Senior Administrative Judge
Emergency Medical Services Department)	
Agency)	
_____)	

Ross Buchholz, Esq., Agency representative
Frederick Schwartz, Jr., Employee representative

INITIAL DECISION

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a petition for appeal with the Office of Employee Appeals (OEA) on September 4, 2007, appealing Agency’s final decision to remove her from her position of Advanced Emergency Medical Technician, effective August 3, 2007. At the time of the adverse action, Employee was in permanent career status.

This matter was assigned to me on or about November 19, 2007. After several postponements requested by the parties, a prehearing conference was held on December 14, 2007. The parties then entered into discussions on a stipulation of facts. The matter proceeded to a hearing on April 7, 2010. At the hearing, the parties were given full opportunity to, and did in fact, present testimonial and documentary evidence. At the conclusion of the hearing, the record was closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (2001).

ISSUE

Should Agency’s termination of Employee be upheld?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Undisputed Facts

In addition to fighting fires, Agency provides ambulance services to District residents. Agency personnel who provide emergency medical assistance are trained Emergency Medical Technicians (EMT) and Paramedics. Its ambulance units are composed of advance life support units (ALSU) and Basic Life Support Units (BLSU). ALSU providers have more extensive medical training than BLSU providers and can thus provide services such as delivery of drugs intravenously that basic units cannot. Further, a basic ambulance is not equipped with a cardiac monitor.

Calls for ambulance service come into the Office of Unified Communications (OUC) from the public and Agency personnel. Depending on the description of the patient's medical condition, the OUC operator makes an initial decision on sending either a ALSU or BLSU. The OUC uses the Automatic Vehicle Locating (AVL) system to dispatch the ambulance unit closest to the patient.

Only the OUC can make decisions which units to dispatch on pre-arrival assignments. But once they arrive on the scene, the ambulance crew member in charge of a unit or the highest ranking trained medical personnel can evaluate the patient and decide whether the unit can provide the medical assistance needed or whether they should notify OUC that patient should be reassigned to another unit. Employee Exhibit #5, General Patient Care Protocols: Patient Care, deals with employees assessing patients at the scene.

Employee LaTisha Porter is an Emergency Medical Technician (EMT) who joined the D.C. Fire and Emergency Medical Services Department on March 26, 2001. On November 27, 2006, the Employee and EMT LaDonnya Stroman were staffing Ambulance 25, a Basic Life Support Unit (BLSU). Both Employee and Stroman were advanced EMT trained. At 14:56 hours, they received a dispatch from the Communications Operator to respond to the quarters of Engine Company 26 for a walk-in patient.

The patient had walked into Engine Company 26 approximately 10 minutes earlier having been referred by a local medical clinic after complaining of dizziness and asking that his blood pressure be taken. He stated that he had not had any medical problems during the past year, but that he had not taken his medication for a few days. Firefighter Stanley Hicks (Hicks), an EMT, took the patient's vital signs noting that his blood pressure was 200/110 with a radial pulse rate of 80 and that he was otherwise asymptomatic. Hicks informed the patient that his blood pressure was abnormal and they agreed to transport the patient to the closest medical facility by ambulance.

After receiving the dispatch order, the Employee telephoned Engine Company 26 to inquire about the patient's condition. During the telephone conversation with Hicks, Employee repeatedly insisted that the patient needed an advanced transport unit. Hicks transferred Employee's call to Lieutenant Gerald Fraley (Fraley) at which time Employee stated that if the patient's blood pressure is 200/110, then the patient needs a medic unit, and we are not able to start an IV line because we are not advanced trained. Fraley disagreed with the evaluation of Employee and told her that the patient was in no distress and that he would discuss the situation with her when she arrived at the station.

Following the telephone conversation with Fraley, Employee called the OUC and reported she was still en route, but recommended that they dispatch the next available paramedic engine company

or medic unit to respond ahead of Ambulance 25. EMS Dispatch Policy Changes (Employee Exhibit #3) mandates that the closest transport unit be dispatched. Employee then requested to be placed in service to take another call after being advised that OUC dispatched Medic 4 to Engine Company 26.

Medic 4 arrived at Engine Company 26 while Employee and her Ambulance 25 did not report to Engine 26. Medic 4 personnel evaluated the patient and transported the patient to Howard University Hospital for further evaluation due to an elevated blood pressure.

Article 17, Section 29 of the DC Fire & EMS Order Book states that as to Medical Local Responses, EMS units may be canceled by Firefighter/EMT'S only under the following circumstances: [1] There is no patient (unable to locate, gone on arrival, false alarm); [2] No EMS service is required (no illness or injury, PDOA); [3] Patient refuses all services - units may be canceled only after a complete physical assessment and counseling of the patient and /or responsible person. It states further that BLS units, ALS units, and /or EMS supervisors on the scene may cancel other responding units when, after complete physical assessment and review of all circumstances, (mechanism of injury) there is no apparent need for further intervention.

Section 29-2 Medical Local Responses states: BLS units, ALS units and/or EMS Supervisors on the scene may cancel other responding units when, after a complete physical assessment and review of all circumstances, (mechanism of injury), there is no apparent need for further intervention. (Employee Exhibit #8).

On March 12, 2007, Agency served Employee with an Advanced Notice of Proposed Removal for the cause of “[f]ailure to respond on an assigned medical dispatched [sic] after requesting a medic unit.” Specifically, the notice charged Employee with failing to respond on a medical dispatch and improperly canceling her dispatch to Engine No. 26. The other EMT in Ambulance 4, LaDonnya Stroman, was not charged in the incident.

Employee filed a response and had an administrative review by a hearing officer. The Hearing Officer’s (HO) written decision was issued on July 2007, finding, *inter alia*, that Agency’s penalty complies with Chapter 16 of the District personnel manual and the “Douglas Factors” have been properly weighed. The HO noted Employee had three previous disciplinary infractions within the past three years. The HO reasoned that given Employee’s 10 day suspension in September 2006 for failure to perform assigned duties and failure to follow orders, the instant offense constituted a second like offense within two months. On June 24, 2005, the Employee was reprimanded for “discourteous treatment and unprofessional treatment towards your co-worker.” On January 26, 2006, the Employee was suspended for three days without pay for “failure to carry in your possession the required employee identification card while on duty.” On August 21, 2006, the Employee was suspended for 10 days without pay for “failure to perform your assigned duties” and for “failure to follow orders.” On September 11, 2006, the Employee was suspended for 5 days without pay for discourteous treatment and unprofessional treatment towards your co-worker.”

On July 16, 2007, Agency issued its Final Agency Decision finding that the cause cited in the Notice was supported by a preponderance of the evidence and warranted removal, effective August 3,

2007.

Positions of the Parties

Agency's position is that Employee was insubordinate when she failed to follow a direct dispatch order from OUC and from her supervisor Lt. Fraley to report to Engine 26 quarters. Employee asserts that: 1) Lt. Fraley was not her supervisor and thus had no authority to command her; 2) she correctly assessed that an ALSU was better suited to assist the patient; 3) the other unit was closer to the patient than her unit was; and 4) she did not disobey the dispatch order since OUC had reassigned her to another run.

Summary of Evidence

Fire Chief Dennis Rubin, a former fire chief of three other jurisdictions, testified (Tr. Pages 9-62) that in determining the proper penalty for Employee, he looked at the Douglas factors and determined that termination was the best choice based on Employee's serious offense of not responding to an ambulance call and her four prior offenses. He stressed the importance of Agency employees obeying immediately a dispatch order without question. Rubin said that this is the rule for all fire departments in the country and that no one, not even the fire chief, has the authority to cancel a dispatcher's order except the dispatcher himself. He also testified that under the National Incident Management (NIMS 100) model which has been in use for the past 50 years, Lieutenant Fraley in his role as incident commander, is Employee's direct supervisor in that situation. Rubin stressed over and over that Employee had no authority to avoid going on an ambulance even if she thought another unit should take the dispatch instead.

Battalion Fire Chief Jerome Stack of EMS Operations (Tr. Pages 62-88) testified that he was the investigating official in this matter. He stated that the incident commander, not Employee, had the authority to cancel a run. He thought that the non-appearance of Employee's basic ambulance unit seriously jeopardized Agency's mission of providing on-site emergency care to District residents. He emphasized that Employee could only accurately assess the needs of a patient if she was on the scene and that it was inappropriate for Employee to diagnose the patient's medical needs away from the scene.

Lieutenant Gerald Fraley, (Tr. Pages 88-108) the ranking supervisor in charge of all Agency personnel at Engine 26, Truck Company 15, testified that on November 27, 2006, a patient came into the station asking to have his blood pressure checked. When they found his blood pressure to be high, the patient asked to be transported by ambulance to the nearest hospital. Fraley ordered Office of Unified Communications (OUC) to dispatch a Basic Life Support (BLS) Unit to Engine 26 Quarters. He then received a cell phone call from Employee who began asking about the patient's condition. Fraley said that protocol dictated that Employee use the radio from OUC to communicate with him. In addition, it is not protocol for Employee to be attempting to get more details about the patient's condition without being on the scene. His impression was that Employee was trying to avoid taking the run. Fraley ordered Employee to report to the scene, regardless of whether her unit was a basic or advanced unit.

Assistant Fire Chief of Operations Lawrence Schultz, a 25-year veteran firefighter, (Tr. Pages 108-160) testified that he was the proposing official in terminating Employee. After listening to the audio tapes recorded of the incident, and reading all the other reports, he determined that termination was the appropriate penalty. In emphasizing the importance of prompt obedience to dispatch orders, he explains that they are a paramilitary unit in that they constantly deal with emergencies and prompt obedience to dispatch orders is essential.

La Donnaya Stroman (Tr. Pages 168-182) testified that she was the driver in Employee's ambulance. She recalled Employee's cell phone calls to lieutenant and the OUC dispatcher. Initially Stroman said the Communications placed them back in service; but when an audio recording of the conversation was replayed, she agreed that it was Employee who declared their unit to be back in service.

Jasper Sterling, an EMT-paramedic with the advanced life support unit, (Tr. Pages 183-235) elaborated on the medical complications that could occur in a patient with high blood pressure. Paramedics sometimes used their cell phones when the ambulance radio hit a dead zone and thus cannot get a radio signal. After much hedging, Sterling admitted that a dispatch by the OUC was an order that must be followed by a paramedic or EMT.

Employee, an EMT basic with Agency, (Tr. Pages 235-281) testified that on November 27, 2006, her unit was dispatched by OUC to report to Engine 26 quarters. Using her cell phone, Employee called Engine 26 to ascertain the patient's condition. After speaking with Sandy Hicks about the patient's condition, Employee determined that a medic unit should be sent instead. Hicks put Lt. Fraley on the line. Fraley instructed Employee to report, saying of her concerns, "We'll discuss it when you get here." (Tr. Page 240) Employee called OUC to suggest sending a medic unit. Later, after hearing a dispatch of Medic 4, Employee called OUC again and claimed that they were placed back in service and thus did not have to report to Engine 26. OUC subsequently sent them on another run. Employee asserts that Fraley's request for her to show up at Engine 26 to discuss the matter was not an order.

Analysis, Findings and Conclusions

This Office has jurisdiction to hear this matter pursuant to Section 101(d) of The Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124. D.C. Official Code § 1-616.51 (2001) (Code herein) provides that the Mayor "issue rules and regulations to establish a disciplinary system that includes... 1) a provision that disciplinary actions may be taken for cause... [and]... 2) A definition of the causes for which a disciplinary action may be taken" for those employees of agencies for whom the Mayor is the personnel authority. Agency is under the Mayor's personnel authority. In this instance, Employee is charged with insubordination or failure to follow a direct dispatch order. Insubordination is included as "cause" for which an employee can be disciplined. *See*, Section 1603.3, 46 D.C. Reg. 7096.

Employee does not deny that she did not report to Engine 26 as per the OUC dispatch order and Lt. Fraley's expressed order. Employee's contention that Lt. Fraley is not her direct supervisor is incorrect. According to the credible and repeated testimony of Agency's witnesses, Lieutenant Fraley in his role as incident commander, is Employee's direct supervisor and thus I find that Fraley has the authority to command Employee to report to Engine 26 quarters. Employee's assertion that Fraley's request for her to show up at Engine 26 to discuss the matter was not an order strains credulity. I find that Employee deliberately ignored Fraley's command.

Employee's second defense, that she correctly assessed that the patient needed an ALSU, not her BLSU, is also erroneous. She has to be on the scene to assess the patient and make this determination. Section 29-2 Medical Local Responses states: BLS units, ALS units and/or EMS Supervisors *on the scene* may cancel other responding units when, after a complete physical assessment and review of all circumstances, (mechanism of injury), there is no apparent need for further intervention. (Employee exhibit 8) (Emphasis placed.)

Employee's third defense, that she correctly assessed that her BLSU was not the right unit to assist the patient or that another unit is closer to the patient, is irrelevant to the charge of insubordination. She was disciplined for disobeying a dispatch order, not for assessing the patient's medical condition off-site. I also find credible Agency witnesses's testimony that Agency is a paramilitary organization where prompt and unquestioned obedience to orders is essential to its mission.

Employee's last defense, that it was OUC who reassigned her to another run and therefore she was not insubordinate, is also unavailing. Employee admits that she asked OUC to take her off the run to Engine 26, something that she has no authority to do. None of Agency's orders and regulations permit an ambulance crewmember to ask to be taken off a run.

The Code does not provide a definition of insubordination, therefore the common law meaning applies. *See, Davis v. District of Columbia Fire Department, MPA 94-0015* (D.C. Super. Ct. September 26, 1995). Black's Law Dictionary (5th Ed., 1979) defines insubordination, in pertinent part, as the "[r]efusal to obey some order which a superior officer is entitled to give and have obeyed. The term imports a *willful or intentional disregard* of the lawful and reasonable instructions of the employer". (emphasis added).

This Judge concludes that Employee refused to obey a lawful and reasonable dispatch order from supervisory staff and the OUC to respond to a patient. Her actions were intentional and willful. The Administrative Judge concludes that Agency met its burden of proof that Employee's conduct constituted insubordination.

Agency has the primary responsibility for managing its employees. Part of that responsibility is determining the appropriate discipline to impose. *See, e.g., Huntley v. Metropolitan Police Department, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review* (March 18, 1994), ___ D.C.Reg. ___ (). This Office will not substitute its judgment for that of an agency when determining if a penalty should be sustained. Rather this Office limits its review to

determining if “managerial discretion has been legitimately invoked and properly exercised”. *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985). A penalty will not be disturbed if it comes “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 (1985). Agency established that it considered relevant factors in determining the penalty and that the penalty was within the range of appropriate penalties under the circumstances presented. In addition, Employee’s many prior disciplinary actions show that Agency has used progressive discipline in its attempt to reform Employee’s actions.

Based on a careful review of the testimonial and documentary evidence and on the findings and conclusions as discussed herein, the Administrative Judge concludes that Agency met its burden of proof in this matter and that Agency’s action removing Employee should be upheld.

ORDER

It is hereby

ORDERED: Agency’s action removing Employee is UPHELD.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge