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## THE DISTRICT OF COLUMBIA

### BEFORE

### THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0012-25
	)	
	)	Date of Issuance: October 28, 2025
v.	)	
	)	
OFFICE OF THE	)	Joseph E. Lim, Esq.
CHIEF TECHNOLOGY OFFICER,	)	Senior Administrative Judge
<u>Agency</u>	)	
Employee <i>pro se</i>		
Victor Regal, Esq. Agency Representative		

### INITIAL DECISION

#### INTRODUCTION

On November 21, 2024, Employee filed a petition for appeal with this Office (“OEA”) from the D.C. Office of the Chief Technology Officer’s (“OCTO” or “Agency”) final decision terminating her employment as an Information Technology Specialist for poor job performance. In response to OEA’s December 2, 2024, letter, Agency filed its Answer on December 31, 2024. This matter was assigned to me on December 31, 2024. I held a Prehearing Conference on January 23, 2025, and ordered the submission of briefs. After the parties submitted their legal briefs on February 11, 2025, I closed the record.

#### JURISDICTION

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

#### ISSUE

Whether Agency’s action terminating Employee’s employment should be upheld under District law.

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

Whether Employee's actions constituted cause for adverse action.

The following facts are undisputed:

In late August 2023, Employee began working for OCTO's OCTOhelps call center. OCTOhelps is part of OCTO's technology support services, providing support for desktop products and services to DC agencies. When Employee arrived at OCTO, Mr. Tshaka Scott supervised her, and Mr. Scott in turn answered to Ms. Melissa Taylor, the OCTOhelps Program Manager. Employee received a week of training, in which she learned how to create customer support tickets and use OCTOhelps tools for assisting customers. Ms. Taylor's work location was close to Employee's, and she had ample opportunity to directly observe Employee's work performance and work ethic.

Within the first few months of Employee's employment with OCTO, Ms. Taylor identified significant weaknesses in her job performance. Ms. Taylor saw that Employee arrived late to work on a near-daily basis and routinely returned late from her allotted daily breaks. OCTOhelps operates on a "buddy system" to maintain coverage while call center employees take breaks. Employee's tardiness forced her assigned buddy, Khizram Javed, to wait to take his own breaks.

In October 2023, Employee met with Mr. Scott and received the Fiscal Year 2024 Annual Performance Document (also called a "Performance Plan") that he had created for her.<sup>1</sup> This document explained to Employee the job expectations for her position's "core competencies" and set specific goals for her job performance. Unfortunately, Employee's sub-par work performance continued. For example, on October 24, 2023, Employee answered a customer service call and remained silent until she disconnected it and left for the day, requiring the customer to call back to receive assistance.<sup>2</sup> On November 15, 2023, Employee gave a customer inaccurate information while using an inappropriate tone, forcing another IT specialist to call the customer back to apologize and fix the caller's problem.<sup>3</sup>

Even into 2024, Employee continued her underperformance. On February 28, 2024, Employee received eight (8) customer support calls for which she failed to create a ticket and fourteen (14) calls that she answered and then disconnected.<sup>4</sup> On March 21, 2024, Mr. Scott conducted a mid-year performance review with Employee and counseled her about her underperformance.<sup>5</sup> In addition, throughout this period, Employee's co-workers also continually tried to help her improve, but Employee proved unwilling to do so.

In May 2024, Mr. Scott left OCTO, and Ms. Taylor became Employee's direct supervisor. After becoming her supervisor, Ms. Taylor spoke to Employee and encouraged her to improve her performance, but Employee's underperformance continued unabated. For example, on June 4, 2024, Employee failed to create tickets for four (4) calls she received, and she failed to speak in response to two of the calls.<sup>6</sup>

Monitoring Employee's underperformance was a team effort. In the above instance, it was Employee's co-worker Kesia Arriaga who documented the underperformance for Ms.

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<sup>1</sup> Agency Brief (January 28, 2025), Attachment 9.

<sup>2</sup> *Id.*, Attachment 1.

<sup>3</sup> *Id.*, Attachment 2.

<sup>4</sup> *Id.*, Attachment 3.

<sup>5</sup> *Id.*, Attachment 4.

<sup>6</sup> *Id.*, Attachment 5.

Taylor, and she copied IT Specialists Davis Devadanam and IT Analyst Silvia Esperanza on the email as well. At this point, Employee had been in her customer service position for about a year, and she had not meaningfully improved her performance.

Employee was still routinely failing to follow procedures on customer support calls, and her inadequate job knowledge often required co-workers to intervene on her calls. Employee continued taking too long on her breaks, inconveniencing not only her assigned buddy, but also compromising the efficiency and effectiveness of call center operations. Employee had resisted the efforts of her first supervisor, Mr. Scott, to help her improve, and she was now resisting Ms. Taylor's efforts too.

Seizing what they perceived as having no other options to address Employee's intractable underperformance, Ms. Taylor put Employee on a Performance Improvement Plan ("PIP") per District Personnel Manual ("DPM") § 1410 in late June 2024. On June 20, 2024, Ms. Taylor met with Employee and told her that she would be on a PIP for the next three (3) months and she documented the meeting with an email later that day.<sup>7</sup> The PIP required Employee to correct her deficiencies in Accountability, Goal Attainment, and Job Knowledge,<sup>8</sup> and it laid out quantifiable performance metrics for her to meet by 30, 60, and 90 days.<sup>9</sup> Employee signed an acknowledgement of the PIP's requirements.<sup>10</sup> However, even while on the PIP, Employee failed to meet call center performance standards.

For example, on July 19, 2024, three days before her 30-day follow-up, Employee upset a customer seeking her assistance to resolve a log in issue. That customer remarked on a survey that Employee was "quite rude and unprofessional" and that "customer training was needed for [her]."<sup>11</sup> After 30 days on the PIP, Employee had missed her First Call Resolution ("FCR") performance target.<sup>12</sup> FCR tracks the rate at which call center employees are able to resolve a customer support issue in one phone call without escalating the matter to someone more senior. It is the most important metric for call center employees to meet, because if a matter requires more than one phone call to resolve, customers must wait longer, and OCTO must also spend more of its limited time and resources to address it. Employee also failed to meet her time and attendance metric for taking long lunch breaks.

On or about August 20, 2024, Employee had her 60-day follow-up. Although she had made progress on improving her FCR rate, she had still failed to meet her 60% metric.<sup>13</sup> She also failed to meet her time and attendance target.<sup>14</sup> Consistent with her continuing underperformance, on August 21, 2024, a day after her 60-day follow-up, Employee failed to gather any information during a call with a customer and wrote an inadequate ticket for it, requiring intervention from a more senior employee.<sup>15</sup> When Employee's PIP ended on

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<sup>7</sup> *Id.*, Attachment 8, page 4.

<sup>8</sup> *Id.*, Attachment 8, page 5.

<sup>9</sup> *Id.*, Attachment 8, pages 6-7.

<sup>10</sup> *Id.*, Attachment 8, page 7.

<sup>11</sup> *Id.*, Attachment 6.

<sup>12</sup> *Id.*, Attachment 8, page 13.

<sup>13</sup> *Id.*, Attachment 8, pages 17-18.

<sup>14</sup> *Id.*, Attachment 8, page 15.

<sup>15</sup> *Id.*, Attachment 7.

September 19, 2024, she had failed to correct two of her three deficient performance metrics.<sup>16</sup> Specifically, she had failed to meet her 30-, 60-, and 90-day targets for both FCR improvement and time and attendance.

On September 25, 2024, Ms. Taylor informed Employee in writing that she had failed the PIP and that she was proposing separation. It stated the following: “On September 19, 2024, it was determined that you failed to complete a Performance Improvement Plan (PIP). Notably, you continued to perform below the required call center performance standards for the Office of Technology Officer (OCTO) Call Center HelpDesk Support Division.” The letter cited 6B DCMR section 1605.4(m) Failure to Meet Performance Standards.<sup>17</sup> The separation package, including the written notifications and associated attachments, was hand-delivered to Employee on September 25, 2024, but she refused to sign for them. Subsequently, on November 12, 2024, Agency issued a Final Agency Decision -Separation, effective November 29, 2024.<sup>18</sup>

Whether Employee's actions constituted cause for separation.

In its Performance Improvement Plan Proposed Adverse Action, Agency cited 6B DCMR section 1605.4(m) Failure to Meet Performance Standards, as authority to propose terminating Employee’s employment. In pertinent part, 6B DCMR section 1605.4(m)<sup>19</sup> states:

1605.4 Though not exhaustive, the following classes of conduct and performance deficits constitute cause and warrant corrective or adverse action:

(m) Failure to meet performance standards; ...

This Office’s Rules and Regulations provide that in an adverse action, the burden of proof for material issues of fact shall be by a preponderance of the evidence.<sup>20</sup> For appeals filed under § 604.1, 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.<sup>21</sup>

The crux of Agency’s case against Employee is that despite numerous attempts by her superiors and fellow employees to assist and guide her, Employee failed to meet important metrics and other performance standards in her call center job. Agency also alleges that despite placing Employee in a Performance Improvement Plan for the maximum 90-days, Employee failed to attain the required minimum performance standards of her position as an Information Technology Specialist. In addition, Agency states that Employee consistently failed to abide with the time and attendance requirements of her position.

At the Prehearing Conference, Employee admits that she failed her Performance Improvement Plan. In her brief, Employee states that her mid-year performance in March 2024 misled her into believing she met expectations. Employee also blamed management for not giving

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<sup>16</sup> *Id.*, Attachment 8, p. 19-20.

<sup>17</sup> Agency Answer to Employee Petition for Appeal, Tab 8.

<sup>18</sup> *Id.*

<sup>19</sup> 64 DCR 4623 (May 12, 2017).

<sup>20</sup> OEA Rule 631.1, 68 DCR 012473 (2021).

<sup>21</sup> OEA Rule 631.2, 68 DCR 012473 (2021).

her prior notice of her work deficiencies and not providing her with adequate support and guidance before placing on the PIP. She also blamed factors beyond her control, such as a February 28, 2024, cyberattack, lack of authority over certain technical issues, as well as the stress of trying to meet her workload requirements. Employee emphasized that she failed to meet her performance standards by only a small margin.

Although Employee asks for a hearing so that she could provide additional details she faced in doing her job. However, none of Employee's protestations refute the fact that she had indeed failed to improve her work performance on the PIP. In addition, Employee did not proffer any evidence that her fellow Information Technology Specialists, who can be reasonably assumed to work under the same work environment constraints, suffer similar deficits in work performance. In other words, Employee's inadequate work performance is hers alone. Accordingly, I conclude that the agency has met its burden of establishing cause for taking adverse action.

Whether the penalty of termination was appropriate under the circumstances

In *Employee v. Agency*,<sup>22</sup> this Office held that it would leave a penalty undisturbed when it is satisfied on the basis of the charge(s) sustained, that the penalty is within the range allowed by law, regulation, or guideline, and is not clearly an error of judgment. 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>23</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>24</sup>

The DPM allows an Agency to reassign, reduce in grade, or remove an employee who has failed to meet the requirements of a Performance Improvement Plan. Agency has chosen termination which is well within the range allowed by regulation. I am satisfied that Agency has properly exercised its managerial discretion and that its chosen penalty is reasonable and is not clearly an error of judgment. Accordingly, I conclude that Agency's action should be upheld.

ORDER

It is hereby ORDERED that Agency's action removing the employee is UPHeld.

FOR THE OFFICE:

s/ Joseph Lim

JOSEPH E. LIM, ESQ.

Senior Administrative Judge

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<sup>22</sup> OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review*, 32 D.C. Reg. 2915, 2916 (1985).

<sup>23</sup> *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985).

<sup>24</sup> *Employee v. Agency*, OEA Matter No. 1601-0158-81, *supra*.