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

In the Matter of:	)	
	)	OEA Matter No. 1601-0054-06
PERRY J. HAWKINS	)	
Employee	)	
	)	Date of Issuance: May 4, 2006
v.	)	
	)	Rohulamin Quander, Esq.
	)	Senior Administrative Judge
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF PUBLIC WORKS	)	
Agency	)	

Perry J. Hawkins, *pro se*, Employee  
Christine Davis, Esq., Agency representative

**INITIAL DECISION**

INTRODUCTION

On April 21, 2006, Employee filed with the Office of Employee Appeals (the "Office"), a Petition for Appeal from Agency's final decision, effective March 31, 2006, which terminated Employee from his position of Sanitation Worker with the D.C. Department of Public Works (the "Agency"), as a result of a charge of being absent without official leave ("AWOL") for 10 consecutive days or more. Although the Office had not notified the Agency of the filing of this Petition for Appeal at the time the Administrative Judge (the "AJ") issued this Initial Decision, the record indicates that the Employee stated in his Petition that the basis for his absence was his incarceration during the time that he was charged with being AWOL from his job.

Further, according to documents the Employee filed with his Petition, Agency took steps to terminate his employment once it was determined that he had been AWOL between December 14, 2005, and January 14, 2006, a then accumulated AWOL of 184 hours. Employee did not dispute the charge, although he indicated in his Petition before this Office that he was unaware of the termination action due to his incarceration.

ISSUE

Whether Agency had cause to terminate the Employee

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

It is not disputed that the Employee was absent from his job at the Agency for at least 180 consecutive hours between the dates of December 14, 2005, and January 14, 2006, due to his being incarcerated. The Employee admitted to this status in his Petition for Appeal, stating, "... [I] was incarcerated during time of action, not AWOL, ..." As well, the record also contains two documents from the Agency, verifying his extended absence from his job, and a Release Authorization Form from the D.C. Department of Corrections, reflecting a release date of February 4, 2006.

On January 29, 2006, Agency issued a letter of proposed removal for cause, due to Employee's unexcused AWOL status. Pursuant to 1603.3 of the D.C. Personnel Manual, Agency conducted an administrative review, and scheduled and convened a hearing at the Agency on March 18, 2006, to afford Employee a chance to respond to the charges. The Employee failed to appear, although notice of the proceedings was sent to his last known official address of record. The recommendation of termination, prepared by Stanley S. Stephens, Hearing Officer, was adopted on March 24, 2006, by William O. Howland, Jr., Deciding Official, as the Agency's final decision.

This Office has previously held that incarceration cannot be a basis for an excused absence, and this AJ likewise agrees. See *Employee v. Agency*, OEA Matter No. 1601-0009-88, 36 D.C. Reg. 7336 (1989). As well, Employee admitted to the basis for his extended absence from work. I conclude that the Agency acted appropriately in taking adverse action against him, resulting in his termination.


The question of whether the assessed penalty of removal is appropriate has likewise been long decided. In *Employee v. Agency*, OEA Matter No. 1601-0012-82, 30 DC Reg. 352 (1983), the Office decided that the scope of review that the Office will undertake is limited to the appropriateness of a particular penalty, and whether the penalty is within the range allowed by law, regulation, or applicable table of penalties; whether the penalty is based upon a consideration of relevant factors; and whether there has been a clear error in Agency's judgment.

In the instant matter, Employee was removed from his position for "inexcusable absence without leave – ten (10) consecutive workdays or more". While there is no specific table of penalties in effect which governs the level of discipline to be imposed for an offense of this nature, based upon this AJ's review of the entire record, he concludes that Agency's decision to remove the Employee was based upon a consideration of the relevant factors, and further concludes that there is no clear error in Agency's judgment. As there are no grounds for mitigation, the AJ further concludes that the assessed penalty of termination was appropriate and should be sustained.

ORDER

The foregoing having been considered, it is hereby ORDERED that the Agency's action of removing the Employee is UPHeld.

FOR THE OFFICE:

  
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ROHULAMIN QUANDER, Esq.  
Senior Administrative Judge