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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	OEA Matter No.: 1601-0052-15
BENITA PAIGE,)	
Employee)	
)	Date of Issuance: November 30, 2015
v.)	
)	
D.C. DEPARTMENT OF PUBLIC WORKS,)	
Agency)	
)	
)	
)	Arien P. Cannon, Esq.
)	Administrative Judge
Clifford Lowery, Employee Representative		
Rahsaan Dickerson Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Benita Paige (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals on March 17, 2015, contesting the Department of Public Works’ (“Agency”) decision to remove her from his position as a Parking Enforcement Officer. Employee’s termination became effective at the close of business on March 6, 2015. Agency filed its Answer on April 17, 2015. I was assigned this matter on July 13, 2015.

A Prehearing/Status Conference was convened on August 28, 2015. Subsequently a Post Prehearing Conference Order was issued, which required the parties to submit briefs to address the issues in this matter. Both parties submitted their briefs accordingly. I have determined that an Evidentiary Hearing is not warranted. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action (termination) against Employee.
2. If so, whether removal was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.¹ “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.

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.²

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

On November 24, 2014, Employee was issued a written notice informing her that Agency discovered that she was not in possession of a valid motor vehicle operator’s permit.³ In the written notice, Agency gave Employee thirty (30) calendar days to remedy her license or be subject to discipline. The written notice also informed Employee that failure to obtain a valid permit in the District of Columbia or surrounding jurisdictions would “result in disciplinary action up to termination...” As a result of Employee not remedying her drivers’ license within thirty (30) days of the written notice, Agency issued an Advance Written Notice on January 13, 2015, proposing to remove Employee from her position as a Parking Enforcement Officer. The cause of Employee’s proposed removal was for “[a]ny on duty or employment related act or omission that interferes with the efficiency and integrity of government operations, specifically: Neglect of Duty (failure to maintain a valid motor vehicle operator’s permit).” Maintaining a valid driver’s license was a requirement of Employee’s employment as a Parking Enforcement Officer.

The Advance Written Notice advised Employee of her rights to review and receive a copy of the material upon which the proposed action was based. This notice also afforded Employee the opportunity to respond in writing within six (6) calendar days and advised her of her right to an administrative review by a Hearing Officer. On January 16, 2015, Employee responded to the Hearing Officer in person. At the time, Employee still had not remedied her revoked license, and therefore requested an extension of time to file additional evidence. This request was granted. On January 29, 2015, Employee submitted additional evidence which included proof that her license was reinstated. On February 2, 2015, the Hearing Officer issued

¹ 59 DCR 2129 (March 16, 2012).

² OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

³ Agency Answer, Tab 9 (April 17, 2015).

her Report and Recommendation finding that Agency's action was supported by cause. On February 23, 2015, Agency issued its Final Notice of Proposed Removal, removing Employee from her position effective March 6, 2015.

Whether Agency had sufficient cause for disciplinary action

An on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations; Specifically--Neglect of Duty (failure to maintain a valid motor vehicle permit).

It is undisputed that Employee's drivers' license was revoked on October 31, 2014. Agency's letter, dated November 24, 2014, gave Employee until December 24, 2014, to provide evidence that her driver's license was reinstated. It is also undisputed that a requirement of Employee's position as a Parking Enforcement Officer was that she maintains a valid drivers' license.⁴ Agency provided Employee with thirty (30) days from the time it issued a written notice to cure the deficiencies with her license. Employee was well aware of her responsibility to possess and maintain a valid drivers' license as demonstrated by her signature on the District of Columbia's Vehicle Operator's Acknowledgement Form.⁵

Employee seems to argue that because Agency was aware that she had a pending court date in the District of Columbia Superior Court, that it should have waited until the revocation of her driver's license was addressed on the December 30, 2014 court date. Despite Employee's argument that all of the charges which led to the revocation of her license were dismissed, I find that Agency was under no obligation to stay the adverse action until Employee's license was reinstated.⁶ Even after her court date, nearly a month had passed before Employee's license was reinstated on January 29, 2015.

For nearly three months, from October 31, 2014 through January 29, 2015, Employee was not in possession of a valid motor vehicle permit, an explicit requirement of her position as a Parking Enforcement Officer. Thus, I find that Agency had cause to take adverse action against Employee for neglecting her duty by failing to maintain a valid motor vehicle permit.

Whether the penalty of removal was appropriate under the circumstances

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the undersigned.⁷ This Office may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.⁸ When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of

⁴ See Agency's Answer, Tab 5, page 5 of 5 (April 17, 2015).

⁵ *Id.*, Tab 6.

⁶ It is noted that the charges which led to the revocation of Employee's drivers' license were dismissed on December 30, 2014, for want of prosecution. These charges were refiled on January 15, 2015, which resulted in Employee pleading guilty to operating a vehicle while impaired. See Agency's Brief (September 29, 2015), Attachment 1.

⁷ See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

⁸ See *Id.*

Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.⁹

Chapter 16, § 1619.1 of the District Personnel Manual (Table of Appropriate Penalties), provides that the appropriate penalty for a first time offense for “any on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations, specifically: neglect of duty,” ranges from reprimand to removal.¹⁰ Here, Employee was removed from her position for failing to maintain her driving privileges in the District. Although Employee did not have any prior disciplinary history, Agency adopted the Hearing Officer’s consideration of the mitigating and aggravating circumstances and appropriately weighed the relevant *Douglas* factors.¹¹ Employee’s failure to maintain a valid vehicle operator permit was a serious offense which was directly related to her job as a Parking Enforcement Officer, and a necessary requirement to fulfill her duties. Therefore, I find that Agency’s decision to remove Employee from her position was appropriate based upon the circumstances.

ORDER

Based on the aforementioned, it is hereby **ORDERED** that Agency’s action is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

⁹ *See Id.*

¹⁰ 6-B DCMR § 1619.1(6), Table of Appropriate Penalties.

¹¹ Agency Answer, Tab 11 (April 17, 2015); *See also Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981).