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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
WILLIE PORTER,)	OEA Matter No. 1601-0046-12R15
Employee)	
)	
v.)	Date of Issuance: March 7, 2017
)	
DEPARTMENT OF MENTAL HEALTH,)	
Agency)	
)	

OPINION AND ORDER
ON REMAND

This matter was previously before the Office of Employee Appeals’ (“OEA”) Board. Willie Porter (“Employee”) was a Psychiatric Nurse with the Department of Mental Health (“Agency”). On July 28, 2011, Agency issued a Notice of Final Decision to Employee informing him that he would be removed from his position. Employee was charged with any knowing or material misrepresentation on an employment application.¹

Agency filed a brief which provided that its removal action was taken in accordance with Chapter 16, § 1603.3 of the District Personnel Manual (“DPM”). Additionally, it explained that pursuant to DPM Chapter 4, § 405.10, Employee was deemed unsuitable for the position because

¹ The notice explained that Employee omitted from his D.C. employment application that he previously worked at Walter Reed Army Medical Center (“Walter Reed”) and was terminated for misconduct.

of misconduct in his prior employment.² Agency provided that under the DPM Table of Penalties, removal was the appropriate penalty for misrepresentation. Therefore, it requested that OEA uphold its removal action.³

In Response to Agency's brief, Employee claimed that Agency knew about his employment with Walter Reed prior to its offer of employment. In support of this assertion, Employee submitted an application dated October 5, 2010, which listed his employment with DeWitt Army Hospital. However, Employee asserted that he resigned from Walter Reed.⁴

The AJ issued his Initial Decision on December 24, 2013. He found that Employee submitted an application on September 16, 2010, and then submitted another application on October 6, 2010.⁵ The AJ provided that although Employee's October 2010 application indicated that he resigned from Walter Reed, his Standard Form 50 ("SF-50") indicated that he was terminated from his position for cause. Moreover, the AJ found that Employee did not offer any evidence to contradict the accuracy of the SF-50, nor did he prove that his resignation letter was received by Walter Reed. As a result, he ruled that Agency's adverse action was taken for cause, and its penalty was appropriate. Accordingly, the action was upheld.⁶

Employee filed a Petition for Review with the OEA Board on February 4, 2014. He requested that the final decision by OEA be delayed until the Merit Systems Protection Board could provide new and material evidence from his personnel file to prove that he was unaware of

² This section of the DPM provides that misconduct in prior employment is a basis for disqualifying an appointee. Agency contended that had it known about Employee's termination from Walter Reed, it would not have hired him. It argued that Employee knowingly omitted this information from his employment application.

³ *Agency's Brief*, p. 6-10 (October 30, 2013).

⁴ Employee explained that during his time at Walter Reed, he got into a car accident that caused a concussion. Due to Employee's condition, his doctor instructed him not to return to work until further notice. Employee provided that thereafter, he submitted a letter of resignation. *Employee's Response to Agency's Brief* (November 25, 2013).

⁵ The AJ found that the October 2010 application was submitted under a different vacancy announcement number.

⁶ *Initial Decision*, p. 4-6 (December 24, 2013).

Walter Reed's adverse action charges.⁷ In opposition to the Petition for Review, Agency submitted that the petition should be denied because the Initial Decision was supported by substantial evidence, and Employee did not provide a reason for the Board to grant his Petition for Review.⁸

On January 8, 2015, Bradley E. Eayrs, Attorney for the Department of the Army, submitted a letter addressed to the OEA Administrative Judge. The letter provided that "the Department of the Army's personnel records does not show that a notice of decision to terminate Mr. Porter was ever provided to him." However, its records did "show that Mr. Porter submitted his resignation prior to 12 June 2006." The letter went on to provide that Employee's SF-50 forms would be updated to indicate that he resigned from his position and that "[a]ny documentation to indicate any action other than a voluntary resignation for the purposes of non-federal employment will be rescinded."⁹

The Board held that Employee provided evidence that established that the SF-50 relied upon by Agency to remove him was inaccurate. The evidence supported Employee's assertion from the beginning that he voluntarily resigned from his position and was not removed on the basis of any adverse action. Accordingly, the matter was remanded to the AJ for consideration of the case on its merits.¹⁰

The AJ held a Status Conference and requested that both parties file briefs addressing the issues on remand.¹¹ Subsequently, he issued an Initial Decision on Remand on September 8, 2015. He held that the new and material evidence provided by Employee – the signed settlement

⁷ *Petition for Review* (February 4, 2014).

⁸ *Agency's Response in Opposition to Employee's Petition for Review of Initial Decision*, p. 5-10 (June 27, 2014).

⁹ *Letter from Bradley E. Eayrs to Administrative Judge* (January 8, 2015).

¹⁰ *Willie Porter v. Department of Mental Health*, OEA Matter No. 1601-0046-12R15, *Opinion and Order on Petition for Review* (April 14, 2015).

¹¹ *Order Scheduling Status Conference* (April 17, 2015) and *Order to Submit Written Briefs* (May 15, 2015).

agreement and Declaration from Attorney Eayrs – supported Employee’s position that he resigned from his position and was not removed. Therefore, in the interest of justice, the AJ ruled that Agency did not have cause to remove Employee. As a result, he ordered that Employee be reinstated with back pay and benefits.¹²

On October 13, 2015, Employee submitted a “Request for Review or C[larification].” Despite its caption, this Board considers this filing a Petition for Review. In the petition, Employee contends that despite its assertions otherwise, Agency was aware of his previous employment status. Therefore, he requests that he be reinstated as a grade 10, step 10. Additionally, he requests that he receive back pay; interest; attorney’s fees; removal of the action from her personnel file; and relief to cover his retirement, medical bills, and life insurance.¹³

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:

- (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) The findings of the Administrative Judge are not based on substantial evidence; or
- (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Employee’s petition does not raise any of the above-mentioned objections as a basis for his Petition for Review. The AJ’s decision reversed Agency’s termination action; reinstated

¹² *Initial Decision on Remand*, p. 3-4 (September 8, 2015).

¹³ *Request for Review and Clarification of the Initial Decision Benefits Lost as the Result of Employee Removal*, p. 1-2 (October 13, 2015).

Employee to the same or comparable position held prior to his termination; and reimbursed Employee all back-pay and benefits lost as the result of his removal. Thus, Initial Decision addressed all of Employee's requests on Petition for Review, with the exception of attorney's fees.¹⁴ If it is selected by the employee, contributions to life insurance, medical insurance, and retirement are a part of their benefits' package. Benefit calculations are made by another District agency. Thus, OEA cannot make a specific ruling regarding these items. If Employee elected these items prior to being terminated, then they may appear in his overall calculation for reimbursement of his benefits.

Because Employee does not provide a specific objection for this Board to grant his Petition for Review, we must deny it. As previously provided, the relief requested by Employee was already ordered in the Initial Decision on Remand. It must be noted that Agency filed a Petition for Review of the Initial Decision on Remand in the Superior Court for the District of Columbia on October 20, 2015. The Court issued its decision on February 14, 2017, upholding OEA's ruling for Agency to reinstate Employee with back pay and benefits.¹⁵ Accordingly, Employee's petition is denied.

¹⁴ The record indicates that Employee was *pro se* and was not represented by an attorney. Moreover, he does not offer any proof that he is an attorney. Thus, an award of attorney's fees does not appear to be warranted in this case.

¹⁵ *Department of Mental Health v. District of Columbia Office of Employee Appeals, et al.*, 2014 CA 007829 P(MPA)(February 14, 2017).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Sheree L. Price, Interim Chair

Vera M. Abbott

Patricia Hobson Wilson

P. Victoria Williams

This decision of the Office of Employee Appeals shall become the final decision 5 days after the issuance date of this order. Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.