THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
Widmon Butler,	)	OEA Matter No. 1601-0041-14
Employee	)	
	)	Date of Issuance: January 27, 2017
v.	)	
	)	Joseph E. Lim, Esq.
Metropolitan Police Department,	)	Senior Administrative Judge
Agency	)	
	)	

David Branch, Esq., Employee Representative
Ronald Harris, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 23, 2013, Widmon Butler ("Employee") filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("MPD" or "Agency") decision to suspend him for thirty days from his position as a Civilian Claims Specialist,[1] effective December 30, 2013. Following an Agency investigation, Employee was charged with [a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations: Misfeasance.

After the parties unsuccessfully mediated the matter, this matter was initially assigned to Administrative Judge Stephanie Harris. After Judge Harris left the OEA for a federal position, this matter was then reassigned to the undersigned Administrative Judge ("AJ") on September 25, 2015. I held a prehearing conference on November 30, 2015. After several continuances requested by the parties for various reasons, I held an Evidentiary Hearing on December 21, 2016. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency's action of terminating Employee from service was done in accordance with applicable law, rule, or regulation.

[1] In his appeal form, Employee describes his position as Human Resource Specialist/Claims Examiner.

BACKGROUND

Undisputed facts

Agency has two main classes of employees: uniformed personnel, such as police officers and non-uniformed personnel, often called civilian employees. Agency has around 3,749 uniformed officers and 500 civilians.

Employee works as a Civilian Claims Specialist in the Agency's Medical Services Branch ("MSB"). As such, he assessed the worker's compensation claims or performance of duty ("POD") claims made by uniformed officers. As a Claims Examiner, part of Employee's job duties was to review medical files using Agency's electronic medical records system. Of the thousands of POD claims submitted annually, roughly half are eventually considered POD.

On August 28, 2013, Agency issued a Final Investigative Report Concerning the Alleged Misconduct of Medical Services Branch Civilian Employee Widmon Butler.[2] On October 10, 2013, Agency delivered to Employee his advance notice of adverse action charging him with "any on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations: Misfeasance."[3] On November 8, 2013, Agency issued its Notice of Final Decision, sustaining the charges and suspending Employee for thirty work days.[4] Employee served his suspension starting on December 30, 2013, until his penalty was satisfied.

Parties' Allegations

Agency accuses Employee, a DS-12 Civilian Claims Specialist, of deliberately omitting critical medical information from his analysis and recommendation of "non-POD" status for a police officer's injury claim. The omitted information consists of proof that the officer received prior medical treatment for a leg injury which was deemed to have incurred in the performance of duty. Employee's supervisor gave Employee an opportunity to review the injured officer's medical records, yet Employee did not correct his analysis nor did he offer an explanation for the omission of critical information in his recommendation of non-POD status.

Employee denies the charges and asserts that the penalty was unwarranted and unreasonable.

Evidentiary Hearing on Disputed Issues

Michael Gottert ("Gottert") testified (Tr. p. 9 - 16) as follows.

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[2] Agency Exhibit 1, Tab A.
[3] *Id.*
[4] Agency Exhibit 1, Tab B.

Inspector Gottert is a Director of the Disciplinary Review Division during the relevant period. He reviewed the charges in the investigative report against Employee and made the recommendations to management. [5] He described how the charges and proposed penalty were determined based on the Douglas Factors.[6] Based on their review of Employee's personnel file, Gottert determined that although Employee had a number of other prior adverse actions, this was Employee's second misfeasance offense.

William Sarvis ("Sarvis") testified (Tr. p. 17 - 61) as follows.

Sarvis testified that as the Director of Agency's Medical Services Division, he oversees public health services for police officers in the Agency, Secret Service, Park Police, Fire and Emergency Medical Services, and other smaller agencies within the District of Columbia. He is ultimately responsible for determining whether a worker's comp claim made by an Agency's employee is compensable or not based on a determination of whether it arose from a performance of duty. As the Director, Sarvis testified that he reviews the claims specialist's recommendations for accuracy, consistency, and causality.

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[5] See Agency Exhibit 1, Tabs A, B, and C.

[6] In *Douglas v. Veterans Administration*, 5 M.S.P.R. 280, 305-306 (1981), the Merit Systems Protection Board, this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows:

> 1) The nature and seriousness of the offense, and its relation to the employee's duties, including whether the offense was intentional or technical or inadvertent, or was committed intentionally or maliciously or for gain, or was frequently repeated;
> 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
> 3) the employee's past disciplinary record;
> 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
> 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties;
> 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
> 7) consistency of the penalty with any applicable agency table of penalties;
> 8) the notoriety of the offense or its impact upon the reputation of the agency;
> 9) the clarity with which the employee was on notice of any rules that where violated in committing the offense, or had been warned about the conduct in question;
> 10) potential for the employee's rehabilitation;
> 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
> 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

However, an agency need not consider all of the factors, as "[n]ot all of these factors will be pertinent in every case."

Sarvis supervised Employee through Lieutenant Stroud since 2011. He emphasized that as a Claims Specialist for worker's compensation claims from Agency's uniformed personnel, Employee's job necessitated that he must examine not just the latest reports regarding a POD application, but to search for all prior reports relating to the claimed injury to make a proper evaluation. Sarvis stated that in complex cases, he expected Employee to talk to doctors and other experts to determine the causal relationship between an injury and the claimant's job.

Sarvis stated that often he and Lt. Stroud were returning Employee's work product to him for deficiencies. He noted that Employee often failed to include and consider medical opinions in determining POD cases and that he had received many complaints about Employee's work. Sarvis saw and concurred with Lt. Stroud's investigative report that Employee often omitted pertinent information in his work. Even after remanding Employee's work back to him, Sarvis noticed that Employee still continued to omit vital information. He testified that he had numerous counseling sessions with Employee about his work, but came away with the impression that due to Employee's unresponsive attitude, no change was forthcoming. Sarvis also stated that Employee had a prior record of disciplinary offenses.

When he confronted Employee with the erroneous recommendation made in one case, Employee changed his recommendation but deliberately failed to include the supporting medical reports that supported the POD recommendation.

Widmon Butler ("Employee") testified (Tr. p. 63 - 118) as follows.

Employee testified that he worked for Agency from 2000 until February 6, 2015. As a Claims Examiner, his job was to review the medical files and to certify official investigation on a police officer or other uniformed personnel seeking worker's compensation on a job related injury and make a ruling as to whether the claim was a performance of duty ("POD") injury or not. His determination on each claim had to be reasoned, based on documented reports, and in accordance with the law and regulations. His ruling would then be passed on to his supervisor, Lieutenant Stroud, for signature. Employee stated that although his work centered on Agency's uniformed personnel, he did on occasion receive claims from civilians that he would then refer to the Office of Risk Management. The Office of Risk Management handles worker's compensation claims from Agency's non-uniformed or civilian employees. Employee stated that he had authorization to see everyone's electronic medical records.

Employee revealed that the claim in question pertained to Officer O.[7] Employee admitted that he saw from the medical reports that this claim pertained to a prior POD injury; however, he said the report did not go into any detail nor did it reference that history as having any effect on the injury described by the claimant. Thus, he ruled the claim as non-POD.[8] After Lt. Stroud returned the claim to him, Employee changed his recommendation to POD even though he disagreed with it.[9]

[7] To protect the claimant's privacy, the parties agreed to use an initial.
[8] See Employee Exhibit 1.
[9] See Employee Exhibit 3.

Employee blamed the tight timeline that he was given by Sarvis, the inadequacy of the claimant's medical reports, and even the claimant. Employee said that he had filed complaints against Sarvis. Employee admitted that in his revised recommendation he failed to provide any rationale.

Employee conceded that his superior found one in five of his recommendations to be erroneous and that he was asked to reverse himself. Employee stated that he never asked his superiors why they believed his determinations were incorrect.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

Whether Agency's action of terminating the Employee from service was done in accordance with applicable law, rule, or regulation.

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, District Personnel Manual ("DPM") § 1603.2 provides that disciplinary action against an employee may only be taken for cause.

Under DPM §1603.(f)(6),[10] the definition of "cause" includes any on duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Misfeasance. According to the record, Agency's decision to suspend Employee was based on this charge.

Any on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Misfeasance

Misfeasance is defined in part as careless work performance.[11] Here, Agency asserts that Employee regularly performed his job duties in a careless and unprofessional manner as evidenced by its assertion that one in five of his recommendations were deemed to be incorrect. Specifically, Agency contends that Employee again carelessly designated a police officer's injury claim as "non-POD" despite medical history and personnel file reports to the contrary.

Based on Employee's own testimony, he admitted as much. Employee never bothered to do further research on the claimant's file to search prior injury history. His defense can be summed up as: he was rushed by his superior to finish his report; the medical report did not explicitly say that the claimant's injury related to a prior claim; the claimant was to blame for not bringing it up; and lastly, since he eventually changed his recommendation from non-POD to POD after his superior instructed him to do so, he did not perceive a problem.

On the stand, Employee was defensive, evasive, combative, and at times refused to answer questions outright. Based on his demeanor and lack of consistency, I do not find Employee credible. Therefore, I find that Employee consistently performed his duties in a

[10] *See also* D.C. Mun. Reg. tit. 16 § 1603(f)(6).
[11] DPM § 1619 (c)-(f).

careless and unprofessional manner, and his actions constitute Misfeasance. I also find that Employee's actions interfered with the efficiency and integrity of government operations.

Consequently, I find that Agency had sufficient cause to charge Employee with misfeasance on these specifications.

Whether the penalty of removal is within the range allowed by law, rules, or regulations.

Employee's conduct constitutes an on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations and it is consistent with the languages of § 1619.1(6)(f) of the DPM.

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[12] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant case, I find that Agency has met its burden of proof for the charge of "[a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations to include: Misfeasance", and as such, Agency can rely on these charges in disciplining Employee.

In reviewing Agency's decision to terminate Employee, OEA may look to the Table of Appropriate Penalties. Chapter 16 of the DPM outlines the Table of Penalties for various causes of adverse actions taken against District government employees. The penalty for "[a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Misfeasance" is found in § 1619.1(6)(f) of the DPM. On September 28, 2015, OEA upheld Employee's suspension for misfeasance and insubordination in an unrelated matter.[13] In addition, this was the third time Employee violated §1619.1(6)(f) as he had committed a prior offense of misfeasance in July 26, 2013.[14] The penalty for a third offense of Misfeasance is termination.

I therefore conclude that Agency is within its right to impose the thirty-day suspension on Employee.

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[12] *See also Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

[13] *See Widmon Butler v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0236-12 and 1601-0069-14 (September 28, 2015).

[14] *See Widmon Butler v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0049-15 (November 30, 2016).

ORDER

Based on the foregoing, it is hereby ORDERED that Agency's disciplinary action of suspending Employee for thirty days is UPHELD.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge