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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
GARNETTA HUNT,)	OEA Matter No. 1601-0053-11
Employee)	
)	
v.)	Date of Issuance: July 21, 2015
)	
D.C. DEPARTMENT OF CORRECTIONS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Garnetta Hunt (“Employee”) worked as a Correctional Officer with the Department of Corrections (“Agency”). On November 19, 2010, Agency issued its final decision to remove Employee, charging her with any on duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: unauthorized absence of ten days or more and incompetence.¹ The effective date of removal was November 23, 2010.

Employee challenged her termination by filing a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 22, 2010. She argued that her termination was in retaliation to her filing a discrimination complaint. She claimed that Agency discriminated against her because of her disability and that Agency’s action constituted constructive

¹ The notice provided that Employee’s unauthorized absence of ten days or more constituted abandonment of her position. *Petition for Appeal*, p. 10 (December 22, 2010).

termination.

Employee explained that as a result of her on duty injuries, she was placed on disability from March 23, 2004 through February 20, 2006.² She asserted that she returned to Agency after her period of disability but was eventually placed on administrative leave. Employee claimed that upon her return to work, she suffered from panic attacks while on duty and contended that Agency refused to process the information needed to complete a disability claim. She later submitted a physician's letter stating that she could return to work with no direct inmate contact, but Agency did not allow her to return nor did it place her on worker's compensation. She claimed that although Agency kept her on the payroll, she did not receive compensation. Employee contended that her orthopedic surgeon provided a letter stating that she could return to work but in a sedentary position. Despite the letters from her doctors, Employee was not allowed to return to Agency. Employee stated that there were numerous positions that could have accommodated her working restrictions. Therefore, she requested reinstatement to her position with back pay, benefits, and attorney's fees.³

Agency filed a Pre-hearing Statement on January 21, 2011. It argued that Employee was terminated for cause. It explained that on April 18, 2006, Employee came to work, but she was later placed on administrative leave pending clearance from her physician to return to work.⁴ It provided that when Employee's administrative leave ended, it mailed a letter to her informing her of her employment options.⁵ On June 18, 2009 and June 26, 2009, Agency informed

² Employee contended that on March 23, 2004, she was attacked by an inmate and suffered physical and psychological damages. She provided that on February 20, 2006, Agency's independent medical examiner determined that she had fully recovered from her injuries.

³ *Id.* at 7. Employee filed an Amended Petition for Appeal which provided that she continued to suffer from physical and psychological damages due to the inmate's attack. She also stated that she was diagnosed with Post Traumatic Stress Disorder ("PTSD"). *Amended Petition for Appeal*, p. 2 (December 23, 2010).

⁴ Agency explained that when Employee returned to work, she was placed in a non-inmate contact position and caused a disturbance that warranted clearance from her doctor for her to return to work.

⁵ Agency explained that the medical documentation Employee submitted stated that she needed to be in a position

Employee that she was in an unauthorized leave status. It provided that Employee's removal was based on her continued unauthorized leave status and that the penalty of removal was in accordance with the District Personnel Manual's ("DPM") Table of Penalties. Thus, it requested that the removal action be upheld.⁶

that had no direct contact with inmates due to her PTSD, panic attacks, and Generalized Anxiety Disorder. Later, Agency received documentation from Employee which provided that her physician was reluctant to return her to work and that he would reevaluate her emotional status on December 19, 2006.

⁶ *Agency's Pre-hearing Statement and Supporting Documents* (January 21, 2011). After the matter was assigned to an Administrative Judge ("AJ"), the AJ scheduled a Status Conference and subsequently ordered the parties to submit Pre-hearing Statements. *Order Scheduling Status Conference* (August 2, 2012) and *Order Convening a Pre-hearing Conference* (September 24, 2012). Employee explained in her Pre-hearing Statement that because Agency never returned her to duty, it could not argue that she was on unauthorized leave. She reiterated that her termination was in retaliation to a discrimination lawsuit that she filed against Agency on March 13, 2009. Lastly, Employee opined that Agency's analysis of the *Douglas* factors proved that her termination was not justified. The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed 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 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 were 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. *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

Therefore, she argued the termination could not be upheld. *Petitioner Garnetta Hunt's Pre-hearing Submission*, p. 6-11 (February 26, 2013).

The AJ issued another order requiring the parties to submit briefs addressing whether OEA had jurisdiction to consider Employee's Petition for Appeal, and whether Agency was required to afford Employee reasonable accommodations at the time that she returned to duty. *Order Requiring the Parties to Submit Briefs* (March 18, 2013). In Agency's brief, it argued that OEA lacked jurisdiction over discrimination and reasonable accommodation complaints. Nevertheless, Agency provided that the D.C. Court of Appeals issued an order on May 2, 2013, finding that Agency was not required to provide Employee with the accommodation she requested. *Agency's Brief on Jurisdiction*, p. 1-4 (May 10, 2013). In Employee's brief, she provided that in accordance with OEA's rules, OEA had jurisdiction over adverse actions resulting in removal. She contended that she never submitted a reasonable accommodation claim. She reiterated that she did not fail to report to work, but rather, Agency did not allow her to

On February 14, 2014, the AJ issued her Initial Decision. She found that the issues surrounding Employee's reasonable accommodations ". . . had been fully litigated in several previous appeals before other tribunals."⁷ Accordingly, the AJ held that under *res judicata*, she was precluded from addressing Employee's claims that Agency did not afford her reasonable accommodations or allow her to return to work. She provided that as of April 26, 2011, Employee was required to return to work, but she did not do so and was absent without authorization for more than ten consecutive days. Furthermore, the AJ found that during Employee's period of administrative leave, she was required to submit medical documentation stating that she could return to work with no restrictions, but she failed to do so. Thus, she held that Agency's adverse action was taken for cause in accordance with D.C. Official Code §1-616.5.⁸

With regard to Employee's claim that Agency's analysis of the *Douglas* factors proved that the termination was not justified, the AJ disagreed. She held that despite Agency's failure to consider mitigating circumstances, given the matter's unique circumstances, Agency chose the appropriate penalty.⁹ Moreover, she held that Employee did not prove that there was an abuse of discretion in Agency's consideration of the *Douglas* factors. Accordingly, because Employee could not show that she was medically cleared to return to work with no restrictions and because Employee could not present an alternative resolution to her situation, the AJ upheld Agency's

return after her period of administrative leave. *Petitioner Garnetta Hunt's Brief on Jurisdiction*, p. 6-8 (May 24, 2013).

⁷ The AJ found that on May 2, 2013, the D.C. Court of Appeals held that Employee failed to prove her case that with reasonable accommodations, she was able to perform her duties; that other jobs existed to which she could be transferred; and that Agency breached its duty to engage in an interactive process to identify alternative jobs. *Initial Decision*, p. 5 (February 14, 2014).

⁸ *Id.* at 6.

⁹ She explained that as of the date of Employee's termination, she was not able to perform her duties. She ruled that under the Table of Penalties, the first offense for unauthorized absences of ten or more consecutive days was removal.

termination action.¹⁰

On March 14, 2014, Employee filed a Petition for Review with the OEA Board. She argues that although the AJ's March 18, 2013 Order limited the issues to whether the office had jurisdiction over the matter and whether Agency needed to provide a reasonable accommodation, the AJ's Initial Decision was based on the merits of her appeal. Employee believes that the AJ " . . . overstepped the parameters of the March 18, 2013 [Order] and deprived [her] of the opportunity for further discovery or a hearing . . ." ¹¹ Therefore, she requests that the Board reverse the AJ's ruling; direct the AJ to continue discovery in the matter; and have the AJ conduct a hearing. ¹²

In response to the Petition for Review, Agency states that Employee's Petition for Review is not based on the grounds established in OEA's rules for Petitions for Review. Moreover, Agency argues that the AJ properly held that OEA lacked jurisdiction to consider Employee's arguments regarding reasonable accommodations. Therefore, Agency requests that the Board affirm the AJ's decision. ¹³

Basis for Petition for Review

As provided by Agency, in accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted:

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;

¹⁰ The AJ reasoned that Agency was not required to provide Employee with an alternative position upon returning to work. As for Employee's retaliation claim, the AJ held that OEA did not have jurisdiction over this issue. *Id.*, 8-9.

¹¹ *Petition for Review of Initial Decision*, p. 4 (March 14, 2014).

¹² *Id.*

¹³ *Agency's Opposition to the Petition for Review*, p. 4-5 (April 17, 2014).

- (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 for Review fails to raise any of the four objections listed. Her petition simply provides that she does not agree with the jurisdictional determination made by the AJ in this case. However, this is not a valid basis for granting a Petition for Review.¹⁴

Discovery

Employee contends that she was deprived of an opportunity for further discovery in this matter. OEA Rule 617.1 addresses discovery specifically and provides the following:

- Parties may obtain discovery by one (1) or more of the following methods:
- (a) Depositions upon oral examination or written questions;
 - (b) Written Interrogatories;
 - (c) Requests for production of documents or things for inspection and other purposes; and
 - (d) Requests for admission.

On November 16, 2012, Employee filed a discovery request. In this document, she specifically requested that Agency respond to her written interrogatories; to her requests for production of documents; and to her requests for admission.¹⁵ On January 16, 2013, the AJ ordered that all discovery be completed by January 18, 2013. Employee never raised any objections to discovery in subsequent filings. Therefore, this Board is puzzled by her argument that she was deprived of an opportunity to engage in further discovery.

Moreover, OEA Rule 617.6 states that "discovery may be commenced after the Office

¹⁴ It must be noted that because Employee's Petition for Review does not contest the merits of the action taken against her, this Board will not address whether there was substantial evidence to support the AJ's ruling on this issue.

¹⁵ *Petitioner's First Set of Discovery Requests*, p. 5-10 (November 16, 2012).

notifies the agency that the employee has filed the petition. Unless the Administrative Judge directs otherwise, discovery *shall* be completed by the date of the prehearing conference (emphasis added).” The AJ scheduled the Pre-hearing Conference for February 25, 2013. Therefore, her order that discovery be completed by January 18, 2013, is consistent with the rule that it occur before the Pre-hearing Conference. The rule is mandatory unless the AJ directs otherwise. The AJ was clear that discovery would cease on January 18, 2013. This determination was within her discretion to make. Consequently, this Board will not reverse the AJ’s decision or direct her to allow Employee to engage in continued discovery.¹⁶ Accordingly, we must deny Employee’s Petition for Review.

¹⁶ As for Employee’s request for an evidentiary hearing, this determination is also within the AJ’s discretion. OEA Rule 624.2 provides that

If the Administrative Judge grants a request for an evidentiary hearing, or makes his or her own determination that one is necessary, the Administrative Judge will so advise the parties and, with appropriate notice, designate the time and place for such hearing and the issues to be addressed (emphasis added)

Thus, the AJ was within her authority to determine that a hearing was not required in this matter.

ORDER

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

FOR THE BOARD:

William Persina, Chair

Sheree L. Price, Vice Chair

Vera M. Abbott

A. Gilbert Douglass

Patricia Hobson Wilson

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.