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

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0040-20
Employee	)	
	)	Date of Issuance: October 3, 2022
v.	)	
	)	JOSEPH E. LIM, ESQ.
DEPARTMENT OF FOR-HIRE VEHICLES,	)	Senior Administrative Judge
<u>Agency</u>	)	
Ann-Kathryn So, Esq., Employee Representative		
Conner Finch, Esq., Agency Representative		

**INITIAL DECISION**

PROCEDURAL HISTORY

Employee, a Human Resources Specialist<sup>1</sup> in the Department of For-Hire Vehicles (“Agency”), filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on April 9, 2020, appealing the Department of For Hire Vehicles’ (“DFHV” or “Agency”) decision to terminate her from service effective March 13, 2020. Employee was terminated for: 1) Unauthorized absence of one (1) workday or more, but less than five (5) days, (2) Any on-duty or employment related reason for corrective or adverse action that is not arbitrary or capricious, (3) Knowing submission (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal documents, and (4) knowingly and willfully reported false or misleading material information to a superior.<sup>2</sup> On June 16, 2020, OEA requested that Agency submit an Answer to Employee’s Petition for Appeal. Agency submitted its Answer on or about August 28, 2020.

After Agency declined mediation on March 26, 2021, this matter was assigned to the undersigned on March 30, 2021. I held a Prehearing Conference on May 3, 2021, and thereafter, I issued orders pertaining to discovery and other procedural matters. After several consent motions requesting time extensions, I held a virtual Evidentiary Hearing

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<sup>1</sup> Employee Exhibit 27.

<sup>2</sup> Agency Exhibit 14.

via WebEx<sup>3</sup> on July 7 and 8, 2022. Both Agency and Employee presented documentary and testimonial evidence during the hearing to support their positions. Documentary evidence entered into the record at the Evidentiary Hearing are noted as Exhibits in the footnotes. This decision is based on the documentary and testimonial evidence presented at that proceeding. The record is closed.

### JURISDICTION

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

### ISSUES

I. Whether Agency had cause for adverse action against Employee.

II. If so, whether Employee's removal was appropriate.

### POSITION OF THE PARTIES

On January 16, 2020, Agency proposed the termination of Employee's employment and issued its Final Decision on its Notice of Separation on March 13, 2020, for the following alleged charges and specifications against Employee:<sup>4</sup>

1. 6B DCMR §1607.2 (f)(3) "Unauthorized absence of one (1) workday or more, but less than five (5) workdays."

Specification: On Wednesday, December 18, 2019, through December 20, 2019, you failed to report to work, submit an absence request for approval, or contact your immediate supervisor. You were effectively Absent without Leave (AWOL) between the dates of 12/18/2019 through 12/20/2019.

2. 6B DCMR§ 1607(f)(2) Unauthorized absence of one (1) workday or less, including leaving the workstation without permission or before the end of the workday.

Specification: On Monday, December 2, 2019, you failed to return to your workstation after you returned from training. More specifically, you attended a training at DCHR, 2019 PeopleSoft Summit, scheduled between 9:00 a.m. – 4:00 p.m. At 2:50 pm you scheduled and took a VIA from 1015 Half Street, SE (DCHR) and never returned to your workstation.

3. 6B DCMR §1607.2 (c)(1) "Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers,

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<sup>3</sup> WebEx is a software program that enables participants to engage in a hearing or meeting remotely via an electronic device.

<sup>4</sup> Agency Exhibit 12.

payroll, loan, or other fiscal document(s).”

Specification: On Tuesday, December 17, 2019, you submitted your timesheet to reflect scheduled sick leave for December 18, 2019 through December 20, 2019 knowing you had not submitted a leave request through PeopleSoft nor received approval for those absences.

4. 6B DCMR § 1607(b)(4) Knowingly and willfully reporting false or misleading material information or purposely omitting material facts, to any superior.

Specification: On December 31, 2019, you drafted a witness statement to appeal the AWOL decision for 12/18/2019 – 12/20/2019 that you knew was false or misleading material and on January 3, 2020, you submitted that false statement signed by an agency employee.

Employee responded that Agency failed to establish cause to separate her from her position as Human Resources Specialist, failed to offer reasoned consideration of the relevant factors set forth in § 1606.2 for each charge; failed to consider less severe penalties in violation of § 1610; and failed to offer a reasoned consideration of the table of illustrative actions in violation of § 1607.1.

## FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

### **I. Whether Agency had cause for adverse action against Employee.**

- 1. Unauthorized absence of one (1) workday or more, but less than five (5) workdays:**

**Specification: Whether Employee was inexcusably absent without leave from December 18, 2019, through December 20, 2019.**

Employee worked as a Human Resources Specialist at the Agency.<sup>5</sup> She testified that she supervised the entire Human Resources Division from June to September 2019 until her supervisor, Shalonda Frazier (“Frazier”),<sup>6</sup> removed those duties from her. Employee complained in person and in writing to Chief of Staff Dory Peters (“Peters”)<sup>7</sup> about Frazier’s bullying and harassment. Employee’s supervisor Peters detailed Employee to the Grants Division on December 2, 2019, after Employee indicated she was uncomfortable working with her Human Resource manager.

Gerald Kasunic (“Kasunic”),<sup>8</sup> an Administrative Officer for Agency’s Grants Division, testified that based on D.C. Government practice, he uses the Peoplesoft program or Microsoft Outlook to note leave requests from his employees and ascertain his manpower resources for each working day. He knew Employee as a Human Resource person for

<sup>5</sup> Employee’s testimony is on the July 8, 2022, Transcript, Pages 74 – 174.

<sup>6</sup> Frazier’s testimony is on the July 7, 2022, Transcript, Pages 153-230.

<sup>7</sup> Dory Peters’ testimony is on the July 8, 2022, Transcript, Pages 60 – 73, 176 - 210.

<sup>8</sup> Kasunic’s testimony is found on the July 7, 2022, Transcript, Pages 34-151.

Agency who was transitioned to his management for a short period. Employee's direct supervisor at the time was Shalonda Frazier. It was Frazier who approved Employee's leave requests.

Employee testified that she began to feel headaches, nausea, shortness of breath, chest and stomach pains from December 12, 2019, to February 2020. She first went to see doctors from December 12, 2019,<sup>9</sup> and even went to the emergency room on December 20, 2019. However, her symptoms continued to worsen, necessitating more emergency room visits and she continued to see her doctor until January 2020.

Nonetheless, she reported to work on December 16 and 17, 2019. Employee said that Kasunic, Peters, and other work colleagues expressed to her their concerns that she might infect them with her coughing. On December 17, 2019, Employee informed Kasunic that she was not feeling well and asked to go home. Kasunic testified that he gave permission for that day but not for the next three days as he needed to see a doctor's note for any absences for three days or more.

On December 17, 2019, Employee felt ill and thought she might faint. So she stood on Kasunic's doorway and asked permission to go home early due to her illness. Employee testified that Kasunic verbally gave his consent and instructed her to obtain a doctor's note. Employee stressed that Kasunic told her that she could be out sick for the rest of the week. She stated that Ms. Hever<sup>10</sup> and Letitia Willer were nearby. Employee then put in her time as unscheduled sick leave on Peoplesoft before rushing out to seek medical attention for what she initially thought was an upper respiratory tract infection.<sup>11</sup> Employee would later learn from her doctor that she tested positive for coronavirus ("COVID").

Employee testified that sometime around December 30, 2019, Peters informed her that her grievance had been denied. Employee then asked about the shortfall in her paycheck. Kasunic then came in and informed her of her AWOL charges which had resulted in her paycheck being docked. Employee then reminded Kasunic that they had discussions about her illness as well as her uncle's funeral. She also told Kasunic that she was confused as to why she was still marked as AWOL when she had provided doctor's notes as instructed, to Kasunic on December 30th and 31st, 2019, before their meeting. The doctor's note indicated that Employee was under medical treatment and needed to be off work from December 17, 2019, through December 20, 2019.<sup>12</sup>

Kasunic asked for another doctor's note after stating that there was no time stamp on the note.<sup>13</sup> On December 31, 2019, Kasunic sent a letter to Employee regarding her absence from work from December 18, 2019, through December 20, 2019,<sup>14</sup> and another

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<sup>9</sup> Employee Exhibit 6.

<sup>10</sup> Also known as Crosson.

<sup>11</sup> Peoplesoft is a human resource website used by the D.C. Government for personnel matters.

<sup>12</sup> Employee Exhibit 7.

<sup>13</sup> Employee Exhibit 19

<sup>14</sup> Agency Exhibit 8.

letter regarding her absence from work on December 2, 2019.<sup>15</sup> In response, Employee testified that she included a copy of the sick leave regulations in her email to Kasunic.<sup>16</sup> In that same email, Employee reminded Kasunic that she discussed verbally with him regarding her request for sick leave.<sup>17</sup> Subsequently, Employee presented Peters and Kasunic with another doctor's note covering her AWOL absences.<sup>18</sup>

Peters was also not aware of any other employee being contaminated by being in the presence of Employee. Although she could not explain why Employee's doctor's notes were not accepted, Peters testified that she just did not find Employee's reasons for being absent to be credible as Employee submitted her doctor's note after being absent. Peters also stated that the timing of Employee's illness and leave requests, especially around the holidays, WAS to be suspicious.

Peters then told Employee that her doctor's note that covered her AWOL period was still insufficient as it did not have a date stamp. Employee went back to her doctor's office and obtained a note stating that she sought treatment on December 17, 2019, as well. Yet Peters still informed her that it was not sufficient as it was not from the original doctor that she had consulted earlier but from the emergency room doctor. Employee then went back and obtained another doctor's note from her primary care doctor to cover the period from December 17, 2019, to December 20, 2019. Yet her superiors still refused to accept them and continued to charge her as AWOL.

Peters stated that it was Frazier who went on to be Employee's supervisor. Peters testified that she had nothing to do with Employee's termination and only heard about it from the Agency's director.

When asked if Employee's doctor's note covered the AWOL period, Do replied that it was submitted after Employee had put down scheduled leave for the AWOL period.<sup>19</sup> When asked about Employee's AWOL charges for December 18, 2019, to December 20, 2019, David Do indicated that he deemed it insufficient because Employee had marked "Scheduled Sick Leave" on her timesheet and that Employee had obtained the note after the fact.

When asked about her superiors' accusation that she worked only eight full days from November 22, 2019, to December 31, 2019, Employee said that she had approved bereavement leave<sup>20</sup> and annual leave in addition to the unscheduled sick leave. Employee said her detail to the Grants Division ended and she returned to the Human Resources Division on January 2, 2020.

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<sup>15</sup> Agency Exhibit 11.

<sup>16</sup> Employee Exhibit 20.

<sup>17</sup> *Id.*

<sup>18</sup> Employee Exhibit 7. Three doctor's notes covering Employee's absences from December 17 to December 20, 2019.

<sup>19</sup> Agency Exhibit 9. Email from Employee to Dory Peters.

<sup>20</sup> Employee Exhibit 19.

Employee testified that because she had been written up as AWOL in December, 2019, she continued to come to work in January 2020 even though she still felt ill. Many of her work colleagues expressed concerns about being infected by her coughing and Peters asked her to leave. Employee testified that she could not understand why Agency refused to accept her doctor's notes regarding her inability to come to work on the days she was charged AWOL as she was really feeling ill and incapacitated. She said she had never been sick before or charged AWOL before this. She learned later that many people were dying of COVID, the same illness she had. Thus, she was honestly shocked to be charged with AWOL despite bringing proof that she was under medical treatment.

Based on the undisputed doctor's notes that Employee submitted to her superiors, I find that Employee was medically incapacitated during the three days she was charged AWOL. The doctors specifically wrote that Employee should not be required to work on the days Employee was charged AWOL. The vague reasons and suspicions that her superiors gave for not accepting her doctor's notes are unreasonable. Kasunic's January 3, 2020, emails to and from Employee revealed that he was upset that Employee's absences forced Agency to reallocate her workload to others.<sup>21</sup> Their suspicions about Employee's frequent absences in December are unjustified as Employee had approved leave for those absences, as evidenced by the fact that, apart from December 18, 2019, to December 20, 2019, Agency could not and did not charge Employee AWOL for those absences.<sup>22</sup> Even after they demanded several notes from more doctors and received them, Agency still unreasonably charged Employee with AWOL. The undersigned finds it baffling that even after Employee cited the applicable regulation to them regarding sick leave,<sup>23</sup> Agency still refused to change her AWOL status.

Based on the testimonial and corroborating documentary evidence presented,<sup>24</sup> I find Employee and her doctors' notes to be more credible than her superiors. This Office has consistently held that when an employee offers a legitimate excuse, such as incapacitation due to illness, for being absent without leave, the absence is excusable, and therefore, cannot serve as a basis for an adverse action.<sup>25</sup> I therefore find that Employee was not AWOL from December 18, 2019, to December 20, 2019, as her absence was medically excusable.<sup>26</sup>

**2. AWOL Charge: Unauthorized absence of one (1) workday or less, including leaving the workstation without permission or before the end of the workday.**

**Specification: On Monday, December 2, 2019, you failed to return to your workstation after you returned from training.**

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<sup>21</sup> *Id.*, Emails to and from Kasunic to Employee and Peters.

<sup>22</sup> Employee Exhibits 10 and 31.

<sup>23</sup> Agency Exhibit 9, where Employee cited District Personnel Manual section 1268.4. Also see Employee Exhibit 20.

<sup>24</sup> Employee Exhibits 11 and 32.

<sup>25</sup> *Teshome Wondafrash v. Department of Human Services*, OEA Matter No. 1601-0126-96, *Opinion and Order on Petition for Review* (April 14, 2008) and *Victor Hines v. Department of Transportation*, OEA Matter No. 1601-0116-05, *Opinion and Order on Petition for Review* (February 25, 2009).

<sup>26</sup> Employee Exhibit 7.

Frazier described Employee's work performance as good in the beginning until she started getting complaints from a manager about Employee's spending a lot of time on personal phone calls while at work. She explained that their workstation layout was open with no privacy cubicles. Frazier also narrated about the time Employee asked for a promotion even after she had explained that she had not have enough time to evaluate Employee's performance as she had just been hired. Employee then filed two grievances against her and another colleague.

While Employee was detailed to the Grants Division, Frazier got Kasunic's approval for Employee's training request during the period when Employee did the timesheet and payroll recordkeeping on Peoplesoft. On December 2, 2019, Employee entered Agency at 8 a.m.<sup>27</sup> and then took the VIA ride<sup>28</sup> to her training, as suggested by Kasunic. Employee said she attended the Department of Human Resources training after Frazier approved her training request. However, Kasunic testified that he himself had not been aware that Employee was going to attend a training on December 2, 2019, until Employee informed him on her way out the door.

Although Employee attended the entire training, their session ended early, and the instructor told them that they would be credited with the entire 8 hours of training. Employee then took a VIA ride at around 2:50 p.m. back to her vehicle parked near the Agency. She arrived at her vehicle at about 30 minutes prior to 4:00 p.m.<sup>29</sup> Employee explained that she then went home as Agency had no policy or communication in place that stated she had to return to her workstation if training ended early. As an HR specialist, Employee states that she also knows there is no District Personnel Manual policy mandating employees to return to their workstation when their training ends early.

Kasunic learned that Employee did not return to her office after the training, nor did she ask permission or inform him that she would not be returning. Kasunic then talked to Frazier and compared Employee's worktime for her payroll and timesheet. Frazier testified that it was Kasunic who did the *Douglas Factors*<sup>30</sup> analysis and proposed Employee's termination.

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<sup>27</sup> Agency Exhibit 2.

<sup>28</sup> VIA is an Agency approved rideshare service used to transport its employees to and from meetings.

<sup>29</sup> Employee Exhibit 15.

<sup>30</sup> The court in *Douglas* held 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;

Former Agency Director David Do (“Do”)<sup>31</sup> testified that he authored the Final Agency Decision of Notice of Removal<sup>32</sup> after he reviewed the Agency’s Hearing Officer’s Administrative Review<sup>33</sup> of the charges against Employee and its supporting documents. Do stated that he decided to remove Employee after reading the reports and had believed that each one of the charges merited Employee’s removal.

Do testified that based on the report, Employee finished her training at 2:50 p.m. and did not return to her workstation even though the training was intended to end at 4 p.m. Do stated that although the Human Resources training teacher dismissed Employee and other trainees for the day, it was only Agency who had the authority to dismiss Employee. He reiterated that Employee should have asked her supervisor at Agency if she wanted to leave early. Do testified that even if Employee’s shift that day ended at 3 p.m., Employee should have asked permission from her supervisor to leave ten minutes early. Do admitted that he never conveyed this expectation to Employee.

Employee added that it was not until around January 16, 2020, that she learned she was being charged AWOL for one hour for not returning to her workstation after her training. She testified that if she came to work at 8 a.m., then she could leave work at 4 p.m. Employee added that earlier, she was allowed a flexible work schedule by Frazier after Frazier noticed that Employee was coming in to work early and staying late. This flexible work schedule ended after Frazier met with Employee and they established her work schedule at 8 a.m. to 4:30 p.m. starting January 2, 2020.

However, Peters denied ever allowing flex time for Employee and said that Employee’s shift was from around 8:30 or 9 a.m. to 5 p.m. during the two or three months that she supervised Employee. However, Peters admitted she doesn’t recall the exact time as it had been a while. Neither did she recall if Employee worked late at times. Peters admitted that it was never communicated to employees that if their training ends

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- 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.

<sup>31</sup> David Do’s testimony is on the July 8, 2022, Transcript, Pages 4 – 58.

<sup>32</sup> Agency Exhibit 14.

<sup>33</sup> Agency Exhibit 13.



early, they should come back to their workstation. She just assumed that every employee should know that.

It is undisputed that Employee did not return to her workstation after her training ended early. What is disputed is whether Employee had been granted flex time. While Employee was consistent in her testimony, Peters was uncertain of the details when she denied that Employee had flex time. I find Employee to be more credible and I find that Employee did have flex time on December 2, 2019.

It is also undisputed that Employee clocked in at work at 8 a.m. From Frazier's own testimony, Employee's shift on December 2, 2019, would have ended at 4:30 p.m. While the training was for a full eight-hour day, Employee's training that day ended early at 3 p.m. The evidence revealed that the VIA transport brought Employee back to her vehicle at around 3:30 p.m. Considering that it would have taken Employee at least several minutes to get back to her office, she would have less than an hour at work.

Each of Employee's superiors admitted that they never informed her or any other employee that they have to return to their workstation when their training sessions ended early. None of them disputed Employee's assertion that there was no formal policy stating such nor was there any personnel regulation on that matter. I found Employee to be very credible and I find her explanation reasonable that after her training instructor informed her and the other trainees that they would be credited with a full eight-hour day, she assumed that she had put in a full day at work. I also find that it is unreasonable for Agency to expect Employee to adhere to a policy that was never expressed or communicated to Employee in any format. I therefore find that Employee was not AWOL on December 2, 2019.

**3. Knowing submission of (or causing or allowing the submission of) falsely stated time logs, leave forms, travel or purchase vouchers, payroll, loan, or other fiscal document(s).**

**Specification: On Tuesday, December 17, 2019, you submitted your timesheet to reflect scheduled sick leave for December 18, 2019, through December 20, 2019 knowing you had not submitted a leave request through PeopleSoft nor received approval for those absences.**

Kasunic testified that Employee did not use the Outlook Calendar to indicate that she would be out for sick leave from December 18, 2019, to December 20, 2019. He added that Employee indicated on her timesheet that she had scheduled sick leave when Kasunic knew Employee did not request prior permission for sick leave.<sup>34</sup> Kasunic said that the proper process would be for Employee to ask sick leave from her supervisor, then put it on Outlook Calendar, and lastly on her timesheet. He said he verbally discussed with Employee that her tour of duty would be 8:30 a.m. to 5:00 p.m.

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<sup>34</sup> Agency Exhibit 6.

Peters admitted that there may have been a time when she ordered the obviously ill and coughing Employee to go home, but could not remember when or provide any other details. Peters also did not recall when Employee marked her timesheet as “Scheduled Sick Leave.” Peters also admitted that some employees put in their timesheet in advance.

Frazier was Employee’s Human Resources Supervisor at Agency. After speaking with Kasunic, Frazier changed Employee’s timesheet entry from Scheduled Leave to Absent Without Leave (“AWOL”) after examining Agency’s Outlook Calendar entries.<sup>35</sup> Based on the entries, Frazier stated that Employee had pre-loaded her timesheet as Regular Work Hours and then came back on December 17, 2019, to adjust her time to Scheduled Sick Leave for December 18, 19, and 20, 2019.<sup>36</sup>

Employee explained that typically, she would preload her timesheet and thought she had marked December 17, 2019, to December 20, 2019, as unscheduled sick leave. If she needed to correct her time entries, she had until the end of that particular pay period to do so. Because she already had scheduled annual leave, Employee did not return to work until December 30, 2019. Although she was not scheduled to return until December 31, 2019, she returned early because she wanted to find out from Kasunic why her paycheck was short about \$800. Employee showed her doctor’s note as well as her uncle’s obituary as her uncle had died and she took time off to attend the funeral.<sup>37</sup> Employee said that Kasunic told her he would look into it and they would discuss the matter the next day.

As for the timesheet that she had mistakenly marked as scheduled sick leave, Employee testified that after her meeting, she could no longer access Peoplesoft or her work email. So when she returned to work on December 31, 2019, she contacted the Office of the Chief Technology Officer (“OCTO”) so that they could fix that problem. When Employee regained access to Peoplesoft and noticed that she was still marked as AWOL, she asked Peters to reverse her AWOL status to unscheduled sick leave. Peters replied that she would review Employee’s notes from the doctor.

Agency charged Employee with the knowing submission of her time as “Scheduled Sick Leave” instead of “Unscheduled Sick Leave” when Employee did not ask for the sick leave in advance. However, I find Employee to be credible when she explained that she had meant to put in “unscheduled” instead of “scheduled” sick leave in her time sheet since she was in a hurry to go home as she was feeling ill. In addition, Employee’s email to Peters on January 3, 2020, is consistent with Employee’s testimony.<sup>38</sup> I therefore find that Employee did not knowingly and deliberately put in the wrong submission of her time. In addition, Agency has not shown how it was prejudiced as “Scheduled Sick Leave” and “Unscheduled Sick Leave” comes out of the same sick leave benefits that Employee had earned. I therefore find that Agency failed to meet its

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<sup>35</sup> Agency Exhibit 6.

<sup>36</sup> Agency Exhibit 4.

<sup>37</sup> Employee Exhibit 5.

<sup>38</sup> Agency Exhibit 9.

burden of proving that Employee knowingly intended to submit a falsely stated characterization of her sick leave.

**4. Knowingly and willfully reporting false or misleading material information or purposely omitting material facts, to any superior.**

**Specification: On December 31, 2019, you drafted a witness statement to appeal the AWOL decision for 12/18/2019 – 12/20/2019 that you knew was false or misleading material and on January 3, 2020, you submitted that false statement signed by an agency employee.**

Director Do testified that Employee was guilty of Charge 4, reporting false information because Employee submitted a statement signed by Agency's Procurement Analyst Renee Crosson ("Crosson"), which was later retracted by Crosson.<sup>39</sup> Do testified that he believed Employee coerced Crosson to sign the statement. Do also overruled the Hearing Officer's report overturning the false statement charge and sustained that charge against Employee.<sup>40</sup>

Crosson<sup>41</sup> testified that she was Employee's work colleague and worked with her for a short period in the same office. She noticed that Employee was coughing, so she offered her cough drops as her workstation was just six feet away from that of Employee's and five feet away from Kasunic's office. Crosson testified that she saw Employee enter Kasunic's office. She recalled that Employee was coughing and saying that she felt sick. Later, Employee drafted a statement stating that Crosson overheard Kasunic verbally granting Employee sick leave and Crosson signed it.<sup>42</sup>

When asked why she retracted her signature on that statement five days later, Crosson testified that apart from witnessing Employee coughing several times and entering Kasunic's office on December 17, 2019, to talk to him, she did not overhear their conversation and thus did not know what they discussed. Crosson testified that she could not verify that Employee asked for and received verbal approval for her absence for the dates December 18 to 20, 2019, as she did not hear the substance of the conversation between Employee and Kasunic. Crosson would not say if Employee appeared ill but confirmed that she had asked Employee why she was at work coughing and exposing others to her germs.

With regard to the false statement charge, Employee testified that she requested her work colleague Crosson/Hever to sign a witness statement on January 3, 2020, because Kasunic denied their previous December 17, 2019, conversation regarding her illness and request for sick leave. Employee stated that she had asked two other colleagues to attest to her conversation with Kasunic but they told her that, while they

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<sup>39</sup> Renee Crosson also goes by the name Renee Hever that she used in signing her statement.

<sup>40</sup> Agency Exhibit 13.

<sup>41</sup> Crosson's testimony is on the July 7, 2022, Transcript, Pages 231-253.

<sup>42</sup> Agency Exhibit 7.

witnessed her talking to Kasunic, they did not know the substance of the conversation and thus they could not help her.

Hever, however, informed her that she did recall Employee's conversation with Kasunic, so Employee typed up the witness statement and Hever signed it after reading it.<sup>43</sup> However, Hever expressed fears about her job security until Employee assured her she would not get in trouble as it was just a witness statement regarding what she observed and heard. Employee then emailed a copy to Hever after she assented. Employee then forwarded Hever's signed statement to Kasunic and Peters. When asked why Hever later retracted her signed statement, Employee said she believed it was because Hever feared for her job security as Hever had expressed her apprehensions to her before she read and signed her statement.

Agency charged Employee with willfully submitting a signed statement by her co-worker Crosson/Hever, knowing that it was false and misleading. I find that Do's contention that Employee must have coerced Crosson to sign the statement is not credible as Crosson herself never said she had been coerced. In addition, it is undisputed that Employee was a mere co-worker who had no supervisory role over Crosson. I also find Crosson was not credible when she would not say Employee appeared ill but admitted her fear of being infected by Employee's coughing.

I find Employee to be more credible than Agency's witnesses when she said she submitted Crosson's signed statement to her superiors in the sincere belief that Crosson had overheard Kasunic giving verbal permission for her to take sick leave. After all, Employee had discussed the subject matter of the statement with Crosson and Crosson had read and signed it. Judging from Crosson's demeanor while testifying, Employee's belief that Crosson later retracted her signature because of Crosson's fear for her job security is credible. I therefore find that Agency failed to prove that Employee knowingly and willfully submitted a false statement to her superiors.

## **II. Whether the penalty of removal was appropriate.**

Because I find that none of Agency's charges against Employee are warranted, I further find that the penalty of removal should be reversed.

### **ORDER**

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of separating Employee is **REVERSED**; and
2. Agency shall reinstate Employee to her last position of record; or a comparable position; and
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the separation; and

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<sup>43</sup> *Id.*

4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

*s/ Joseph Lim*  
Joseph E. Lim, Esq.  
Senior Administrative Judge