Notice: This decision is subject to formal revision before publication in the District of Columbia Register and OEA Website. Parties are requested to notify the Chief Operating Officer of any formal errors in order that corrections may be made prior to publication. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)
)
EMPLOYEE,) OEA Matter No. 1601-0034-26
)
) Date of Issuance: October 26, 2026
v.)
) JOSEPH E. LIM, ESQ.
DEPARTMENT OF PUBLIC WORKS,) SENIOR ADMINISTRATIVE JUDGE
Agency)

Employee *pro se*
Timothy McGarry, Esq. Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on February 10, 2026, challenging the Department of Public Works' ("Agency") decision to remove him from his position as a Sanitation Worker. Employee was cited for "Unauthorized absence of five (5) workdays or more (AWOL)"[1] In response to OEA's March 2, 2026, email granting an extension, Agency submitted its Answer to Employee's Petition for Appeal on March 27, 2026. I was assigned this matter on March 30, 2026. A Prehearing Conference was convened on June 1, 2026. Neither party disputed the facts of this case; rather, Employee asked for forgiveness and his job back. The parties also indicated that they were resting on the documents that were already submitted. The record is now closed.

JURISDICTION

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

ISSUE

Whether Agency had cause to terminate Employee.

FINDINGS OF FACT,[2] ANALYSIS AND CONCLUSIONS OF LAW

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[1] DPM (District Personnel Manual") 1607.2 (f)(4). Agency Answer, Tab 12 (March 27, 2026).

[2] Agency Answer, Tabs 7 to 16 (March 27, 2026).

It is not disputed that Employee was absent from his job at the Agency from August 25, 2025, to August 29, 2025, due to his being incarcerated. Due to additional federal criminal charges, Employee remained incarcerated until September 19, 2025, and unable to go to work. Employee admitted to this status in his Petition for Appeal, stating, " … not able to work my position. I am currently incarcerated…" The record also contains documents from the Agency, verifying his extended absence from his job, and a Criminal Citation Number 25128252 Form from the D.C. Department of Corrections.

On October 21, 2025, Agency issued a letter of proposed removal for cause, due to Employee's unexcused AWOL status. Agency conducted an administrative review of the charges and Employee was served with the notice of the proposed adverse action in person. The recommendation of termination, prepared by Danielle Ragofsky, Hearing Officer, was adopted on December 29, 2025, by Anthony Crispino, Deciding Official, as the Agency's final decision. The effective date of Employee's termination is January 2, 2026.

This Office has previously held that incarceration cannot be a basis for an excused absence. See *Employee v. Agency*, OEA Matter No. 1601-0202-09, *Opinion and Order on Petition for Review* (March 19, 2013). In addition, Employee admitted to the basis for his extended absence from work. I conclude that the Agency acted appropriately in taking adverse action against him, resulting in his termination.

The question of whether the assessed penalty of removal is appropriate has likewise been long decided. 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).[3] According to the *Stokes* Court, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency.

The Court in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised."[4] OEA has previously held that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[5] Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-

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[3] *Anthony Payne v. D.C Metropolitan*, OEA Matter No. 1601-00540-01*, Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 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).

[4] Stokes v. District of Columbia, 502 A.2d 1006, 1010 (D.C. 1985).

[5] *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, Opinion and Order on Petition for Review (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); and *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-

0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.

Love went on to provide the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

In the instant matter, Employee was removed from his position for “Unauthorized absence of five (5) workdays or more."[6] The table of penalties indicates that the penalty for a first offense of absence without leave ranges from reprimand to removal.[7] Agency’s documents indicate that Employee was AWOL for considerably more than five workdays.[8] Based upon my review of the entire record, I conclude that Agency’s decision to remove Employee was based upon a consideration of the relevant factors, and that there is no clear error in Agency’s judgment. As there are no grounds for mitigation, I further conclude that the assessed penalty of termination was appropriate and should be sustained.

ORDER

The foregoing having been considered, it is hereby ORDERED that Agency’s action of removing Employee is UPHELD.

FOR THE OFFICE:

/s/ Joseph Lim
JOSEPH E. LIM, ESQ.
Senior Administrative Judge

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08 (April 25, 2011).

[6] DPM 1607.2(f)(4).

[7] Chapter 16 DCMR 1607.2(6)(b) (2020 update).

[8] Agency Answer, Tabs 7 to 8 (March 27, 2026).