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

In the Matter of:	)	
	)	OEA Matter No.: 1601-0035-12
BEVERLY DAY,	)	
Employee	)	
	)	Date of Issuance: July 7, 2014
v.	)	
	)	
DISTRICT OF COLUMBIA DEPARTMENT OF	)	
PUBLIC WORKS,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

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Angela Pringle, Employee Representative  
Rahsaan Dickerson, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

Beverly Day (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) on November 25, 2011, challenging the Department of Public Works’ (“Agency”) decision to terminate her from her position as a Staff Assistant. Agency filed its Answer on December 20, 2011. This matter was assigned to me on August 9, 2013.

A Prehearing Conference was convened in this matter on November 1, 2013. A Post Prehearing Conference Order was issued on November 4, 2011, which required the parties to submit legal briefs addressing the issues in this matter. Both parties submitted their briefs accordingly. Upon consideration of the briefs, it was determined that there were material issues of facts and an Evidentiary Hearing was warranted. As such, an Evidentiary Hearing was convened on May 13, 2014, where both parties presented testimonial and documentary evidence. The parties were subsequently ordered to submit written closing arguments on or before June 27, 2014. The written closing arguments were submitted accordingly. The record is now closed.

### JURISDICTION

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

### ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. If so, whether the penalty of removal was appropriate under the circumstances.

### BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. “Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

### UNDISPUTED FACTS

On the morning of July 28, 2011, there was a heated verbal exchange between Employee and her co-worker, Sabrina Green (“Green”). Both employees used profanity during this exchange. It is undisputed that this incident occurred after Ms. Green asked Employee whether Ms. Cassandra Boyd (“Boyd”), an administrator with Agency, was coming to the office that morning. Employee responded by saying that she did not know whether Boyd was coming to the office. This exchange quickly turned into an argument between Employee and Green. This incident occurred in an office space shared by Rosa Grant, Elneta Chance-Hawkins, Sabrina Green, and Tracey Thompson at Agency’s 2750 South Capitol Street, Southeast location. Ms. Thompson was not present the morning of the incident. What occurred during the course of this argument is at issue.

On September 12, 2011, Agency issued Employee an Advance Written Notice of Proposed Removal. On October 25, 2011, Agency issued Employee a Notice of Final Decision on Proposed Removal, which terminated Employee from her position for “any on-duty or employment-related act or omission that an employee knew or should reasonably know is a violation of law: assault or fighting on duty.” Agency also listed the following as a cause for

Employee's termination: "any on-duty or employment-related reason for corrective or adverse actin that is not arbitrary or capricious; making a false report to the Metropolitan Police Department." However, it was later determined at the Evidentiary Hearing, that this cause was not, in fact, used as one of the causes to remove Employee from her position.

### SUMMARY OF TESTIMONY

On May 13, 2014, an Evidentiary Hearing was held before this Office. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their position.

#### Agency's Case in Chief

##### ***Rosa Grant ("Grant") Tr. 10-24***

Grant testified in relevant part that: she is a Program (Staff) Assistant with Agency's Solid Waste Management Administration ("SWMA") division and has been with Agency for 25 years. Grant further testified that she was at work on the morning of July 28, 2011, and that her tour of duty was from 7:00 a.m. to 3:00 p.m. at Agency's 2750 South Capitol Street, Southeast location. Grant stated that she shared office space with Sabrina Green, Elneta Chance, and Andrea Hedgeman, who were all present the morning of July 28, 2011. Grant also stated that when she came in that morning, all of the other ladies were already in the shared office space. Grant stated that while getting coffee, she observed Employee come to the doorway with food in her hand from McDonald's. Grant then testified that she heard Ms. Green asked Employee if Ms. Boyd was coming to their office on that day, to which Employee responded "I don't know." Subsequently, Employee and Ms. Green began talking back and forth to which Grant did not pay much attention to because she "assum[ed] it [was] not real."<sup>1</sup> Grant testified that she observed Employee place her purse and McDonald's food on Ms. Hedgeman's desk once the exchange escalated. Grant stated that the voices between Employee and Green were getting "strong" and that Employee and Ms. Green were "saying bad words to each other."<sup>2</sup>

After Employee placed her purse and food on Ms. Hedgeman's desk, Employee walked over to Ms. Green's desk with her hands up in a fighting stance. Grant then put her arms around Employee's waist and said, "Ms. Day, come on and go down to your office. Think about your job." Employee responded by saying "Okay, Ms. Grant." Grant stated that she did not remember seeing Green out of her seat during this exchange because Elneta Chance-Hawkins was standing between Employee and Green, and her view was obstructed by Employee's height. Grant further stated that once she grabbed Employee by the waist, she was focusing on trying to hold Employee back and was not sure if Employee was swinging.

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<sup>1</sup> Tr. at 12.

<sup>2</sup> Tr. at 21.

***Andrea Elizabeth Hedgeman (“Hedgeman”) Tr. 25-39***

Hedgeman testified in relevant part that: she is an employee of Agency’s Solid Waste Collection Division as a Program Support Assistant. Hedgeman testified that she was at work on the morning of July 28, 2011, and her tour of duty was 6:45 a.m. to 3:15 p.m. She stated that on the morning of July 28, 2011, Employee came into the shared office space and said good morning to everyone, then inquired if anyone wanted her (Employee) to bring back anything from the 7-Eleven convenience store. Hedgeman asked Employee to bring her some Equal sugar for her coffee. When Employee returned, Hedgeman was working at her computer when she heard a lot of back and forth commotion. Initially, Hedgeman did not think the commotion was serious. During the commotion, Hedgemen testified, that she heard cursing and name calling. Hedgeman stated that she realized the verbal exchange was serious when Employee placed her purse on her (Hedgeman’s) desk. After Employee placed her belongings on Hedgeman’s desk, Hedgeman stated that she saw Employee throw her hands up in a “fighting position.”<sup>3</sup> When Employee’s hands were put in a fighting position, Elneta Chance intervened. Hedgeman is not sure if a punch landed, but did testify that she saw Employee throw her hands up. After Employee’s hands were thrown up and Elneta Chance intervened, Hedgeman testified that she went outside to the parking lot with her cigarettes. Hedgeman testified that at some point she did see Ms. Green standing up, although she is not exactly sure at what point during the incident Ms. Green stood up. Hedgeman also recalled that after the incident was over, she heard Employee say to Ms. Green, “what time do you get off?” After Ms. Green responded that she got off at 3:00 o’clock, Employee responded, “Well, I’ll meet you at that point.”<sup>4</sup>

After the incident, Hedgeman stated that she gave a statement regarding her account of the incident and that the only person she discussed her statement with was Daniel Harrison (Investigator to this matter). Hedgeman also stated that she was hesitant to give a statement at first because she had just gotten back to work from a 2010 incident and did not want to be involved in the investigation.

***Sabrina Green (“Green”) Tr. 39-55***

Green testified in relevant part that: she is an employee of Agency in the Solid Waste Management, Solid Waste Collection Division as a Staff Assistant. Green’s worksite is located at 2750 South Capitol Street, Southeast. Green stated that she was at work on the morning of July 28, 2011. Her tour of duty began at 6:30 a.m. and she arrived to work a little before 6:30 a.m. Green testified that when Employee came to their office, she (Green) was at her desk. Green further testified that a little after 6:00 a.m., Employee came in and stated she was going to 7-Eleven and asked if anybody wanted her to bring back anything. Approximately 20 minutes later, Employee came back and began talking to co-workers. Green stated that she asked Employee, “is Ms. Boyd coming down for a meeting?” Employee responded “yes,” in a very aggressive tone, to which Green responded by saying she “[didn’t] want any problems.” Green then asked Employee if she knew what time Boyd was coming down for the meeting, to which Employee responded “no.”<sup>5</sup>

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<sup>3</sup> Tr. at 28.

<sup>4</sup> Tr. at 30.

<sup>5</sup> Tr. at 43-44.

Green described the verbal exchange she had with Employee as a “back and forth with verbal profanity.”<sup>6</sup> During the course of the exchange, Green testified that Employee proceeded to place her purse and coffee on Hedgeman’s desk and “threw her hands up.” Green further testified that Grant grabbed Employee by the waist as Employee went to swing. Green stated that when Employee swung, she hit Hawkins-Chance instead. Green also testified that she was still sitting down when Employee approached her with her hands up and at no point did she stand up as Employee approached her. Green also testified that when Employee was heading in her direction, she was “afraid” and “scared.” Green further stated that Grant told Employee, “Come on, Ms. Day, baby, think about your job.” Green further stated that Employee responded by saying “okay,” but that Employee was still fussing and asked her (Green) what time she got off of work. Green testified that Grant grabbed Employee and Employee swung at her while Chance-Hawkins was in the middle, which caused Employee to hit Chance-Hawkins. Green further stated that Employee continued to talk to her and said, “I see you’re not getting up out of that seat,” and “what time do you get off?” Green stated that she responded and told Employee that she got off at 3:00 p.m. At this point, Ms. Lashawn Bowden came and took Employee away. Subsequently, Ms Lashawn Bowden came back and took Green outside and told her that she needed to calm down. Green stated that she never threw a punch. This incident led Green to be suspended for five (5) days.

Green also stated that prior to the incident, her only relationship with Employee was “co-workers” and they never had a personal relationship. Green stated that the reason she asked Employee about whether Boyd was coming down for a meeting was because she knew Employee and Boyd were friends.

***Elneta Chance-Hawkins (“Chance-Hawkins”) Tr. 55-69***

Chance-Hawkins testified, in relevant part, that: she is a Sanitation Crew Chief with Agency’s Solid Waste Collection Division. Chance-Hawkins also testified that she was working the morning of July 28, 2011. Her tour of duty was 6:45 a.m. to 3:15 p.m., but stated that she always arrived to work at 5:00 a.m.

Chance-Hawkins testified that Employee first came through the office about 6:30 a.m. and spoke and then left the office area and came back about 7:15 a.m. When Employee came back to the office the second time, Chance-Hawkins testified that is when Green asked Employee a question about whether Ms. Boyd was supposed to come to the building and if they were supposed to have an office meeting. During this exchange between Green and Employee, Chance-Hawkins was standing beside Green’s desk waiting for Green to print something from her printer. Chance-Hawkins stated that after Green asked Employee a second question, an “explosion” transpired. Chance-Hawkins further stated that all of a sudden there was “a lot of profanity between the two of them back and forth.”<sup>7</sup> Chance-Hawkins also stated that she told Green not to move and not to get out of her seat to avoid a possible physical altercation. Chance-Hawkins further testified that Employee put her coffee and purse down and “threw her hands up in the air in a fighting stance.”<sup>8</sup> At some point during the verbal exchange, Grant was pulling

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<sup>6</sup> Tr. at 45.

<sup>7</sup> Tr. at 59.

<sup>8</sup> *Id.*

Employee away from Green and trying to get her out of the office. Chance-Hawkins testified that while Grant was pulling Employee back, Employee swung and hit her (Chance-Hawkins) in the shoulder area. Chance-Hawkins testified that she did not respond to the swing because she knew it was not directed towards her and that there was not “a lot of power behind [the swing].”<sup>9</sup> Chance-Hawkins further stated that Employee was about five to seven feet away from Green when she swung. Chance-Hawkins stated that she wanted to remain between the two of them to prevent a physical altercation and that at no time did Green get out of her seat.

During the course of the exchange, Chance-Hawkins stated that Employee initially told Green that she got off of work at 4:30 and then asked Green what time she got off and that they could meet in the parking lot after work.

After Ms. Bowden took Employee out of the office, Chance-Hawkins made sure Green was fine and then proceeded to continue working once there were enough people to keep things calm in the office.

***Daniel Alonzo Harrison (“Harrison”) Tr. 70- 86***

Harrison testified, in relevant part, that: he has been a Safety Officer/Risk Manager with Agency since 2004. In this position, Harrison investigates incidents of workplace violence and other major incidents. Harrison described the procedure Agency uses in carrying out an investigation of workplace violence. Initially, Harrison stated, Agency tries to get written statements which are then followed by a sit-down investigation.

In the instant case, Harrison testified that he became aware of the incident on July 28, 2011, through a phone call from Cassandra Boyd. Harrison stated that after he became aware of the incident, he received written statements from witnesses and started interviewing people the next day. Harrison received the names of individuals in the room from Cassandra Boyd and also from the two employees involved in the incident. Harrison testified that the first person he interviewed was Green, who explained her version of the incident. Green stated to Harrison that she and Employee had a conversation about whether or not Ms. Boyd was coming to the office to have a meeting that day. Harrison testified that he also interviewed Employee the day after the incident. Harrison stated that he interviewed all of the witnesses within a week of the incident. None of the employees Harrison spoke with indicated that Leroy Brooks was present in the room at the time of the incident.

After Harrison had spoken with all of the witnesses, he testified that it became clear to him that Employee was the more aggressive party. Harrison further stated that he felt that both individuals were guilty of cursing and calling each other names. Harrison determined that Employee did throw a punch although she did not hit her intended target. Harrison concluded that Green did not throw a punch.

Harrison stated that he did not interview Ms. Bowden because she was not in the room at the time of the incident and did not believe her testimony was relevant during the course of his

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<sup>9</sup> Tr. at 60.

investigation. He stated that his investigation revealed that Bowden did not enter the room until after the altercation had occurred.

***William Otis Howland, Jr. (“Howland”)*** (Tr. 86- 102)

Howland testified, in relevant part, that: he is the Director of Agency. Howland testified that his role as director includes setting the general direction of the Agency, both in policy and implementation of policy. With regard to discipline of individual employees, Howland stated that he is usually the deciding official in more serious offenses, such as termination of an employee. Howland testified that in 2008 he issued a memorandum to all employees that identified behavior that would not be tolerated within Agency. The memorandum, Agency’s exhibit 5, indicated that there is a signature line for employees to acknowledge they had received the memo. Employee signed the “Acknowledgement of Receipt.”

Howland further testified that he used the Hearing Officer’s report made during the course of the administrative review, to help make his decision to terminate Employee. The Hearing Officer’s Report recommended that the penalty of removal be sustained. The report also provided that Green should also be considered for disciplinary action for her role in the incident. Howland testified that his decision to terminate Employee was strictly based on the cause of assault or fighting.

**Employee’s Case in Chief**

***Joseph Kabore (“Kabore”)*** (Tr. 103-112)

Kabore, who is an employee of Agency, testified, in relevant part, that he did not see anything happen except for Employee and Green arguing. Kabore also stated that he does not believe he saw the entire incident, but just heard arguing as he came into the office on the morning of July 28, 2011.

***Nkechi Whiteman (“Whiteman”)*** (Tr.113-116)

Whiteman testified, in relevant part, that she is employed by Agency and was at work on July 28, 2011, and heard some commotion; however, she did not actually see the incident between Employee and Green.

***Monique Huggans (“Huggan fka “Hicks”)*** (Tr. 117-121)

Huggans testified, in relevant part, that she is employed by Agency as a Clerical Assistant. She stated that she has no knowledge of the incident that took place on July 28, 2011 and was not present during the incident. However, Huggans testified that she has been involved in a verbal and physical altercation while at work. Huggans testified that she received a 15 day suspension for the incident she was involved in, which occurred in 2011. Huggans further stated that the 15 day suspension was based on the fact that she acted in self-defense. Huggans’s supervisor was Anthony Duckett, who was over SWMA Administrative Office at the time of her incident.

***Carol Rose (“Rose”)*** (Tr. 122-124)

Rose testified, in relevant part, that she is employed by Agency. Rose also stated that Green slapped her in the face around 2002 or 2001. Rose testified that she was not disciplined for this incident and she could not recall if Green was disciplined. Rose’s position was not provided during her testimony.

***Lashawn Bowden (“Bowden”)*** (Tr. 124-132)

Bowden testified, in relevant part, that she currently works at Agency as an Administrative Program Coordinator. She also testified that she was at work on the morning of July 28, 2011 and heard some commotion that involved Employee. At first Bowden did not think the verbal commotion was serious; she then realized it was serious by the tone of the voices involved. Bowden did not see the incident and did not provide a written statement.

***Krystal Russell (“Russell”)*** (Tr. 133-143)

Russell testified, in relevant part, that she is employed by Agency. Russell also testified in regards to the conversation she had with Hedgeman and Chance-Hawkins regarding the incident. Russell also testified regarding the conversation she observed between Employee and her supervisor, Hallie Clem. Russell’s testimony was an attempt to contradict Hedgeman’s testimony that she was unsure as to what happened that led up to the incident with Employee and Green. Russell stated that she provided a second-hand account of the incident through a written statement submitted to Agency’s Administration. Russell could not remember who she submitted her statements to. These statements are dated for February 2012.

***Beverly Day (“Employee”)*** (Tr. 154-181)

Employee testified, in relevant part, that: she was the Assistant to the Deputy Administrator and the Administrator for the Waste Management Administration. Employee stated that on July 28, 2011, she was involved in a verbal altercation with Green. Employee stated that when she first came in the office area, Hedgeman, Grant, and Hawkins-Chance were in the office. Employee told the ladies that she was going to 7-Eleven and asked if anyone wanted anything. When Employee came back she gave Hedgeman the Equal sugar that she requested.

When Employee was about to leave the Office, Green, who was sitting at her desk, asked Employee, “Is Ms. Boyd coming down here,” to which Employee responded, “I’m not sure.” Employee then went on to explain in detail the expletives that were exchanged between herself and Green. Employee further testified that Green was sitting down when she asked her the question and then got out of her seat and started to charge towards her (Employee). Employee stated that she placed her purse and other belongings down because she was not going to let Green hurt her. Employee also stated that Green tried to hit her, but Hawkins-Chance was in the way and prevented Green from hitting her. Employee also testified that Green was not close enough to strike her and Employee was not close enough to strike Green. Employee later

contradicted her own statement and said that Green never threw a punch. Employee testified that she did not attempt to hit Green. However, Employee did state in her written statement that both, she and Green, made “swing[ing] motions.” In her testimony, Employee explained that the “swing motions” made by both women were intended to signal to the people holding them back to get off of them. Employee stated that she was not angry at Green as a result of the verbal exchange.

Employee further stated that she does not believe she hit Hawkins-Chance at any time during the incident.

### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

#### *Whether Agency’s adverse action was taken for cause*

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

Here, Employee was terminated for any on-duty or employment-related act or omission that an employee knew or should reasonably know is a violation of law; specifically assault or fighting on duty. The District of Columbia Superior Court has held that the OEA should make factual findings relating to whether an employee’s conduct meets the factual requirements and legal elements of the crime they are alleged to have violated.<sup>10</sup> The elements of a criminal assault are that the defendant (Employee) must have made (1) an attempt, with force or violence, to injure another; (2) with the apparent present ability to effect the injury; and (3) with the intent to do the act constituting the assault.<sup>11</sup>

Grant testified about the circumstances that led to the heated exchange between Employee and Green. Grant further testified that once she realized the severity of the exchange, she put her arms around Employee’s waist and tried to get her out of the office. However, from Grant’s vantage point, she was unable to state unequivocally whether Employee swung at Green. Grant did state that she observed Employee put her hands up in a “fighting stance.” Ms. Grant

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<sup>10</sup> *D.C. DOT v. D.C. OEA*, 2012 CA 002979 P (MPA) (2014).

<sup>11</sup> *Stroman v. United States*, 878 A.2d 1241 (D.C. 2005).

testified very forthright and I found her testimony, and her recollection of the incident, to be very credible. However, because Grant was unable to unequivocally state that Employee swung at Green or Chance-Hawkins, I am unable to find that Employee committed an assault.

Hedgeman also testified about the circumstances that led to the exchange between Employee and Green. Hedgeman testified that she observed Employee place her belongings on her desk (Hedgeman's) and observed Employee place her hands up in a "fighting position." Hedgeman also stated that once Employee's hands were in a fighting position, Chance-Hawkins intervened between Employee and Green. Hedgeman further testified that she believed Green was standing up at one point during the incident although she could not recall at what point Green stood up. The undersigned notes that Hedgeman was hesitant to provide a statement regarding the incident; however, I do not find that this took away from the credibility of her testimony. I also find that when Employee put her hands in a "fighting position," that alone did not constitute an attempt to injure Green.

Green testified regarding the circumstances that led up to the incident involving herself and Employee. Green further testified that Grant grabbed Employee by the waist as Employee went to swing. Green stated that she was still sitting when Employee swung. Green testified that she was "afraid" and "scared" when Employee was heading in her direction. I am unpersuaded that Green was, in fact, afraid and scared. When asked by Employee what time she got off, Green told her 3:00 p.m. I do not find it plausible that Green would have told Employee what time she got off work in anticipation of continuing their dispute if she was, in fact, scared and afraid. Despite Green making such an assertion, the evidence supports that she continued to exchange profanity with Employee until Employee was escorted out of the room by Grant and Bowden. In Agency's exhibit 2, Green provided in her written statement that when Employee asked her what time she got off, she said "bring it on I never been scared of know (sic) fight." Green's written statement directly contradicts her testimonial assertion that she was scared and afraid. Also, in Green's testimony, she stressed the fact that Employee hit Chance-Hawkins in an attempt to hit her (Green). However, nowhere in her written statement does Green state that Employee swung at either her or Chance-Hawkins. It was apparent that Green had a motive and was bias in her testimony when she gave her rendition of the incident. Based on Green's testimony, I was not persuaded that an assault occurred.

Chance-Hawkins also testified regarding the events that led up to the incident. Chance-Hawkins testified that Employee swung while Grant was pulling Employee back. Chance-Hawkins also stated that she was hit in the shoulder area from Employee's swing. Chance-Hawkins did not respond to the swing because she knew it was not directed towards her and that there was not "a lot of power behind [the swing]." Chance-Hawkins stated that Employee was about five to seven feet away from Green when she swung. I found Chance-Hawkins' testimony to be credible, as she testified in a truthful and forthright manner. She did not have any motive to skew her version of the facts in favor of one party or another. Still, based on Chance-Hawkins version of the incident, I am not persuaded that Employee committed an assault. Based on Chance-Hawkins' account that: Employee swung while being pulled away by Grant, Employee's swing was not very powerful, and Employee was five to seven feet away from Green when she swung, I am unpersuaded that Employee swung in an attempt to injure or punch Green or Chance-Hawkins. I find that the swinging motion from Employee was in response to Grant

pulling her away from the situation and Employee's attempt to counter the resistance from Grant or Chance-Hawkins.

Employee testified regarding the events that led up to the heated exchange between herself and Green. Employee stated that she placed her belongings on Hedgeman's desk after she saw Green charging towards her. I did not find Employee's assertion that Green charged towards her to be credible. Employee further stated that Green tried to hit her but was prevented by Chance-Hawkins, who was standing between the two of them. There were a number of inconsistencies in Employee's testimony. For example, at one point Employee testified that Green swung at her, and later she testified that Green did not throw a punch. However, I do not find that the inconsistencies were intended to deceive the undersigned; but rather Employee's attempt to clarify what she perceived to have actually occurred and to skew the facts in her favor.

Employee further testified that to her knowledge, she did not hit Chance-Hawkins during the course of the incident. I find that during the commotion and struggle to keep Employee and Green separated, that Employee may have hit Chance-Hawkins in the shoulder area. However, as stated by Chance-Hawkins, it was not powerful, and thus I do not find that it was intended for Chance-Hawkins, nor was it directed at Green.

Based upon the relevant testimony provided, I am not persuaded that an assault or physical fight occurred. I find that the Agency did not have cause to remove Employee for assault or fighting on duty.

It is noted that the analysis portion of this decision focuses on Agency removing Employee based on the cause of "assault." In *Bonilla v. U.S.*, 894 A.2d 412 (D.C. 2006), the Court noted that the term "fight" has several distinct meanings, including: 1. A confrontation between opposing groups in which each attempts to harm or gain power over the other, as with bodily force or weapons. 2. A quarrel or conflict. 3. a. A physical conflict between two or more individuals. b. Sports. A boxing or wrestling match. 4. A struggle to achieve an objective...5. The power or inclination to fight; pugnacity..." *The American Heritage Dictionary of the English Language* 679 (3d ed. 1992), *See supra* at Footnote 8. The cause in which Agency relies upon in this case is "assault or fighting on duty." *See* Table of Appropriate Penalties, 6-B DCMR § 1619.1(5)(c). Because the Table of Appropriate Penalties addresses a verbal quarrel or conflict in 6-B DCMR § 1619.1(7) (i.e. arguing and use of abusive or offensive language), it can be reasonably assumed that the cause for "fighting on duty" used by Agency in this case means a physical fight, rather than a verbal fight. I do not find that a physical fight occurred here. Thus, I find that Agency also did not have cause to remove Employee for fighting on duty.

Because I have determined that Agency did not have cause to terminate Employee for "any on-duty or employment-related act or omission that an employee knew or should reasonably know is a violation of law; specifically assault or fighting on duty," I will not address the appropriate of the penalty and disparate treatment arguments.

**ORDER**

Accordingly, it is hereby **ORDERED** that:

1. Agency's termination of Employee is **REVERSED**;
2. Agency shall reinstate Employee to the same or comparable position she held prior to her termination;
3. Agency shall immediately reimburse Employee all back-pay and benefits lost from her termination; and
4. Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge