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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE,)	
)	OEA Matter No. 1601-0042-20
)	
v.)	Date of Issuance: July 1, 2021
)	
DISTRICT OF COLUMBIA)	MONICA DOHNJI, ESQ.
DEPARTMENT OF GENERAL SERVICES,)	Senior Administrative Judge
Agency)	
)	

Vanessa Dixon-Briggs, Employee Representative
C. Vaughn Adams, Esq., Agency Representative

INITIAL DECISION¹

INTRODUCTION AND PROCEDURAL HISTORY

On April 9, 2020, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of General Services’ (“DGS” or “Agency”) decision to terminate him from his position as a Maintenance Worker, effective March 6, 2020. Employee was terminated pursuant to District of Columbia Municipal Regulation Personnel Manual (“DCMR”) 6B DCMR §§ 435.6² and 1605.4(h).³ On July 27, 2020, Agency submitted its Answer and Motion to Dismiss.

Following a failed mediation attempt, this matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on January 6, 2021. Thereafter, I issued an Order scheduling a Status/Prehearing Conference in this matter for February 18, 2021. While Agency’s representative was present for the scheduled Conference, Employee was absent. Thereafter, I

¹ This decision was issued during the District of Columbia's COVID-19 State of Emergency.

² 6B DCMR § 435.6: In accordance with Section 428, a positive drug or alcohol test shall render an individual unsuitable for District employment and constitute cause for purposes of Chapter 16 of these regulations.

Pursuant to 6B DCMR § 428.1, unless otherwise required by law, and notwithstanding Subsection 400.4, an employee shall be deemed unsuitable and there shall be cause to separate an employee from a covered position as described in Subsections 435.9 and 439.3 for: (1) A positive drug or alcohol test result.

³ 6B DCMR §1605.4(h): Unlawful possession of a controlled substance or paraphernalia or testing positive for an unlawful controlled substance while on duty.

emailed an Order for Show Cause to Employee requiring that Employee submit a statement for good cause for his failure to attend the scheduled Status Conference. Subsequently, on March 2, 2021, another Show Cause Order was mailed to Employee's address of record. Employee responded to the March 2, 2021, Show Cause Order. Accordingly, the Status/Prehearing Conference was rescheduled for March 30, 2021. Both parties were present for the scheduled conference. Subsequently, I issued a Post Status Conference Order on March 31, 2021, requiring the parties to address the issues raised during the Status/Prehearing Conference. Agency also had the option to file a reply brief. Both parties have submitted their respective briefs. Since a decision can be made based on the documents in the record, I have decided that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

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

ISSUES

- 1) Whether this matter should be dismissed as untimely;
- 2) Whether Agency's action of terminating Employee was done for cause; and
- 3) If so, whether the penalty of removal is within the range allowed by law, rules, or regulations.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

According to the record, Employee was a Maintenance Worker with Agency. His position was classified as a safety-sensitive position. Employee signed the Individual Notification of Requirements for Drug and Alcohol testing for the Protection of Children and Youth form in December of 2012, acknowledging that he occupied a safety-sensitive position, and that he was subject to drug and alcohol testing.⁴ On October 23, 2019, after observing Employee when he arrived for work, Employee was referred for a reasonable suspicion testing. The Reasonable Suspicion Observation forms were completed by two trained supervisors – Cameron Washington and Gregory Minor. Both supervisors noted on their respective forms that they observed Employee exhibit the following behavior in the early hours of October 23, 2019 (between 12:00 a.m. and 1:00 a.m.): slurred speech; swaying while walking/talking; his balance was staggering; he looked confused and lacked coordination; and he smelled of alcohol and marijuana.⁵ While Agency asserts that both supervisors who observed Employee on October 23, 2019, had undergone management training for reasonable suspicion reporting, Agency did not include their training certificates received from completing the reasonable suspicion training.

⁴ See Agency's Brief Regarding Reasonable Suspicion Termination, at Exhibit 2 (April 22, 2021).

⁵ *Id.* at Exhibit 3.

Instead, Agency included a chain of emails between its Human Resources and training staff regarding a reasonable suspicion training that should have occurred in 2018.⁶

Following the observation by the two supervisors, DGS Human Resources (“HR”) Specialist was contacted at home because the observation occurred after normal business hours. The HR Specialist, Brittany Wright, also observed Employee when she arrived at his work site. She noted that Employee was visibly intoxicated, exhibiting “slurred words, bloodshot and glossy eyes, swaying while standing, and smelling of alcohol. [Employee] also stated to me that he had gone to Friday’s prior to reporting for duty and she requested that a collector be dispatched to test Employee for drugs and alcohol.”⁷ Employee provided a urine sample to the collector which was tested for the presence of marijuana.⁸ Employee also took a breathalyzer test, administered by a certified technician employed by Lifeloc Technologies. Employee’s Blood Alcohol Concentration (“BAC”) from the Breathalyzer was .241 at 1:06 a.m. and .211 at 1:23 a.m.⁹ On November 12, 2019, Employee’s urine sample also came back positive for the presence of marijuana.¹⁰

On November 20, 2019, Agency issued a Proposed Separation notice, which included a *Douglas* factors¹¹ rationale worksheet to Employee, informing Employee that he would be separated for testing positive for alcohol and marijuana following a reasonable suspicion test conducted on October 23, 2019, pursuant to 6B D.C. Municipal Regulations (“DCMR”) sections 465.6 and 1605.4(h).¹² This matter was referred to a Hearing Officer. Upon review of Employee’s response to the Proposed Separation notice, the Hearing Officer issued his report on January 14, 2020, recommending that: (1) Employee be offered a Last Chance Agreement; (2) a penalty equal to a forty-five (45) day suspension; (3) failing the other two, a penalty of removal.¹³ On February 27, 2020, Agency issued its Notice of Separation. According to the Notice of Separation, Employee was terminated for the following reason:

1. On October 23, 2019, you submitted a breath sample. This sample tested positive for the presence of alcohol. (Positive drug test result, 6B DCMR §§ 435.6 and 1605.4(h)).¹⁴

Employee was terminated effective March 6, 2020. He filed the current appeal with OEA on April 9, 2021.

⁶ *Id.* at Exhibit 4.

⁷ *Id.* at Exhibit 5.

⁸ *Id.* at Exhibit 6.

⁹ *Id.*

¹⁰ Agency’s Brief Regarding Reasonable Suspicion Termination, *supra*, at Exhibit 1, page 29.

¹¹ *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

¹² *Id.* at Exhibit 1.

¹³ *Id.*

¹⁴ *Id.* It should be noted that although the proposed separation notice included the positive marijuana test result, the Notice of Separation only mentioned the positive alcohol test result as basis for the separation. As such, the undersigned will not use the positive marijuana test result in support of this cause of action.

Employee's Position

Employee does not deny that he tested positive for alcohol. He states that he is extremely sorry, and he is willing to do whatever it takes, including submitting to random drug testing to show his sincerity and compliance.¹⁵ However, Employee also argues that Agency did not follow the recommendation of the Hearing Office. Specifically, Employee notes that the Hearing Officer recommended 1) a Last Chance Agreement; 2) forty-five days suspension, and if the first two (2) options failed, then 3) removal. Employee also asserts that Agency did not consider mitigating circumstances such as his 12 years of service; his performance rating; and the fact that this was his first offense.¹⁶ He also states that Agency did not consider his personal circumstances during that period – losing his wife of nine (9) years; losing access to his son when his wife moved away; and his father's deteriorating health. Employee alleges that these family crises led to his drinking and marijuana use. He avers that he has almost completed his drug treatment, he is currently employed, but he desires to return to Agency.¹⁷ Employee also notes that he informed his supervisor of these issues about six (6) weeks prior to being tested for drugs and alcohol.¹⁸ Employee further states that he had a hostile relationship with his supervisor as a result of a conflict between his supervisor and Employee's uncle, a former Agency Manager.

Analyzing the *Douglas* factors, Employee argues that his actions were not intentional, but rather, as a result of his family crises, and it only occurred once. Employee reiterated that he had no corrective actions in his record. Employee notes that he did not receive a performance rating for two (2) of the three (3) years preceding the instant action. Employee argues that he has enrolled in the Employee Assistance Program ("EAP") and is expected to fully recover without further incident. Employee contends that Agency did not consider any mitigating factors such as his family issues, his disciplinary record, his show of remorse and the hostile work environment evidenced by disparate treatment from his supervisor. Employee reiterated that Agency acknowledged that a lesser action would deter similar future conduct by Employee.¹⁹

Citing to DPM section 1607.2, Employee maintains that the Table of Illustrative Actions allows for flexibility for a first offense. Given that this was his first offense, Employee contends that Agency failed to balance the totality of the relevant factors as required by the DPM. He reiterated that he should have received a lesser corrective action.²⁰

Employee also argues in his brief that Agency did not comply with the DPM. He argues that Agency did not consider progressive discipline. Employee contends that Agency disregarded a myriad of mitigating factors. He restated the arguments he made in his Petition for Appeal regarding the *Douglas* factors.²¹

¹⁵ Petition for Appeal (April 9, 2020).

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ Employee's Post Status/Prehearing Brief (May 13, 2021).

Employee further notes that he had approached his supervisor on more than one occasion admitting using marijuana and alcohol based on several critical hardships. Rather than the supervisor providing information to Employee which would have assisted him in overcoming these challenges and successfully continue with 12 years of service to District residents, the supervisor laid in wait for Employee to present to work, declared that Employee was observed manifesting the signs of drug use, and then instructed Employee to wait to be tested.²²

Employee explains that “he had been at work for 5 minutes and was talking to co-workers while getting a work assignment from the crew leader. In fact, when Employee signed in, the supervisor was not present. Supervisor then approached Employee and said, “[Employee] you ain’t going nowhere. You wait right here.” Employee waited for a few minutes and the supervisor returned with Human Resources Representative, Brittany Wright, and the person who administers drug tests.”²³ Employee argues that “it therefore is not credible that the key personnel just happened to be at the worksite when it is alleged Employee was observed in a manner which suggested drug use. Given that Employee had already confessed to drug use and asked the supervisor for help, it’s evident that supervisor had already arranged for the HR representative and drug test personnel to be on-site to test Employee.”²⁴

Employee contends that “Agency’s decision to terminate, in opposition to alternative recommendations of the hearing officer, would be justified only by aggravating factors, which were considered by the hearing officer who recommended the lesser penalties noted above.”²⁵ He challenged the penalty of removal, reiterating that this was his first offense and he was not given a lesser penalty as recommended by the Table of Illustrative Actions.²⁶

Employee asserts that the “DC Office of Human Resources (DCHR) revised Chapter the Comprehensive Merit Personnel Act (“CMPA”) Chapter 4 (Suitability) of Title 6 (Personnel), Subtitle B (Government Personnel) of the District of Columbia Municipal Regulations (DCMR) ... states, in relevant parts, “a safety sensitive employee who randomly tests positive for cannabis with no additional evidence of impairment will generally be subject to the following: (a) first offense: the employee shall be summarily subject to a 5-day suspension without pay...” 6BD CMR 429.3. Balancing the totality of the relevant factors established in §1606.2 can justify an action that deviates from the penalties in this section.” Employee submits that Agency should have imposed a penalty other than termination for the reasons as noted above.”²⁷

Agency’s Position

Agency argues that Employee did not file his Petition for Appeal within 30 days as prescribed by law, accordingly, OEA should dismiss the Petition for Appeal as untimely. Agency notes that, the effective date of Employee’s termination was March 6, 2020, Employee filed his

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

Petition for Appeal on April 6, 2020, more than 30 days from the effective date of the termination.²⁸ Accordingly, Employee's Petition for Appeal should be dismissed for lack of jurisdiction.²⁹

In its Post Status/Prehearing Conference brief, Agency asserts that Employee occupied a safety sensitive positions and was aware that he was subject to drug and alcohol testing. Agency states that Employee was referred for reasonable suspicion testing based on the observations of two supervisors, Cameron Washington ("Mr. Washington") and Gregory Minor ("Mr. Minor") around midnight on October 22, 2019. It avers that both supervisors completed reasonable suspicion forms describing their observations of Petitioner's behavior and appearance and contacted Agency's HR Specialist at home because of the late overnight hours.³⁰ Agency notes that both Mr. Minor and Mr. Washington have undergone management training for reasonable suspicion reporting.³¹ Agency states that when the HR Specialist arrived at Employee's worksite, she too observed that Employee was visibly intoxicated with slurred words, bloodshot eyes, swaying while standing and smelling of alcohol.³² Agency explains that at approximately 1:36 a.m. on October 23, 2020, Employee provided a urine sample to a certified collector to test for the presence of drugs. He also subjected himself to a breathalyzer administered by a certified technician employed by Lifeloc Technologies. The Breathalyzer was positive for alcohol and the urine sample came back positive for marijuana. Based on these positive alcohol and marijuana results, the District of Columbia Department of Human Resources ("DCHR"), the personnel authority, proposed that Employee be separated for violating 6B DCMR 435.6 and DPM 1605.4(h).³³

Agency contends that Employee's appeal must be dismissed for failure to state a claim because his termination action was properly supported by cause and was procedurally correct. Agency states that there is no question that Employee arrived at work in a highly inebriated state and he admitted as much to his supervisors.³⁴ Agency asserts that even if he had mentioned drug and alcohol abuse to his supervisors, Employee was fully aware of the fact that he was subject to drug testing and that counseling was available to him because he signed the statement admitting to being aware of his safety-sensitive status and he had actually gone to counseling for marijuana use before. Agency explains that the availability of EAP counseling or other drug counseling services was known to the Employee in October of 2019, whether he told his supervisor about a substance abuse problem or not. According to Agency, Employee was not singled out for adverse treatment due to any alleged conflict involving his uncle, nor was his personal information spread by DGS. Instead, it was determined that Employee was in violation of 6B DCMR 435.6 and DPM 1605.4(h) as a result of a reasonable suspicion referral for testing. Agency maintains that Employee was not singled out for a random drug test.³⁵

²⁸ Agency's Answer and Motion to Dismiss (July 27, 2020).

²⁹ *Id.*

³⁰ Agency's Brief Regarding Reasonable Suspicion Termination (April 22, 2021).

³¹ *Id.*

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

Agency further argues that the penalty of removal was consistent with the DPM's recommended range of disciplinary actions and DCHR and DGS' past actions in similar cases. Agency explains that, in reviewing a penalty, the OEA is not to substitute its judgment for that of the Agency. Rather, it must determine whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. According to Agency, the Table of Illustrative actions provides that the penalty for the first offense for violating DPM 1607(h)(3) "Reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance", ranges from 14 day suspension to removal.³⁶ Agency asserts that Employee, a safety-sensitive employee, reported to work severely inebriated on October 22, 2019. It claims that the Hearing Officer's recommendation determined that termination was the appropriate penalty for this offense and that this penalty was consistent with the disciplinary action taken against similarly situated persons. Citing to DPM 1623.2(a), Agency avers that the Deciding Official was not bound by the recommendation of the Hearing Officer.³⁷

Agency also asserts that the Hearing Officer's suggestion of a Last Chance Agreement and 45 day suspension is unavailable as a penalty for Employee because he occupied a safety sensitive position.³⁸ Citing to 6B DCMR § 435, which specifically addresses safety-sensitive positions, only allows for removal or reassignment to a non-covered position following a positive drug test, Agency maintains that a mere suspension and then subsequent continuation in a safety-sensitive position after a failed drug test is not permitted under Chapter 4 of the District regulations.³⁹ Agency also noted that it considered the *Douglas* factors, and included the worksheet to the Notice of Proposed Termination. It concluded that Employee's removal for a positive drug and alcohol test and reporting to or being on duty while under the influence of an illegal drug or unauthorized controlled substance is supported by cause, and removal is within the range of penalties for this offense.⁴⁰

1) Whether this matter should be dismissed as untimely

Agency argued in its Answer and Motion to Dismiss that Employee did not file his Petition for Appeal within 30 days as prescribed by law, accordingly, OEA should dismiss the Petition for Appeal as untimely. Agency notes that, the effective date of Employee's termination was March 6, 2020, Employee filed his Petition for Appeal on April 6, 2020, more than 30 days from the effective date of the termination.

A "[d]istrict government employee shall initiate an appeal by filing a Petition for Appeal with the OEA. The Petition for Appeal must be filed within thirty (30) calendar days of the

³⁶ *Id.*

³⁷ *Id.*

³⁸ Citing to *Franswello Russel v. DC Department of Public Works*, OEA Matter No. 1601-0030-20 (December 3, 2020, 2011).

³⁹ Agency's Brief Regarding Reasonable Suspicion Termination, *supra*.

⁴⁰ *Id.*

effective date of the action being appealed.”⁴¹ Although the District of Columbia Court of Appeals had previously held that the time limit for filing an appeal with an administrative adjudicatory agency such as this Office is mandatory and jurisdictional in nature,⁴² the Court of Appeals recently took a different approach to this issue. The Court of Appeals in *Sium v. Office of the State Superintendent of Educ.*, 218 A.3d 228, 231 (D.C. 2019), concluded that Employee’s failure to file an appeal with OEA within thirty (30) days, as specified in D.C. Code § 1-606.03(a), did not deprive OEA of jurisdiction to hear her case. The Court held that because the Council did not seek to curtail OEA’s jurisdiction through D.C. Official Code § 1-606.03, the 30-day deadline is not jurisdictional. Nonetheless, the Court of Appeals also noted that although its holding in *Sium* implies “that OEA was not required to dismiss Ms. Sium’s late-filed appeal outright, OEA was authorized to do so if OSSE “seasonably” objected to the untimeliness of Ms. Sium’s filing as a defense.”⁴³

In the instant matter, I find that Agency seasonably objected to the untimeliness of Employee’s Petition for Appeal as a defense, and it did not abandon its objection. Employee’s termination was effective on March 6, 2020. Accordingly, Employee had thirty (30) days from March 6, 2020, to file an appeal with OEA. On July 27, 2020, Agency filed a Motion to Dismiss Employee’s Petition for being untimely. Therefore, based on the reasoning in *Sium*, supra, OEA would not have jurisdiction over this appeal, since it was filed after the thirty (30) day filing deadline, and Agency objected to the untimeliness of Employee’s filing as a defense. However, due to the District of Columbia’s COVID-19 State of Emergency, all District of Columbia agencies, including OEA were ordered to work from home from March 13, 2020. OEA had a secure drop box at the front door for filings, and the filings were retrieved and processed approximately once a week. Employee’s appeal was retrieved from the drop box and stamped by OEA on April 9, 2020, three (3) days after the thirty (30) days filing deadline. It is reasonable to assume that Employee’s Petition for Appeal was placed in the drop box prior to the filing deadline and was only retrieved and stamped by OEA on April 9, 2020. Moreover, OEA specifically noted on its website that “... all filings made during this time period will be presumed timely.”⁴⁴ Consequently, I conclude that Employee’s Petition for Appeal is timely and Agency’s Motion to Dismiss is DENIED.

2) Whether Employee's actions constituted cause for discipline

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Furthermore, the District Personnel Manual (“DPM”) regulates the manner in which agencies in the District of Columbia administer adverse and corrective actions. DPM § 1602.1 provides that disciplinary action against an employee may only be taken for cause. Agency terminated Employee for violating 6B DCMR §§ 435.6 and 1605.4(h) – “...a positive drug or

⁴¹ DC Official Code §1-606.03.

⁴² See, e.g., *District of Columbia Public Employee Relations Board v. District of Columbia Metropolitan Police Department*, 593 A.2d 641, 643 (D.C. 1991); *Thomas v. District of Columbia Department of Employment Services*, 490 A.2d 1162, 1164 (D.C. 1985).

⁴³ Citing *Brewer v. District of Columbia Office of Emp. Appeals*, 163 A.3d 799, 802 & n.5 (D.C. 2017).

⁴⁴ <https://oea.dc.gov/release/oea-employee-telework-due-covid-19-coronavirus-precautionary-measures>

alcohol test shall render an individual unsuitable for District employment and constitute cause for purposes of Chapter 16 of these regulations” and “[u]nlawful possession of a controlled substance or paraphernalia or testing positive for an unlawful controlled substance while on duty” respectively.

In the instant matter, there is no dispute that Employee tested positive for alcohol after a reasonable suspicion referral on October 23, 2019. Employee was aware that as a safety-sensitive employee, he was subject to random testing. He was also aware of the EAP resources available to him as noted in the Individual Notification of Requirements for Drug and Alcohol testing for the Protection of Children and Youth form that he signed in December of 2012.

However, I take issue with Agency’s compliance with the reasonable suspicion testing regulations. Specifically, 6B DCMR § 432.7 provides that, *only* a trained supervisor or manager *shall* refer an employee for drug or alcohol testing (emphasis added). In the instant matter, Agency asserts that Employee was observed by two trained supervisors - Mr. Minor and Mr. Washington. Agency noted that both Mr. Minor and Mr. Washington had undergone management training for reasonable suspicion reporting. However, Agency did not provide any credible evidence in support of this assertion, such a training certificates awarded to these individuals for their completion of the aforementioned training; a training sign-in log signed by these individuals; or any other evidence to prove that these individuals were indeed trained reasonable suspicion supervisors. Instead, Agency provides this Office with an email chain between its HR and training staff scheduling a reasonable suspicion training for November 15, 2018. The names of these two supervisor, Mr. Washington and Mr. Minor are nowhere in the email. Although Employee was also observed by Human Resources Representative, Brittany Wright, she did not complete a reasonable suspicion observation form and there is no evidence in the record to prove that she was a trained reasonable suspicion supervisor or manager.

Moreover, on November 19, 2019, a year after the purported training, Agency’s HR Specialist, Britany Wright, emailed a DCHR trainer who was responsible for the 2018 reasonable suspicion training, requesting the following:

“I’m reaching out regarding the Reasonable Suspicion training that PCA facilitated for our managers about a year ago. We ran a report earlier this week to confirm which managers would require refresher training, and it looks like the employees who participated last year never received credit for completion. Might either of you have a copy of the sign in sheet from the training on 11/15/18 so we can get that over to DCHR-CLD?”⁴⁵

Agency does not include a follow-up email from the DCHR trainer or a sign-in sheet from the training. There is no evidence in the record to prove that Mr. Washington or Mr. Minor participated in the November 15, 2018, reasonable suspicion training. As previously noted, pursuant to OEA Rule 628.2, 59 DCR 2129, Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause and I

⁴⁵ Agency’s Brief Regarding Reasonable Suspicion Termination, *supra*, at Exhibit 4.

find that based on the evidence in the record, Agency has not met this burden. As such, in compliance with 6B DCMR § 432, I find that the reasonable suspicion drug and alcohol testing conducted on October 23, 2019, cannot stand.

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

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).⁴⁶ According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. Here, I find that since Agency did not comply with the requirement of 6B DCMR § 432, it has not met its burden of proof for the above-referenced charge, and consequently, the drug and alcohol tests that resulted from the reasonable suspicion referral, and the subsequent positive results are void. I therefore conclude that Agency cannot rely on these results or the associated cause of action to disciplining Employee.

ORDER

Based on the foregoing, it is hereby ORDERED that:

1. Agency's action of terminating Employee from service is **REVERSED**; and
2. Agency shall reinstate Employee and reimburse him all back-pay, and benefits lost as a result of his removal; and
3. 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/ *Monica N. Dohnji*

MONICA DOHNJI, Esq.
Senior Administrative Judge

⁴⁶ See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).