THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
RONALD WILKINS,	)	OEA Matter No. 1601-0251-09
Employee	)	
	)	Date of Issuance: September 18, 2013
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Ronald Wilkins ("Employee") worked as a Lieutenant with the D.C. Metropolitan Police Department ("Agency"). On June 16, 2009, Agency issued its final notice of adverse action to remove Employee, charging him with absence without leave ("AWOL"), untruthful statements, prejudicial conduct, and neglect of duty.[1] Employee challenged his termination by filing a Petition for Appeal with the Office of Employee Appeals ("OEA") on August 28, 2009.[2] He argued that Agency's action was arbitrary and capricious, not in accordance with the law, and not supported by substantial evidence. Therefore, he requested that Agency's action be reversed and that he be reinstated with back pay and benefits.[3]

[1] *Petition for Appeal*, p. 11 (August 28, 2009).
[2] Prior to filing an appeal with OEA, Employee appealed the final notice to the Chief of Police, who denied his appeal.
[3] *Id* at 3.

Agency explained in its Answer to the Petition for Appeal that its investigation revealed that Employee reported false hours of attendance between August 31, 2008 and September 13, 2008. Consequently, he was served with a notice of proposed adverse action. Thereafter, an Adverse Action Panel ("Panel") conducted a hearing and later found him guilty of all the charges. Accordingly, Agency argued that its action of terminating Employee was not arbitrary and capricious; it was in accordance with the law and supported by substantial evidence.[4]

After the matter was assigned to an Administrative Judge ("AJ"), the parties were ordered to submit legal briefs in support of their positions. Employee explained in his brief that he suffered from depression, and his absences were due to his sickness. He argued that the Panel's decision was not based on substantial evidence because it ignored his expert witness' testimony that his mental condition was the cause of his misconduct.[5] Furthermore, Employee asserted that under *Curtis Douglas v. Veterans Administration*, 5 M.S.P.R. 280 (M.S.P.B. Apr. 10, 1981) ("*Douglas"*) and Agency's own rules, the penalty was improper, arbitrary, and capricious.[6] Therefore, he requested that the final notice be set aside.

Agency reiterated in its brief that its decision was based on substantial evidence. It provided that it considered Employee's expert witness' testimony but found that it was only offered to excuse his misconduct.[7] Agency stated that it considered the *Douglas* Factors in its analysis and believed the penalty was proper and within the tolerable limits of reasonableness.[8]

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[4] *Respondent Metropolitan Police Department's Response to Petition for Appeal* (October 1, 2009).
[5] *Brief of Employee,* p. 15-18 (July 6, 2011).
[6] Additionally, Employee stated that Agency violated the laws under *Whitlock v. Donovan,* 598 F. Supp. 126 (D.D.C. 1984) *affirmed sub nom. Whitlock v. Brock,* 790 F.2d 964 (D.C. Cir. 1986) and the Rehabilitation Act of 1973.
[7] Agency submitted that Employee was aware of the rules, regulations, and protocols for requesting leave, and it was not until Agency disclosed Employee's misconduct to him that he claimed he suffered from a sickness. *Brief of the Metropolitan Police Department,* p. 11-17 (August 22, 2011).
[8] With regard to Employee's argument concerning the "firm choice" doctrine under *Whitlock,* Agency submitted that the court's holding only applies to employees suffering from alcoholism. As for Employee's argument regarding the Rehabilitation Act of 1973, Agency explained that Employee was not terminated because he suffered a mental

Accordingly, it requested that its decision be affirmed.[9]

On May 21, 2012, the AJ issued her Initial Decision. She ruled that under *District of Columbia Metropolitan Police Department v. Elton L. Pinkard*, 801 A.2d 86 (D.C. 2002), she was limited to reviewing the record previously established by the Agency Trial Board. She reasoned that she was charged with determining whether Agency's decision was based on substantial evidence; whether there was harmful procedural error; or whether its action was in accordance with applicable law or regulation. Accordingly, the AJ reviewed the record previously established and found that all of the charges levied against Employee were supported by substantial evidence. She further ruled that Agency was not required to adopt Employee's expert witness testimony when it issued its final decision.[10]

With regard to Agency's consideration of the *Douglas* Factors, the AJ found that although Agency considered all but one factor, there was no credible reason to disturb its analysis because there was substantial evidence to support its findings. Finally, the AJ found that the record did not reflect harmful or procedural error, and there was no credible reason to support a finding that Agency failed to act in accordance with the applicable law or regulation. As a result, Agency's termination action was upheld.[11]

On June 25, 2012, Employee filed a Petition for Review with the OEA Board. He argues that the Initial Decision is based on erroneous interpretations of statute, regulation, policy, and law. He further contends that the Initial Decision did not properly address all issues of fact and law raised on appeal. Specifically, Employee states that the AJ failed to address Agency's

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illness; he was terminated because he engaged in misconduct. Finally, Agency asserted that Employee had not provided any evidence for his claim that it failed to comply with the Metropolitan Police Department General Order 201, No. 28, Part I A. *Id.*, 20-28.

[9] *Brief of the Metropolitan Police Department*, p. 11-17 (August 22, 2011).

[10] *Initial Decision*, p. 10-16 (May 21, 2012).

[11] *Id.*

disregard for his expert's testimony. Employee avers that the AJ overly relied on the standard set by *Pinkard* and failed to ensure that Agency's decision properly applied the law. He opines that his matter is parallel to *Hammond v. Department of Human Services,* OEA Matter 1601-0080-88-P95, *Opinion and Order on Petition for Review* (May 22, 1998) in that he offered evidence that his absences were due to his mental condition, but Agency ignored this evidence and offered no alternative explanation for his misconduct. Additionally, he argues that the AJ failed to address the reasonableness of the penalty, explaining that Agency's analysis of the *Douglas* Factors was flawed because it ignored mitigating circumstances, as described in factor number eleven.[12] Therefore, Employee believes that the decision should be set aside.[13]

In response to the Petition for Review, Agency reasons that the Initial Decision was proper in holding that its final decision was based on substantial evidence and that the penalty was appropriate under the applicable law. Furthermore, Agency argues that *Hammond* is distinguishable from Employee's matter because the employee in that matter suffered from alcoholism and sought treatment prior to his removal; however, Employee's case is due to claims of mental illness.[14] Accordingly, Agency asserts that the Petition for Review should be denied and requests the Initial Decision be affirmed.[15]

A. *PINKARD* ANALYSIS

Generally, OEA has broad discretion on establishing procedures for handling appeals. However, that discretion is limited when the parties are under a collective bargaining agreement.

[12] He asserts that his mental condition, as submitted by his expert witness, was a mitigating factor and was the cause of his misconduct, but the AJ failed to consider this point. Employee further submits that the Initial Decision failed to ensure that Agency properly interpreted and applied the laws under the Rehabilitation Act of 1973, *Whitlock v. Donovan*, 598 F. Supp. 126 (D.D.C. 1984) *affirmed sub nom. Whitlock v. Brock*, 790 F.2d 964 (D.C. Cir. 1986), and the Metropolitan Police Department General Order 201, No. 28, Part I A.
[13] *Petition for Review,* p. 16-31 (June 25, 2012).
[14] Agency supports it position that this case is distinguishable by noting that Employee, after being confronted about his absences, provided fraudulent information.
[15] *Agency's Response to Employee's Petition for Review,* p. 11-30 (July 30, 2012).

The Court in *Pinkard* held that when there is a collective bargaining agreement involved, any appeal to OEA shall be based solely on the record established at the agency's hearing. *Pinkard* set forth the principle that under certain conditions, an Administrative Judge is bound by the record established at the agency level and may not conduct a *de novo* hearing if an employee files an appeal with this Office. The following conditions must be present to invoke the *Pinkard* standard:

1. The employee is an employee of either the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subjected to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement provides that when an employee has been granted a departmental hearing and subsequently files an appeal with this Office, any further appeal shall be based solely on the record established in the departmental hearing; and
5. At the agency level, Employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an employee's removal.

All of these conditions were met in the current case. The *Pinkard* Court held that where all of these conditions are present, OEA's review of an agency decision is then "limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations."[16] The Court also made clear that while considering these points, OEA may not substitute its judgment for that of an agency. Moreover, the Court held that OEA must generally defer to the agency's credibility determinations made during its trial board hearings.[17] Thus, the AJ properly decided against holding a *de novo* hearing in this case. As a result, she was charged with determining if

[16] *District of Columbia Metropolitan Police Department v. Elton L. Pinkard,* 801 A.2d 91-92 (D.C. 2002).
[17] *Id.*

the Trial Board's decision was supported by substantial evidence; if the action taken was in accordance with law or applicable regulations; and whether there was harmful error.

1. SUBSTANTIAL EVIDENCE

According to OEA Rule 633.3, the Board may grant a Petition for Review when the AJ's decisions are not based on substantial evidence or when the Initial Decision did not address all material issues of law and fact. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[18] After reviewing the record, this Board believes that Agency and the AJ's assessment of this matter were based on substantial evidence. We will address each charge individually below.

2. DECISION IN ACCORDANCE WITH LAW OR APPLICABLE REGULATIONS

a. AWOL

In accordance with General Order 120.21, Attachment A, Part A-10, Employee was removed on the basis of "AWOL (Absent Without Official Leave) i.e., reporting late for duty more than six (6) times within a one year period, an absence from duty without official leave in excess of the first four (4) hours of a scheduled tour of duty, or any unexcused absence from a scheduled duty assignment that is not in the category of lateness."[19] Agency claimed that Employee failed to appear at work for six days from August 31, 2008 through September 13, 2008. Employee even concedes during the Trial Board hearing that he was not present at work

[18] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).
[19] *Brief of the Metropolitan Police Department,* Tab E (August 22, 2011).

on any of the days in question. When asked why he did not report to work, he responded that he ". . . couldn't really explain why [he] didn't report to work on those times . . . [He] couldn't explain where [he] was. . . ."[20] Thus, Agency proved that Employee was indeed AWOL during the period in question.

However, Employee did offer a reason for his absence during this period. He provided that he was suffering from depression and high blood pressure.[21] The OEA Board has previously held in *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) 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. Employee contends that his depression should be viewed in accordance with the OEA Board's holding in *Hammond v. Department of Human Services*.

In *Hammond,* the employee was terminated for AWOL. He maintained that his absences were related to his illness associated with alcoholism. The OEA Board reversed agency's action against Mr. Hammond because it failed to provide reasonable accommodations for employee's alcoholism.[22]

However, this case is clearly distinguishable from *Hammond.* Although both employees claim illness as their reason for being AWOL, that's where the similarities end. In *Hammond,* agency was aware of employee's alcoholism. He enrolled in the D.C. Employee Counseling Service for a six-month period. Mr. Hammond also submitted a letter to agency from a social

[20] *Metropolitan Police Department Adverse Action Hearing Transcript*, p. 132 (May 4, 2011).
[21] *Id.,* 133, 135-138.
[22] *Hammond v. Department of Human Services,* OEA Matter 1601-0080-88-P95, *Opinion and Order on Petition for Review,* p. 1-4 (May 22, 1998).

worker providing that he completed an intense alcohol education and group counseling sessions. Moreover, Employee enrolled himself in two, in-patient hospitalization treatments, for which his physician provided a letter to agency. Thus, Mr. Hammond provided medical certificated establishing why he was AWOL.

Employee offered no documentation to Agency to make it aware of his illness. He explained during his investigation that he did not inform his supervisor that he was battling depression or hypertension.[23] Surprisingly, Employee admitted that he was not too ill to call his supervisor to tell them that he needed to take leave.[24] Therefore, Agency was unaware, at the time of the investigation, that accommodations needed to be made for Employee. Thus, this matter differs greatly from *Hammond*.

According to Employee, during the period in question, he had one hundred and thirty six (136) hours of leave available.[25] It is unreasonable for Employee to expect to be paid by the government for sixty-nine hours for which he did not work. He chose not to use his leave, but he instead intentionally reported that he worked during those hours. As previously provided, Employee admitted that he was not working and failed to request leave for this period. Based on these facts alone, this amounts to unexcused absence from a scheduled duty assignment. Thus, Agency proved that Employee was AWOL during the six days in question, and the record clearly establishes that the decision was based on substantial evidence.

b. Untruthful Statements

According to General Order 120.21, it is a violation for an officer to "willfully and knowingly make an untruthful statement of any kind in any verbal or written report pertaining to

[23] *Brief of the Metropolitan Police Department*, Tab G, Attachment #15, p. 33 (August 22, 2011).
[24] *Id.* at 43.
[25] *Id.* at 32.

his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer or making an untruthful statement before any court or hearing."[26] Moreover, General Order 201.26, Part 1-B-30 provides that "when questioned by a superior officer in connection with matters relating to the official business of the police department, subordinate members shall respond truthfully to questions by an agent or official of the Internal Affairs Division (IAD), even if the IAD agent is not of superior rank . . . ."

The real issue in this case is not that Employee may have legitimately been suffering from depression and hypertension; it is that he was untruthful about working for six days on his time and attendance report. When Employee was first confronted by an IAD agent with the time discrepancy, he initially said that the hours accurately reflected the time he worked.[27] It was not until he was confronted with evidence that he admitted that the time he reported was not accurate.[28] Thus, Agency proved that Employee was untruthful with an IAD agent.

c. Prejudicial Conduct to the Reputation and Good Nature of Agency

General Order 120.21, Attachment A, Part A-25 provides that a violation by a police officer includes "any conduct not specifically set forth in this order, which is prejudicial to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."[29] Agency alleges that Employee violated the General order by fictitiously reporting time for a six-day period and admitting to having not worked during the dates but instead remained at home. It is reasonable for this Board to deduce that this conduct would be prejudicial to Agency's

[26] *Brief of the Metropolitan Police Department,* Tab E (August 22, 2011).
[27] *Brief of the Metropolitan Police Department,* Tab G, Attachment #15, p. 22 (August 22, 2011).
[28] *Id.,* 32-33.
[29] *Brief of the Metropolitan Police Department,* Tab E (August 22, 2011).

reputation and good order. Employee was tasked to serve the public. Instead of providing the service for which he was being paid, he decided not to report to duty. Not only was this a major disservice to the public, but it was fraud.

d. Neglect of Duty

Finally, Agency claimed that Employee was guilty of neglect of duty. General Order 120.21, Attachment A, Part A-14 states that "neglect of duty to which assigned, or required by rules and regulations adopted by the Department."[30] Furthermore, General Order 101.9, Part 1. E7 provides that "lieutenants shall be governed by the provisions of this order as they apply to their assignment, and comply with the provisions of other department directives relative to their position." Agency proved that Employee failed to report to duty for six days during August 31, 2008 through September 13, 2008. It reasoned that Employee's conduct, as a sworn official, was contrary to that expected of members of Agency. Specifically, Agency established that Employee failed to carry out his assigned duties. This Board agrees that his behavior amounts to neglect of duty.

B. APPROPRIATENESS OF PENALTY

In addition to assessing if the appropriate regulations and laws were used in an adverse action against an employee, OEA must also determine if the penalty decided by an agency is appropriate. According to the Court in *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985), OEA 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.

1. Penalty within the Range Allowed by Law, Regulation, or Applicable Table of Penalties

General Order 120.21, Attachment A, Table of Offenses and Penalties outlines the

[30] *Id.*

penalties for various causes of adverse actions taken against Metropolitan Police Department employees.[31] The table lists the penalty for the first offense of AWOL to range from reprimand to removal. Thus, removal was within the range allowed by Agency. The penalty for the first offense of untruthful statements is a fifteen-day suspension to removal. Therefore, Employee could have been removed from his position solely on this basis as well. Finally, the penalties for prejudicial conduct and neglect of duty are reprimand to removal. Hence, it is clear that removal was the appropriate penalty in this case. Therefore, Employee could have been removed from his position for any of the charges levied against him by Agency.

As for Employee's argument that the penalty was arbitrary and capricious, 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."[32] 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.[33] Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (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

[31] *Brief of the Metropolitan Police Department,* Tab E, p. 24-25 (August 22, 2011).
[32] *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).
[33] *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. 1601-0062-08 (April 25, 2011).

> 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)).

This Board believes that Agency and the AJ's decisions were reasonable. Agency properly exercised its authority to remove Employee for cause, and the penalty of removal was within the range allowed by the regulation.

2. Consideration of Relevant Factors

The Court in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), provided that an agency should consider the following when determining the penalty of adverse action matters:

(1) the nature and seriousness of the offense, and it's relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
(2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
(3) the employee's past disciplinary record;
(4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
(5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
(6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
(7) consistency of the penalty with any applicable agency table of penalties;
(8) the notoriety of the offense or its impact upon the reputation of the agency;
(9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
(10) potential for the employee's rehabilitation;
(11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and

(12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Agency Trial Board applied these factors to the facts of Employee's case and found several reasons to remove him. It found that the nature and seriousness of the offense directly related to the job of Lieutenant. Agency reasoned that the charges proved "the inability of [Employee] to exercise sound judgment and restraint." It also determined that Employee possessed a propensity to operate outside of the laws, regulations, policies, and procedures for the police department because he engaged in repeated behavior that would adversely affect his relationship with his supervisors and subordinates. Agency found that although Employee was aware of the regulations and orders, he chose to be untruthful about his time and attendance. Because of the seriousness of the offense, it did not believe that Employee could be rehabilitated, nor could alternative sanctions deter his conduct.[34]

Employee claims that because Agency failed to discuss his expert witness' testimony in its findings, it did not consider mitigating factors when deciding his penalty. However, contrary to Employee's claims, Agency did consider mitigating factors while determining his penalty. It considered Employee's twenty-four year tenure; that he had no past disciplinary action taken against him; and that his supervisors thought that he was dependable and got along well with other officers.[35] Moreover, it must be noted that in accordance with Agency's Adverse Action Handbook, ". . . the Panel shall clearly articulate the mitigating factors when the Panel will *not* recommend that the member be terminated from the Department (emphasis added)." Thus, it was not a requirement that Agency include the mitigating factors it considered in written form because Employee was terminated. The Handbook only requires that the penalty involve a "responsible balancing of the relevant factors, to include the existence of any mitigating . . .

[34] *Brief of the Metropolitan Police Department,* Tab D, p. 15-16 (August 22, 2011).
[35] *Id.,* 14-16.

factors . . . ."[36] It is clear that Agency did consider the mitigating factors and balanced the relevant factors. Unfortunately for Employee, the mitigating factors were not enough to outweigh the other factors surrounding his removal.

As it relates to Employee's expert witness, the Court in *Metropolitan Police Department v. Ronald Baker,* 564 A.2d 1155 (D.C. 1989), provided that great deference to any witness credibility determinations are given to the administrative fact finder. In this case that would be the Trial Board. The Court in *Baker,* as well as the Court in *Baumgartner* found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Although it is hard to determine how much weight the Trial Board gave to witness testimonies, a reasonable mind would accept the credibility determinations made by Agency as adequate to support its decision to remove Employee. Consequently, this Board agrees with the Agency Trial Board's assessment and application of the *Douglas* factors.

1. Harmful Error

There was no harmful procedural error present when reviewing Agency's decision. Agency was able to prove through substantial evidence that Employee was properly removed; there was no harmful procedural error; and his removal was in accordance with laws and applicable regulation. Accordingly, Employee's Petition for Review is DENIED.

[36] *Petition for Review,* Exhibit #1, p. 13 (June 25, 2012).

ORDER

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

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

_____
A. Gilbert Douglass

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.