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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹)	
)	OEA Matter No. 1601-0002-24
v.)	
)	Date of Issuance: May 29, 2025
D.C. PUBLIC SCHOOLS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as an Educational Aide with the D.C. Public Schools (“Agency”). On August 21, 2023, Agency issued a Notice of Termination informing Employee that he would be removed from his position, charging him with violation of District of Columbia Municipal Regulations (“DCMR”) 5-E § 1401.2 (v) other conduct during and outside of duty hours that would affect adversely the employee’s or the agency’s ability to perform effectively. Agency alleged that Employee was indicted on charges including involuntary manslaughter. Agency explained that despite Employee not being convicted, the charges were of such a nature that they would shock the public conscience if disciplinary action were not taken and call into question Employee’s ability to effectively perform his duties as an aide. Consequently, he was terminated from

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

employment, effective September 5, 2023.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on October 5, 2023. He asserted that on February 28, 2022, Agency emailed him a letter informing him that he would be placed on administrative leave and that he may be placed on enforced leave on March 7, 2023, if his leave extended beyond five days. According to Employee, the involuntary manslaughter charge was dismissed on August 10, 2022. However, on August 21, 2023, Agency emailed him a notice of termination letter, which provided that he was terminated because he was indicted on the charge of involuntary manslaughter. To the contrary, Employee asserted that he was not indicted. Additionally, Employee contended that Agency improperly placed him on enforced leave without notice of its decision or notice of his appeal rights. He argued that Agency’s decision to terminate him was not supported by substantial evidence; it was procedurally erroneous; it was a violation of law and applicable regulations; and it failed to consider relevant factors when imposing its penalty. As a result, Employee requested that he be reinstated with back pay and benefits.³

On November 6, 2023, Agency filed its Answer to the Petition for Appeal. It asserted that Employee’s separation was warranted because he was arrested and charged with negligent homicide and involuntary manslaughter after he struck and killed a pedestrian. It was Agency’s position that although Employee was not convicted, it believed that the charges were of such a nature that they would shock the conscience if disciplinary action was not taken. Therefore, it reasoned that Employee was properly terminated.⁴

Prior to issuing an Initial Decision, the OEA Administrative Judge (“AJ”) ordered both

² *Petition for Appeal*, p. 24 (October 5, 2023).

³ *Id.* at 14-20.

⁴ *District of Columbia Public Schools’ Answer to Employee’s Petition for Appeal*, p. 1-2 (November 6, 2023).

parties to submit briefs on whether Agency had cause for the adverse action against Employee.⁵ In its brief, Agency argued that as an Educational Aide, Employee was required to exercise appropriate judgment both on and off duty. It asserted that it had cause to remove Employee because he was arrested, charged with a criminal offense, struck and killed a pedestrian, left the scene of an accident, admitted to drinking before the accident, and failed to report his arrest to Agency. Finally, Agency opined that the *Douglas*⁶ factors were properly considered in reaching its decision to terminate Employee. Therefore, it requested that its removal action be upheld.⁷

In his brief, Employee maintained that Agency did not have cause to terminate him. He argued that the criminal charges were dismissed by a District of Columbia Superior Court Judge, and thus, his removal action should be reversed because he was not indicted as Agency alleged. Additionally, Employee argued that Agency did not offer any evidence showing a nexus between his conduct and the efficiency of him performing his job. He also asserted that the *Douglas* factors

⁵ *Post Conference Order* (July 26, 2024).

⁶ The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board (“MSPB”) in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee’s duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee’s job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee’s past disciplinary record;
- 4) the employee’s past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 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.

⁷ *District of Columbia Public Schools’ Legal Brief*, p. 4-8 (August 20, 2024).

warranted the reversal of Agency's removal action.⁸

In his Initial Decision, the AJ found that there must be a nexus or a reasonable connection between an employee's conduct and their ability to perform their job or the ability for an agency to perform effectively. He found that Agency failed to demonstrate a nexus and noted that Employee's arrest occurred off-site and off-duty; the crime, of which he was absolved, had no relationship to his job; there was no evidence of public notoriety regarding his alleged crime other than the limited time his arrest was in the news; and there was no evidence that his work performance or relations with his superiors or colleagues were negatively affected by Employee's arrest. The AJ also opined that Agency failed to present any evidence that Employee was indicted. Accordingly, the AJ relied on the Court of Appeals ruling in *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994), which held that employees can be expected to defend only against the charges which were levied against them.⁹

Agency disagreed and filed a Petition for Review on December 23, 2024. It argues that as an Education Aide, Employee was required to exercise sound and appropriate judgment both on and off duty. Agency contends that Employee's actions surrounding his arrest were alarming and that his behavior was inconsistent with what Agency expects of its staff. It also notes that Employee advised police officers that he thought that he may have hit someone and that he was drinking prior to his arrest. Finally, Agency asserts that Employee failed to report his arrest to

⁸ *Employee Reply Brief in Support of Appeal of the District of Columbia Schools' (DCPS's) Unlawful Termination of His Position as a Pre-School Aide*, p. 11-22 (September 20, 2024). Agency filed a Sur-Reply on September 27, 2024. It argued that Employee was not separated pursuant to 5-E DCMR §1401.2 (m) conviction of a felony, but he was separated pursuant to 5-E DCMR § 1401.2(v), other conduct during and outside of duty hours that would affect adversely the Employee's or the Agency's ability to perform effectively. Thus, it reasoned that the dismissal of the criminal charges bore no weight on Agency's decision to terminate Employee. Additionally, Agency contended that a nexus was established between Employee's off-duty conduct and his employment with Agency. It, again, explained that as a role model to students, peers, and the community, Employee was responsible for exercising sound, reasonable, and appropriate judgment on and off duty. Finally, Agency opined that the penalty was appropriate under *Douglas*. *District of Columbia Public Schools' Sur Reply*, p. 1-3 (September 27, 2024).

⁹ *Initial Decision*, p. 4-6 (November 19, 2024).

Agency. Thus, it requests that the OEA Board overrule the Initial Decision or remand the matter to address issues outlined and convene an evidentiary hearing.¹⁰

On January 27, 2025, Employee filed a response to Agency's Petition for Review. It explains that a dismissed arrest for lack of probable cause is not an indictment. Thus, as the AJ ruled, it is Employee's position that Agency failed to prove that he was indicted. As it relates to a nexus, Employee asserts that he was involved in a car accident that he did not cause and could not avoid while he was off duty. He contends that Agency's vague references to the local media story and staff discussions about Employee's arrest, do not establish a nexus. Employee also notes that Agency failed to show how his arrest and subsequent dismissed criminal case impacted its efficiency. Consequently, Employee requests that this Board affirm the Initial Decision and order that he be reinstated with back pay and benefits and awarded attorney's fees.¹¹

Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. 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 they 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.¹²

Cause

OEA has held and the Superior Court for the District of Columbia and D.C. Court of

¹⁰ *District of Columbia Public Schools' Petition for Review*, p. 3-6 (December 23, 2024).

¹¹ *Employee [] Answer to the District of Columbia Public Schools' Petition for Review*, p. 13-29 (January 27, 2025).

¹² *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).

Appeals have consistently affirmed, that an employee must be aware of the charges for which they are penalized to appropriately address or appeal those charges.¹³ The Superior Court for the District of Columbia has held that in accordance with *D.C. Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994), an employer is required to provide an employee, against whom an adverse action is recommended, with advance written notice stating any and all causes for which the employee is charged and the reasons, specifically and in detail, for the proposed action. The Court in *Frost* also held that the purpose of requiring a specification of the details is to apprise the employee of the allegations he or she will be required to refute or the acts he or she will have to justify, thereby affording the employee a fair opportunity to oppose the proposed removal.

In the current case, Agency provided in its advanced notice that Employee “engaged in activity that led to criminal charges for a crime that bears a relationship with your position”¹⁴ There were no other details offered in this notice which was issued prior to Agency’s final notice of termination. In Agency’s final notice, it provided the grounds and reason for its charge against Employee and its analysis of the *Douglas* factors. The notice provided the following:

The grounds and reason for your termination are as follows:

Grounds: Violation of 5-E DCMR § 1401.2(v) other conduct during and outside of duty hours that would affect adversely the Employee’s or Agency’s ability to perform effectively.

¹³ *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0012-24 (February 18, 2025); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0027-24 (July 10, 2024); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0050-23 (March 15, 2024); *Craig Royal v. D.C. Metropolitan Police Department and D.C. Office of Employee Appeals*, 22-CV-0220 (D.C. 2024); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0025-22 (June 1, 2023); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0060-22 (May 8, 2023); *Employee v. D.C. Fire and Emergency Medical Services*, OEA Matter No. 1601-0040-21, *Opinion and Order on Petition for Review* (January 19, 2023); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0046-21, *Opinion and Order on Petition for Review* (January 19, 2023); *Employee v. D.C. Department of Employment Services*, OEA Matter No. 1601-0001-20 (January 3, 2023); *Employee v. D.C. Department of Transportation*, OEA Matter No. 1601-0054-19 (January 14, 2021); *Office of the Attorney General for the District of Columbia v. D.C. Office of Employee Appeals*, 2019 CA 5286 P(MPA)(D.C. Super. Ct. July. 2, 2020); and *Sefton v. D.C. Fire and Emergency Services Department*, OEA Matter No. 1601-0109-13 (August 18, 2014).

¹⁴ *Agency’s Response to Employee’s Request for Production of Documents*, Tab #8 (March 4, 2024).

Reasons: On February 24, 2022, you were indicted on charges including: involuntary manslaughter. Despite not being convicted, these charges are of such a nature that they would shock the public conscience if disciplinary action were not taken, and call into question your ability to effectively perform your duties as an aide.

As the AJ correctly held, Employee was not indicted on the alleged involuntary manslaughter charge. This Board also finds that there is substantial evidence to uphold the AJ's rulings that Agency failed to demonstrate a nexus and noted that Employee's arrest occurred off-site and off-duty; the crime, of which he was absolved, had no relationship to his job; there was no evidence of public notoriety regarding his alleged crime; and there was no evidence that his work performance or relations with his superiors or colleagues were negatively affected by the arrest.

Consequently, Agency did not have cause to terminate Employee. It also failed to establish a nexus between Employee's conduct and his ability to effectively perform his duties as an aide. As a result, this Board denies Agency's Petition for Review and upholds the Initial Decision which ordered that Employee be reinstated with back pay and benefits.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**, and the Initial Decision is **UPHELD**.

FOR THE BOARD:

Dionna Maria Lewis, Chair

Arrington L. Dixon

Lashon Adams

Jeanne Moorehead

Pia Winston

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.