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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANTWAINE PUTNEY,)	
Employee)	OEA Matter No. 1601-0100-09
)	
v.)	Date of Issuance: February 28, 2012
)	
D.C. DEPARTMENT OF)	
MOTOR VEHICLES,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Senior Administrative Judge
_____)	
Clifford Lowery, Union Representative)	
Charles Tucker, Esq., Agency Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Antwaine Putney (“Employee”) was a Motor Vehicle Inspector in the Department of Motor Vehicles (“DMV” or the “Agency”). Employee was removed effective on March 11, 2009, upon a charge of committing an “on duty act that interferes with the efficiency or integrity of government operations (malfeasance and neglect of duty)” ((DPM 1603.3 (f) (7) and (3)). Employee was also charged with an “on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law” (DPM 1603.3 (e)). According to Agency, its Service Integrity Office (“SIO”) conducted an investigation during the period of April 1, 2008 through September 30, 2008. Through that investigation, Agency discovered that Employee misused his official position as a vehicle inspector to conduct four fraudulent vehicle inspections.

On March 17, 2009, Employee filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”). Employee denies conducting any fraudulent inspections. Employee explained that vehicle inspection results can be impacted by a variety of factors other than fraudulent activity. Employee also maintains that Agency should have effected corrective action or retraining to ensure that employees were following proper procedure when inspecting vehicles. He denied receiving any benefit from the alleged fraudulent inspections and noted the absence of any customer statements from Agency’s investigation results. Employee also cites

his previous history at Agency as grounds for a lesser penalty.

This matter was originally assigned to Administrative Judge Sheryl Sears; however, she retired from service before this matter could be adjudicated. This matter was then reassigned to the Undersigned. The Undersigned held a Status Conference in order to ascertain the pertinent issues in this matter as well as plan for an evidentiary hearing. However, due to constraints within the OEA's budget, this matter was held in abeyance until a time where the OEA could afford to hold an evidentiary hearing in this matter. Once the OEA's budget stabilized, an evidentiary hearing was held in the above-captioned matter on December 7 and 14, 2010. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUES

1. Whether the Agency's adverse action was taken for cause.
2. If so, whether the penalty was appropriate under the circumstances.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

Summary of the Testimony

Agency's Case in Chief

Horniman Orjisson

Horniman Orjisson (“Orjisson”) testified in relevant part that he is employed by the DMV as a Supervisor. He has held this position for the past three years. *See* Transcript (“Tr.”) at 14 – 16. Orjisson’s daily duties include supervising his subordinates located at the Southwest Vehicle Inspection Station. Employee was one of the subordinate employees that Orjisson was tasked with supervising. *Id.* Orjisson became aware that fraudulent vehicle inspection of for-hire vehicles may have occurred at the inspection station. On multiple occasions, he admonished his subordinate vehicle inspectors to conduct their on-the-job duties above board. *See generally* Tr. at 17 – 20. Orjisson revealed that a new on-board diagnostic (“OBD”) testing system was implemented in 2005. This new system collected and stored vehicle data e.g. Vehicle Identification Number (“VIN”), make and model, and the various times the vehicle was tested. Moreover, the computer system would retain the vehicle history of the type(s) of tests that were conducted on each vehicle. *See* Tr. at 20 – 23. Orjisson also explained that each vehicle inspector is given a unique identification number (“ID”) with which they are to use to log onto the testing system. *See* Tr. at 33 – 40. Employee’s unique ID was 8594. *Id.* Employee was repeatedly admonished about safeguarding his ID number. He was further instructed to log off of the testing system whenever he left his station (e.g. bathroom break). *Id.* According to Orjisson, a for-hire (e.g. taxicab or limousine) vehicle inspection consists of the vehicle inspector entering the vehicle information into the DMV’s computer system, then a safety inspection, then the vehicle OBD system is tested, and a brake test. An inspection sticker is given to vehicles that adequately pass all of these tests. *See* Tr. at 48 – 51. According to Orjisson, each lane should have a Lane Chief who oversees the inspection process and is the one who issues the inspection sticker. *Id.*

Gregory Simpson

Gregory Simpson (“Simpson”) testified in relevant part that he is employed by the DMV as an Inspection Station Manager. He described his job related duties as follows:

To ensure that the inspection process is followed to the fullest as directed by the [DMV]; to ensure that customers and their inspection process is expedited; to make sure that customers are treated in a tactful, professional [manner]; and to ensure that the inspection process is done in a professional manner also. Tr. at 61.

Simpson supervises Orjisson, who in turn supervises the vehicle inspectors. *See* Tr. at 62. As a result of a DMV internal investigation, it was alleged that Employee conducted fraudulent vehicle inspections. According to Simpson, the investigation involved a search of the Gordon-Darby database. This database chronicles every vehicle inspection conducted at the inspection station. Further, the vehicle inspection history can be extracted according to an employee’s ID number. Simpson confirmed that Employee’s ID was 8594. *See* Tr. at 62 – 65.

Through Gordon-Darby, the Agency was able to track the inspection histories of every vehicle as well as link that history to the vehicle inspector(s) that conducted those inspections. *See* Tr. at 73 – 82. Agency’s Exhibit No. 5 is a printout from Gordon-Darby of a for-hire vehicle inspection conducted by Employee. This exhibit depicts one of the instances where it is alleged that Employee conducted a fraudulent vehicle inspection. *See* Tr. at 74 – 79. Simpson explained that this exhibit indicates that Employee performed an OBD test on a Pontiac Grand Am but logged that resulting pass on a Lincoln Town Car. According to Simpson, this was a prime example of Employee committing fraud. *Id.* Agency’s Exhibit No. 7 is another printout from Gordon-Darby of a for-hire vehicle inspection conducted by Employee. This exhibit depicts another instance where it is alleged that Employee conducted a fraudulent vehicle inspection by using a different vehicle to conduct the OBD test. *See* Tr. at 81 – 86. Agency’s Exhibit No. 6 is another printout from Gordon-Darby of a for-hire vehicle inspection conducted by Employee. This exhibit depicts another instance where it is alleged that Employee conducted a fraudulent vehicle inspection by fraudulently denoting a for-hire vehicle as a commercial vehicle in Gordon-Darby. Simpson explained that a commercial vehicle is subjected to a less frequent timeline for testing than a for-hire vehicle. *Id.*

Michael Montgomery

Michael Montgomery (“Montgomery”) testified in relevant part that he currently works for the Office of the Inspector General as a Criminal Investigator. Prior to his current stint with the Office of the Inspector General, Montgomery worked as an Investigator with the DMV in its Office of Service Integrity (“OSI”). *See* Tr. at 109 – 111. While at the DMV, Montgomery was tasked with investigating allegations of fraud, waste and abuse. *Id.* Montgomery conducted an investigation from April through September 2008 into whether DMV vehicle inspectors were conducting fraudulent vehicle inspections of for-hire vehicles. *Id.* Montgomery coordinated his investigative effort with Dr. Michael St. Denis, who assisted Montgomery with identifying fraudulent vehicle inspections within the Gordon-Darby database.

Montgomery explained that he knew from consultation with Dr. St. Denis that when certain makes and models¹ of vehicles were inspected, they were always supposed to read “supported” on the inspection system used by the DMV. For the time period that the investigation covered, Employee inspected approximately 24 vehicles that read “unsupported” where it was deemed to be scientifically impossible for that reading to occur for the vehicles tested. *See* Tr. at 123 – 134.

Montgomery authored a report that detailed his findings with respect to his investigation into the alleged fraudulent vehicle inspections which occurred at the Southwest Vehicle Inspection Station from April 1, 2008, through September 30, 2008. This report may be found in the record at Agency’s Exhibit No. 8. This report detailed the results of Montgomery’s investigation as it relates to Employee. In this report, Montgomery determined that Employee conducted four fraudulent inspections where he was the sole vehicle inspector logged onto both stations 1 and 2. Montgomery also found that Employee conducted approximately 20 other

¹ Montgomery’s investigation focused exclusively on Lincoln Town Cars, Ford Crown Victoria’s and Mercury Grand Marquis’.

vehicle inspections where he was working with another colleague. *See* Tr. at 133 – 141; *See also* Tr. at 349 – 358. In assessing when a fraudulent inspection occurred, Montgomery was looking for a vehicle that initially failed inspection with a distinct OBD “fingerprint” in Gordon-Darby and then that same vehicle would then be inspected seconds later where the vehicle passed with a different OBD “fingerprint”. For the vehicles that were part of this investigation, it was deemed scientifically impossible for a vehicles’ OBD “fingerprint” to change from one test to the next. It was determined that when this occurred, another vehicle was used to fraudulently circumvent the OBD test. *Id.* Based on the fruits of his investigation, Montgomery believes that Employee conducted fraudulent vehicle investigations as detailed in Agency’s Exhibit No. 8. *See* Tr. at 146 -147; *See also* Tr. at 374.

Montgomery was recalled as a witness on behalf of the DMV. With respect to the OBD diagnostic test, Montgomery explained that the information inputted by the inspector (e.g. VIN, license plate number) will not affect how Gordon-Darby performs that diagnostic test. *See* Tr. at 349 – 351. The vehicle information and the results of the OBD diagnostic test are independent of each other. *Id.*

Dr. Michael St. Denis²

Dr. Michael St. Denis (“St. Denis”) testified in relevant part that he owns Revecorp, Incorporated (“Revecorp”). This company’s is primarily focused on reducing air pollution and conducting research into vehicle emissions. *See* Tr. at 169 - 171. St. Denis holds a BS in Chemistry from the University of the Pacific, a MS in Physical Chemistry from the University of the Pacific, and a Doctorate in Environmental Science Engineering from the University of California Los Angeles. *Id.* Furthermore, St. Denis has done vehicle emissions research for the United States Environmental Protection Agency (“EPA”). Moreover, St. Denis has “written U.S. EPA’s guidance on how to audit test systems, how to audit vehicle inspection programs, how to look at data for fraud.” Tr. at 171.

In 2005, St. Denis contracted with the DMV to find, procure and install a new data system (Gordon-Darby) for vehicle emissions inspections. St. Denis “helped come up with the design for the system so it would collect information that would help [the DMV] to carefully look at what the inspectors were doing so that [the DMV] could see if inspections looked suspicious.” Tr. at 176. St. Denis trained Montgomery and Bob Johnson on how to look at the data in Gordon-Darby in order to properly identify fraudulent inspections. *Id.* As part of the training St. Denis showed them how the OBD system in a vehicle operates, what data it collects and the fact that certain data in the OBD system acts as a fingerprint that will identify one vehicle from other makes and models of vehicles. *See* Tr. at 176 – 178. St. Denis explained that that “the fingerprint of the vehicle shouldn't change. Regardless of the vehicle [that was tested]

² DMV proffered St. Denis as an expert witness in the field of vehicle emissions testing and auditing of emissions testing and with respect to the Gordon Darby vehicle emissions system used by the DMV to test vehicle emissions. *See* Tr. at 169 – 175. The Undersigned decided not to accept St. Denis as an expert witness due to the fact that St. Denis and the DMV have a contractual relationship wherein he provided technical expertise to the DMV so that it could find, procure and implement its current vehicle emissions testing system. The *appearance* of bias is too great to allow for St. Denis’ testimony to be accepted as an expert. *Id.* However, St. Denis was allowed to testify otherwise in this matter and the undersigned will weigh his testimony appropriately given the circumstances.

before or after or whatever, if we have two records for the same vehicle, identification number, if that vehicle is tested twice, it should just not change at all." Tr. at 196.

St. Denis was questioned about Agency's Exhibit No. 8. The following excerpt from the transcript is relevant to the instant matter:

Q: I will ask you to take a look at Agency Exhibit No. 8. I am going to ask you to turn to page 76. Do you recognize that document?

A: Yes.

Q: What do you recognize that document to be?

A: This is a memo that I wrote to [Montgomery] at DMV. He asked for documentation as to how they could use something that proved that if OBD data changed how we would know that it was a different vehicle and how that related back to guidance documents and what the EPA required and how the vehicles were built so I tried to document how you could tell the difference between a car that had been inspected when another vehicle was used to inspect in place of that vehicle.

Q: Drawing your attention now to page 57, in that particular chart where it indicates, there is a portion of the chart that indicates OBD fraud indicators where it shows a 2003 Crown Victoria coming in with a ready reading and then an EGR reading of ready as a failed inspection and then coming back nine minutes later as unsupported consistent with a 2001 Volvo S40 also reading unsupported, is that what you're indicating? Is that something like what you were discussing in your memo?

A: Yes. The way the vehicles are designed is that these monitors, the heated oxygen, and exhaust gas recirculation ("EGR") for instance is hardware that's built onto the car and the computer is designed to check that system continuously while the car is operating.

So it is basically part of the car; and electronically when you ask it, is that system working, it responds, in this case ready means, yes, it is there and, yes, I've checked it.

The second inspection where it says unsupported, that car did not have [EGR] on it and the computer doesn't believe that car has it.

And since these were done nine minutes apart, it's unlikely that those two tests were the same vehicle simple because even if it was removed from the car, you have to reprogram the computer to know the difference between them, and that code is pretty much locked down by the car company so you can't get access to it.

Q: So this could not be explained by a mistake or anything resembling human error?

A: These two vehicles, the first and second one listed there, the one at 6:20 and at 6:29 were not, those tests did not come from the same vehicle, no.

Tr. at 178 – 180.

St. Denis went on to explain that the OBD fingerprints for the Ford Crown Victoria, the Lincoln Town Car and the Mercury Grand Marquis (model year 1996 or newer) should always read supported during the OBD diagnostic test. *See* Tr. at 183 – 187. During cross examination, St. Denis maintained that the alleged incidents of fraud cited by the Agency in this matter cannot be attributed to mistake or human error. *See* Tr. at 187 – 189. After examining Agency's Exhibit No. 8 and 9, St. Denis confirmed that the instances cited by the Agency against Employee constituted fraud in the vehicle inspection process. *See* Tr. at 193 – 194. St. Denis explained that the investigative methodology that the DMV used to uncover the instant fraud is used by practically every other State in policing their own vehicle inspection practices. *See* Tr. at 194 – 196.

Robert Johnson

Robert Johnson (“Johnson”) testified in relevant part that he is an Investigator with the OSI. Johnson assisted Montgomery in his investigation. *See* Tr. at 201 – 207. Johnson was tasked with assisting Montgomery with pulling documents and records as part of this investigation. Johnson searched the Gordon-Darby system for for-hire vehicle inspections that were conducted that were notated as “unsupported” in the system. Johnson then turned over the information he collected to Montgomery. *Id.*

Kenneth King

Kenneth King (“King”) testified in relevant part that he is employed by the DMV as its Administrator for Vehicle Services. *See* Tr. at 208. King supervises Orjisson who in turn supervised Employee. *See* Tr. at 216. Through the fruits of the investigation carried out by the OSI, King learned that Employee was one of his subordinates who conducted fraudulent vehicle inspections. *See* Tr. at 201 – 210. After reviewing the report that was entered into evidence as Agency's Exhibit No. 8, King started processing Employee's termination. In furtherance of his decision to remove Employee from service, King created Employee's Advance Written Notice for Proposal to Remove. *See* Agency's Exhibit No. 8 at 47. King felt that Employee's actions were egregious and undermined the Agency's integrity. Moreover, Employee's actions presented a danger to the public at larger particularly the driver and passengers of these fraudulently inspected for-hire vehicles. *See* Tr. at 210 – 215. King asserts that Employee's acts as alleged constituted fraud and that his removal from service was warranted. *Id.*

Lucinda M. Babers

Lucinda M. Babers (“Babers”) testified in relevant part that she is the Director of the DMV. *See* Tr. at 219. She is tasked with overseeing the Agency. Babers was made aware that Employee was conducting fraudulent vehicle inspections through the investigative efforts of the OSI – in particular Montgomery, Johnson, and St. Denis. *See* Tr. at 220 – 227. The Agency tried to ensure that all of its vehicle inspectors were properly trained to perform their assigned duties. *Id.* They accomplished this by having numerous training sessions and staff meetings where it was stressed, among other things, that all employees must uphold the integrity of the Agency by conducting their on-the-job duties correctly. *Id.* Babers confirmed that Employee received continual training as evinced by Employee's participation in numerous DMV sponsored training courses and staff meetings. *See* Tr. at 222; *See also* Agency's Exhibit No. 2.

Relative to the removal action taken against Employee, Babers reviewed Employee's Advance Written Notice for Proposal to Remove and the investigative report compiled by the OSI that detailed the allegations of fraud attributed to Employee. After taking all of the pertinent facts and circumstances into account, Babers agreed with King's proposal and its conclusions and decided to terminate Employee. *See* Tr. at 228 – 231; *See also* Agency Exhibit No. 8. Babers does not regret her decision to remove Employee from service. *See* Tr. at 232.

Employee's Case In ChiefKevin Brown

Kevin Brown ("Brown") testified in relevant part that he is currently employed by the DMV as a Vehicle Inspector. He has worked for the DMV for approximately 10 years. *See* Tr. at 248 – 249. Employee was one of the persons that trained Brown on how to do his job. Brown has never witnessed Employee accepting anything of value in exchange for providing a fraudulent inspection. *See* Tr. at 249. Brown described various circumstances where, in the performance of his duties, he would have to retest a vehicle e.g. the tag is wrong or the VIN on the door is different than the one in the car. *See* Tr. at 253 – 254. Brown testified that the lead inspector is the one who issues the inspection sticker at the end of the vehicle inspection. *Id.* Furthermore, Brown recalled that there have been instances where the lead inspector has ordered that a vehicle be retested. *Id.*

During cross examination, Brown confirmed that Orjisson and Simpson conducted multiple meetings with the vehicle inspectors about various work related topics including, but not limited to, being accurate with respect to the information that the inspector enters into the database and safeguarding ones ID and password.

Kelvin Fuller

Kelvin Fuller (“Fuller”) testified in relevant part that he is employed by the DMV as a Main Motor Vehicle Inspector. He has worked for the DMV for 29 years. Fuller is also the

Sergeant-At-Arms for the Union³. Prior to his stint as Sergeant-At-Arms, Fuller was the Chief Shop Steward for three years. *See* Tr. at 271 – 274. Fuller has not recalled representing a member in his shop who was facing allegations of fraudulent vehicle inspections. *Id.* Fuller indicated that he has never witnessed Employee taking favors in exchange for passing a vehicle fraudulently. *Id.* Fuller confirmed that it is the Lane Chief's responsibility to give a vehicle its passing certification sticker. *See* Tr. at 275. Because of the large volume of work, Fuller admits that occasionally inadvertent mistakes happen in the vehicle inspection process. *See* Tr. at 276.

Antwaine Putney

Antwaine Putney ("Employee") testified in relevant part that prior to his removal he had worked for the DMV for ten years. *See* Tr. at 296. Employee confirmed that Orjisson held numerous meetings during which he cautioned his subordinates against conducting fraudulent vehicle inspections. At the time, Employee did not believe those warning were directed towards him. *See* Tr. at 297 – 308. Employee could not readily explain why he was listed as the only Employee who committed the fraudulent inspections as described by the Agency. He went on to speculate that it was due to either him taking a break or possibly a shift change. *Id.* As for the allegation that one vehicle was used to pass another fraudulently, Employee indicated that the vehicle inspection lanes sometimes get overcrowded and the inspectors are not paying attention to the vehicle information that is being inputted. *Id.* Moreover, Employee contends that he is not the one responsible for issuing a passing certification sticker – that responsibility belongs to the Lane Chief. *Id.* Employee was unaware of any mechanism of determining whether an OBD diagnostic retest was ordered by the Lane Chief. *See* Tr. at 301 – 303. Employee admitted that he had been adequately trained by DMV on how to properly conduct a vehicle inspection. *See* Tr. at 305 – 315.

Employee was recalled as a witness by the Agency. During this phase of questioning, Employee admitted that he recognized Agency Exhibit Nos. 5, 6, and 7. Moreover, Employee admitted that he was the sole inspector logged into stations 1 and 2 for each inspection depicted by those exhibits. *See* Tr. at 2342 – 344.

Curtis Thomas

Curtis Thomas ("Thomas") testified in relevant part that he has worked for the DMV for 39 years. *See* Tr. at 321. Currently, he is employed as a Senior Inspector. Thomas has been tasked with training other inspectors on how to properly perform their on-the-job duties. *See* Tr. at 324 – 328. Thomas never witnessed Employee take anything of value in exchange for conducting a fraudulent vehicle inspection. *See* Tr. at 339.

Findings of Fact

The Agency presented oral testimony from several persons who, both individually and collectively, repeatedly counseled Employee (and his colleagues) about the importance of

³ Although he did not expressly indicate which Union, the Undersigned presumes that Fuller is a representative of AFGE Local 1975.

exercising integrity in their job-related duties. Orjisson, Simpson, and King confirmed that Employee and his fellow vehicle inspectors attended several DMV sponsored training classes in an effort to make sure that each attendee was well versed in the mechanics of performing their job-related duties in a workmanlike manner. These three witnesses also confirmed that Employee attended several DMV sponsored meetings over the course of several years wherein it was stressed that the fraudulent activities in question were not to be tolerated. Employee was repeatedly counseled that the actions alleged herein would not be condoned and that the offending employee would face severe sanctions.

In an attempt to make sure that the vehicle emissions inspection process was done in a manner that was compliant with EPA demands, as well as making sure that the District government did not lose out on Federal grant monies tied to emission guidelines, Babers contracted with St. Denis to find and then implement the Gordon-Darby vehicle emission testing system. When this new system was instituted, it became a more manageable process for tracking emissions as well as rooting out fraudulent vehicle inspections. Babers then tasked St. Denis, Montgomery, and Johnson with investigating whether fraudulent inspections were being conducted at the Southwest Vehicle Inspection Station. In order to accomplish this task, St. Denis advised Montgomery of some of the best practices which were widely accepted nationwide in order to effectively determine whether fraudulent vehicle inspections were occurring. This process would focus on whether certain vehicles would register within the Gordon-Darby system as "unsupported". What was discovered is that certain makes and models of vehicles should never come back as unsupported by the Gordon-Darby system. In order to make sure that the data set was not too onerous for the OSI to investigate, the investigation only focused on vehicle inspections that occurred during the time period of April 1, 2008 through September 30, 2008. The OSI then further focused their investigation by reducing that list of inspections to certain makes and models (primarily Ford vehicles) that were registered as for-hire (taxi) vehicles. What the investigation uncovered was that DMV employee identification number 8594 (Employee herein) registered approximately 4 instances where a vehicle read as unsupported, but according to the vehicle's make and model that is virtually an impossible occurrence.

For his part, Employee firmly denies that he actively participated in fraudulent vehicle inspections.

During the evidentiary hearing, I had the opportunity to observe the poise, demeanor and credibility of both the Agency's witnesses and Employee's witnesses in this matter. I find that the Agency's collective testimony relative to this matter was more credible and persuasive than Employee's rendition of events. Agency instituted its investigation in order to root out suspected fraudulent activities occurring within its vehicle inspections. I agree with the DMV that in order to prove fraud that it need not prove that Employee herein received a benefit, only that a fraudulent inspection occurred. I further find that one instance of a fraudulent inspection is enough to warrant removal of an offending employee. As the Agency noted, the integrity of its testing process is at stake.

I further find the collective testimonies of all of the Agency's witnesses to be both forthright and trustworthy. The Undersigned notes that the initial bent of the DMV's

investigation was not to implicate Employee personally but rather was an assessment of the data set presented on who was conducting fraudulent vehicle inspections. I also take note that the testimonies of Montgomery and St. Denis were not credibly challenged. I also take into account that Fuller is the current Sergeant-At-Arms and former Union Shop Steward and thus has an implied interest in seeing that this matter is resolved in Employee's favor. I find that Employee committed fraudulent vehicle inspections as indicated in Agency's Exhibit Nos. 5, 6, 7, and 8. I further find that the Agency has met its burden of proof in this matter and it has adequately proved that it had proper cause to remove Employee from service.

Analysis and Conclusion

In a nutshell, I find that the Agency's adverse action was taken for cause. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. See *Stokes, supra*; *Hutchinson, supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995). I conclude that given the totality of the circumstances as enunciated in the instant decision, the Agency's action of removing Employee from service should be upheld.

ORDER

Based on the foregoing, it is ORDERED that the Agency's action of removing Employee from service is hereby UPHELD.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Senior Administrative Judge