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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹)	
)	OEA Matter No. 1601-0071-23
v.)	
)	Date of Issuance: August 7, 2025
D.C. DEPARTMENT OF)	
PUBLIC WORKS,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Motor Vehicle Operator (“MVO”) with the Department of Public Works (“Agency”). On August 4, 2023, Agency issued Employee an Advance Written Notice of Proposed Removal, charging him with violation of District Personnel Manual (“DPM”) Chapter 16, Sections 1607.2(a)(4), (b)(2), (b)(3), and (d)(2) for: any on-duty conduct that an employee should reasonably know is a violation of law or regulation; misrepresentation, falsification, or concealment of material facts or records in connection with an official matter, including investigations; knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record; and deliberate or malicious failure to comply with rules, regulations, written procedures, or proper supervisory instructions. The charges were based on a

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

December 6, 2022, incident wherein Employee was instructed by Agency's Deputy Administrator to tow a vehicle "party bus" to the Blue Plains towing facility. Employee instead towed the vehicle to two different locations that were not authorized and subsequently submitted a Crane Report² which omitted the additional towing locations.³ A hearing officer reviewed the proposed notice and issued a Report of Findings and Recommendation on August 31, 2023. On September 14, 2023, Agency issued a Final Decision on Proposed Removal, sustaining the charges against Employee. The effective date of his removal was September 15, 2023.⁴

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on September 21, 2023. He argued that Agency wrongly charged him with offenses that he did not commit that were based on conduct in which he did not engage. Employee also contended that Agency improperly applied the *Douglas* factors.⁵ Finally, he opined that the penalty constituted

² A Crane Report is a report utilized by Agency that identifies where a towed vehicle is taken by an MVO. See *Evidentiary Hearing Transcript*, Volume I, p. 17. The report consists of two documents: a hand-written daily log and a "Tow Event Detail" electronic record generated from an MVO's entries into a handheld device during the course of the tow. See *Agency Answer to Petition for Appeal* at p. 2.

³ Employee and two other MVOs were alleged to have accessed the party bus in question to retrieve alcoholic beverages located in the passenger compartment. A subsequent investigation regarding the purported theft resulted in improvable charges against Employee. According to Agency, the investigation apprised it of Employee's misconduct related to the tow, and the current administrative charges were not based on the theft allegations.

⁴ *Agency Answer to Petition for Appeal* (October 23, 2023).

⁵ 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;

disparate treatment. As a result, Employee requested reinstatement with backpay and benefits.⁶

Agency filed its answer on October 23, 2023. It asserted that Employee was disciplined based on his act of intentionally towing privately owned property to an unauthorized location and knowingly omitting vital information from a Crane Report. Agency submitted that Employee's conduct was sufficiently egregious to warrant the instant adverse action. Further, it posited that termination was appropriate based on a thorough analysis of the *Douglas* factors and Chapter 16, Section 1607 of the DPM. Therefore, Agency requested that Employee's removal be sustained.⁷

An OEA Administrative Judge ("AJ") was assigned to the matter in October of 2023. During a December 6, 2023, prehearing conference, the AJ determined that the issues presented warranted an evidentiary hearing. Thereafter, a hearing was held on July 24th and August 22nd of 2024. Employee and Agency were subsequently ordered to submit closing arguments.⁸

The AJ issued an Initial Decision on January 13, 2024, finding that Agency met its burden of proof as to each charge levied against Employee. She stated that on December 6, 2022, Employee was instructed to tow a party bus, located at or near 1717 Hamlin Street, N.E., for failure to "display current tags." However, she concluded that Employee failed to tow the vehicle to the Blue Plains facility in accordance with the procedures outlined in Agency's 2016 Standard Operating Procedures ("SOP"). The AJ explained that Employee knowingly and deliberately falsified Agency records by failing to include interim stops made at Bryant Street or 17th Street in his Crane Report and failed to obey instructions given by a supervisor. She further found

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.

⁶ *Petition for Appeal* (September 21, 2023).

⁷ *Agency Answer to Petition for Appeal*.

⁸ *Order for Closing Arguments* (September 9, 2024).

Employee's evidentiary hearing testimony to be inconsistent and untrustworthy when questioned about his argument that it was unsafe to tow the party bus to the Blue Plains facility. As a result, the AJ held that Agency established cause to initiate the current adverse action. Lastly, she ruled that termination was a permissible penalty based on the Table of Illustrative Actions and the holding in *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).⁹ Therefore, Agency's termination action was upheld.¹⁰

Employee filed a Petition for Review with the OEA Board on February 14, 2025. He argues that a safety concern arose at the towing site on December 6, 2022, which required his discretion to move the party bus to a more suitable location before proceeding to the Blue Plains lot. Employee contends that the 2016 SOPs were inconsistently applied, with different interpretations among supervisors. He further claims that Agency failed to provide any clear directives regarding restrictions on interim stops and also challenges the AJ's credibility determinations relevant to SOPs and instructions for impounded vehicles. According to Employee, Agency's termination action lacked proper documentation; deviated from past disciplinary procedures; and failed to consider exculpatory evidence presented during the OEA evidentiary hearing. Lastly, Employee opines that the penalty of removal was excessive and disproportionate given his clean disciplinary record. As such, he requests that the Board grant his petition.¹¹

In response, Agency argues that Employee's petition fails to challenge that he knowingly falsified records, namely the Crane Report that was submitted regarding the tow. It further notes that Employee's submission does not contest or address the AJ's findings pertinent to the

⁹ The D.C. Court of Appeals in *Stokes v. District of Columbia* held that OEA must determine whether the penalty imposed 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

¹⁰ *Initial Decision* at p. 12.

¹¹ *Petition for Review* (February 14, 2025).

substantive charges levied against him. Agency believes that the AJ's rulings are based on substantial evidence and accurate credibility determinations. Thus, it reasons that Employee is improperly second guessing the AJ's findings of veracity related to witness testimony. Agency reiterates its position that the penalty of termination was both warranted and appropriate based on a review of the *Douglas* factors and relevant case law. Consequently, it requests that the Board deny Employee's Petition for Review.¹²

Substantive Charges

Pursuant to OEA Rule 631.1, 6-B DCMR Chapter 600 (December 27, 2021), Agency has the burden of proof by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Additionally, DPM § 1602.1 provides that "no employee may be reprimanded, suspended, demoted, placed on enforced leave, or removed without cause." In support of its charges pursuant to Chapter 16, Sections 1607.2(a)(4), (b)(2), (b3), and (d)(2), Agency cited the following Employee violations of regulations or procedure:

1. Standard Operating Procedures for the Towing & Vehicle Immobilization Division, Section 1.0 (Authority and Applicability 1.5): Failure to enforce or follow the Standard Operating Procedures may lead to disciplinary action, including termination of employment....
2. Section 13.0 – Code of Conduct: No employee shall engage in conduct unbecoming an employee of the Department of Public Works. Any violation of these rules may be considered grounds for disciplinary action.
3. DPM Chapter 18: 1800.2: Each employee has a responsibility to the District of Columbia and its citizens to place loyalty to the laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the District government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the District of Columbia Employee Ethics Pledge and in supplemental agency regulations and policies.
4. DPM Chapter 16: 1605.1: District Employees are expected to

¹² Agency Answer to Petition for Review (March 17, 2025).

demonstrate high standards of integrity, both on and off the job....

Based on a review of the record, this Board concludes that the AJ's findings are supported by substantial evidence.¹³ Employee failed to follow Agency's 2016 SOP, which required MVOs to transfer a towed vehicle directly to the prescribed impound lot, absent a safety or traffic concern at pick-up or a specific instruction from a supervisor. Agency's procedures also required MVOs to notify a supervisor or dispatch if he or she believes that a hazard exists, or of the towing location is unsafe.¹⁴ On December 6, 2022, Employee was instructed by Agency management to tow the party bus directly to the Blue Plains facility. Instead, he proceeded to stop at two different towing locations without authorization and did not notify a supervisor of any perceived safety concerns or threats. Therefore, Employee's failure to abide by the SOPs serves as a basis from imposing discipline pursuant to Chapter 16, Section 1607.2(a)(4) of the DPM.

Employee also knowingly and willfully made incorrect entries on the Crane Report associated with the December 6, 2022, tow. Agency SOP requires an MVO to enter information accurately on the tow reports, as it may be used in future court proceedings. However, the evidence shows that Employee's Crane Report did not include reference to his stops at the Bryant Street or 17th Street towing lots. The evidence further establishes that Employee did not complete his tow to the Blue Plains facility at 8:20 a.m., contrary to what he indicated in his report. Based on a review of the record, we conclude that Agency's termination action was taken for cause.

We further note that Employee's petition does not challenge the AJ's finding that he falsified records related to the tow. As will be discussed herein, even if Employee's arguments

¹³ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. Under OEA Rule 628.1, 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.

¹⁴ *Evidentiary Hearing Transcript*, Volume I at pp. 49, 50, 84, 107, and 130 and Volume II at p. 107.

warranted the reversal of any remaining charge, there exists an independent basis for sustaining charges of any on-duty conduct that an employee should reasonably know is a violation of law or regulation and knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record.

Witness Credibility

Employee's petition challenges the AJ's credibility findings, namely the alleged conflicting testimony that Employee did not violate the SOPs. The AJ provided a thorough assessment as to why she found Employee's testimony to be inconsistent. Conversely, she found the testimony of Agency's witnesses to be credible. The Court in *Metropolitan Police Department v. Baker*, 564 A.2d 1155 (D.C. 1989), provided that great deference to any witness credibility determinations is given to the administrative fact finder. Similarly, the Courts in *Raphael v. Okyiri*, 740 A.2d 935, 945 (D.C. 1999) and *Washington Metropolitan Area Transit Authority v. District of Columbia Department of Employment Services*, 683 A.2d 470, 477 (D.C.1996) have held that due deference must be accorded to the Administrative Judge's credibility determinations, both by the OEA, and by a reviewing court. Furthermore, the Court in *Raphael* held that the Administrative Judge's findings of fact are binding at all subsequent levels of review unless they are unsupported by substantial evidence. This is true even if the record also contains substantial evidence to the contrary. In reviewing the hearing transcript and documentary evidence, a reasonable mind would accept the credibility determinations the AJ made as adequate to support her conclusions. The AJ was the trier of fact in this case, and she was in the best position to evaluate the sufficiency of the evidentiary hearing testimony. As a result, we find that the AJ committed no clear error in determining the veracity of witness testimony. Consequently, this Board will not disrupt her findings.

Penalty

Finally, this Board is tasked with determining if substantial evidence exists to support the AJ's findings related to the penalty. 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).¹⁵ According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency.¹⁶ Pursuant to the Table of Illustrative Actions, a first violation of DPM § 1607.2(a)(4) (on-duty violation of the law) is reprimand to removal; a first violation of DPM § 1607.2(b)(2) (misrepresentation/falsification) is reprimand to removal; a first violation of DPM § 1607.2(b)(3) (incorrect entries) is reprimand to removal; and a first violation of DPM § 1607.2(d)(2) (failure to follow instructions) is a three-day suspension to removal.

In this case, Agency conducted a reasonable assessment of the relevant *Douglas* factors in concluding that termination was warranted for each charge. Agency only needed to satisfy its

¹⁵ *Anthony Payne v. D.C. Metropolitan*, OEA Matter No. 1601-00540-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 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).

¹⁶ The D.C. Court of Appeals 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." As a result, 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. *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). 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.

burden of proof as to any of the four independent charges to support the termination action, as each charge carries a potential penalty of termination. While Employee has no past disciplinary history, which Agency concedes was a mitigating factor, there remains sufficient evidence in the record to support the imposed penalty. There is no indication that Agency abused its discretion in selecting termination as the appropriate disposition of Employee's misconduct, and this Board finds no clear error by Agency in exercise of its managerial duties. Consequently, we must leave the penalty undisturbed.

Conclusion

Based on the foregoing, there is substantial evidence in the record to find that Agency met its burden of proof regarding Employee's violation of DPM Sections 1607.2(a)(4), (b)(2), (b)(3), and (d)(2). Employee provides no basis for overturning the AJ's credibility determinations. Finally, the penalty of termination was permissible for each charge levied against Employee. For these reasons, we must deny Employee's Petition for Review.

ORDER

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

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.