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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ANDRE BROOKS,	)	
Employee	)	OEA Matter No. 1601-0024-24
	)	
v.	)	Date of Issuance: September 22, 2026
	)	
OFFICE OF THE STATE	)	
SUPERINTENDENT OF	)	
EDUCATION,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	
Employee, <i>Pro-Se</i>	)	
Danielle Ragofsky, Esq., Agency Representative	)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 20, 2023, Employee was sent an Advanced Notice of Proposed Separation, notifying him that he was facing a proposed termination for an attendance-related offense, specifically, unauthorized absences of five workdays or more pursuant to D.C. Mun. Regs. tit. 6, sub. 6-B, §§1605.4(f) and 1607.2(f)(4) (2017). The subject dates and times when it was alleged that Employee was AWOL will be detailed below but amount to well over 1000 combined hours of absences. Employee's last position of record with the Office of the State Superintendent of Education ("OSSE" or the "Agency") was Motor Vehicle Operator Grade 7. Employee was first hired by OSSE in September 2016. The timeframe that OSSE focused its removal action on was March through December 2023. On January 25, 2024, OSSE issued a Final Agency Decision to separate Employee with an effective date of January 29, 2024. Employee asserts that he had been diagnosed with Long Covid-19 and considering this, he was unable to work during the period in question. Employee filed his Petition for Appeal with the Office of Employee Appeals ("OEA" or the "Office") on January 9, 2024. On that same date, the OEA, through its Executive Director, sent a notice requiring the Agency to provide an Answer to Employee's Petition for Appeal. The Answer was due by February 28, 2024. OSSE timely submitted its Answer. The above captioned matter was first assigned to Administrative Judge Lois Hochhauser ("AJ Hochhauser") on

February 28, 2024. AJ Hochhauser has since left the OEA. This matter was then reassigned to the Undersigned on June 11, 2025. On June 16, 2025, the Undersigned issued an Order Convening a Status Conference set for July 2, 2025. During this conference, it was determined that there were no material issues of fact that were in dispute. Accordingly, a briefing schedule was adopted. After reviewing the documentary evidence in this matter, the Undersigned has determined that no further activities are warranted. 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 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for 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 631.2 id. States:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Agency’s adverse action was taken for cause. If so, whether the penalty was appropriate, given the circumstances.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The following findings of fact, analysis, and conclusions of law are based on the documents and evidence presented by the parties during the course of Employee’s appeal process with OEA. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

(a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office

upon the record and pursuant to other rules and regulations which the Office may issue. (*Emphasis added*).

Agency's Answer received on August 7, 2025 at pgs. 3 - 4, states in pertinent part as follows:

On December 20, 2023, Employee was sent an Advanced Notice of Proposed Separation, notifying him that he was facing a proposed termination for an attendance related offense, specifically, unauthorized absences of five workdays or more pursuant to D.C. Mun. Regs. tit. 6, subt. 6-B, §§1605.4 and 1607.2(4) (2017). See Ex. 10, Dec 20, 2023 letter. Agency noted that Employee had missed the following dates of employment:

Date Status

03/12/2023-03/25/2023 Absent Without Leave - 70 Hours
 03/26/2023 - 04/08/2023 Absent Without Leave - 70 Hours
 04/09/2023 - 04/22/2023 Absent Without Leave - 21 Hours
 04/23/2023 - 05/06/2023 No time Submitted or Entered
 05/07/2023 - 05/20/2023 No time Submitted or Entered
 05/21/2023 - 06/03/2023 No time Submitted or Entered
 06/04/2023 - 06/17/2023 No time Submitted or Entered
 06/18/2023 - 07/01/2023 No time Submitted or Entered
 07/02/2023 - 07/15/2023 No time Submitted or Entered
 07/16/2023 - 07/29/2023 Absent Without Leave - 70 Hours
 07/30/2023 - 08/12/2023 Absent Without Leave - 70 Hours
 08/13/2023 - 08/26/2023 Absent Without Leave - 70 Hours
 08/27/2023 - 09/09/2023 Absent Without Leave - 70 Hours
 09/10/2023 - 09/23/2023 Absent Without Leave - 70 Hours
 09/24/2023 - 10/07/2023 Absent Without Leave - 70 Hours
 10/08/2023 - 10/21/2023 Absent Without Leave - 70 Hours
 10/22/2023 - 11/04/2023 Absent Without Leave - 70 Hours
 11/05/2023 - 11/18/2023 Absent Without Leave - 70 Hours
 11/19/2023 - 12/02/2023 Absent Without Leave - 70 Hours
 12/03/2023 - 12/16/2023 Absent Without Leave - 70 Hours

OSSE asserts that Employee was provided with a significant amount time, through multiple avenues of leave, presumably for which it was hoped that Employee would recover from his ailments and return to work. More specifically, Agency detailed that on February 21, 2021, Employee first informed OSSE that he had tested positive for Covid-19. Agency then notes that Employee filed for Family Medical Leave Act ("FMLA") on February 8, 2022. Regrettably, by notice dated April 16, 2022, Employee was informed that he did not qualify for FMLA or DC

FMLA and that his FMLA leave request was denied. OSSE then provided Employee with forms for requesting leave without pay, however, Employee did not complete the paperwork for requesting this type of leave. Afterwards, Employee did not appear for work and Agency started documenting his absences as noted above in its Proposed Notice and Final Decision.

Employee admits that he was not present for the time periods in question but explains that his absences should be excused due to his ongoing health concerns. As part of prosecuting his appeal, Employee provided, for the first time, medical notices that arguably could cover his absences. In sum, Employee provided 22 (twenty-two) notices from various medical providers detailing his visit history. All the notices referenced visits that lasted one day. Of note, 10 of those notices provided no discernable date range for treatment or request for excuse from work. Furthermore, 10 other notices requested that Employee be excused from work on the date cited in the notice. One notice, dated August 2, 2023, stated that Employee was not cleared to return to work. And one other notice dated November 16, 2023, stated that Employee was cleared to return to work with no restrictions.

Upon review of the record, it is readily apparent that the medical notices provided by Employee do not fully cover the periods of time alleged in the instant removal action. Put plainly, Employee, at best, has notices that cover approximately 21 workdays or approximately 168 of the over 1300 hours assessed as part of the removal action. While it is not a complete bar to provide medical notices in matter such as this for the first time on OEA review, it does not lend credence to the notion that Employee should have kept OSSE abreast of his ongoing ailment and whether he was medically cleared to return to work. I must also take notice that according to the notice dated November 16, 2023, Employee was cleared to return to work without restrictions. Given this revelation from Employee's submission, even if I were to excuse all of the other time entries (which the Undersigned does not), it would still leave just over two weeks and approximately 160 hours that he did not report for duty. Most assuredly, the Undersigned finds that Employee's medical notices only excused him from reporting for duty on the singular dates cited therein, amounting to well over 1100 hours of AWOL that were left unaccounted for by Employee's submission. Except for the notice exceptions that account for approximately 168 hours, I find that Employee was properly cited for AWOL for the remainder of the time cited by OSSE as noted above.

Given the gravity of the conduct and the proper procedural safeguards of due process that Agency undertook, I find that Agency proved by a preponderance of the evidence that it had cause to remove Employee from service. With regards to the penalty, although the OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.¹ The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the OEA."² Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case. 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 OSSE's shoes in the first instance; such an approach

¹ See, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.G.R. 280, 301(1981)(Federal Merit Protection Board case); Raphael 740 A. 2d 945.

² *Id.*

would fail to accord proper deference to the Agency's primary discretion in managing its workforce. Rather, the OEA's review of an agency-imposed penalty is essentially to ensure that OSSE conscientiously considered 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 OSSE's judgment clearly exceeded the limits of reasonableness, is it appropriate for the OEA then to specify how the OSSE's decision should be corrected to bring the penalty within the parameters of reasonableness.³ I find that the evidence did not establish that the penalty of termination constituted an abuse of discretion.⁴ I conclude that the Agency has met its burden of proof in this matter and that Employee's termination should be sustained.

ORDER

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

FOR THE OFFICE:

/s/ Eric T. Robinson

ERIC T. ROBINSON, ESQ.
SENIOR ADMINISTRATIVE JUDGE

³ *Raphel* 740 A. 2d at 945.

⁴ Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").