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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0017-25
	)	
v.	)	Date of Issuance: November 13, 2025
	)	
DISTRICT OF COLUMBIA	)	
FIRE & EMERGENCY MEDICAL	)	
SERVICE DEPARTMENT,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	
Zakia Brown, Employee <i>Pro Se</i>		
Timothy J. McGarry, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 10, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Fire and Emergency Medical Services Department (“FEMS” or the “Agency”) adverse action of removing her from service. Employee’s last position of record with FEMS was Firefighter/EMT. Employee was charged with violating Agency’s Order Book Article VII, § 2(f)(3), which states “Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations, to include: Neglect of Duty.” Specifically, Employee was found to have violated Agency’s Bulletin 5, § 13.1 when she submitted a urine sample for drug screening that was determined to have been substituted. A full evidentiary hearing was held before the Fire Trial Board (“FTB”) on September 18, 2024. The FTB issued its Findings of Fact and Recommendation on November 15, 2024, wherein it found Employee guilty and recommended her for termination. On December 3, 2024, Fire Chief John Donnelly issued his Final Decision in this matter, through which Employee was formally notified that he was adopting the FTB’s findings of fact and recommendation. Moreover, Employee was informed in this writing that the effective date of her removal from service was December 14, 2024.

On January 13, 2025, the OEA, through its Executive Director, issued a request for Agency's Answer to Employee's Petition for Appeal. The stated deadline for submission was February 12, 2025. Agency timely complied by submitting its Answer at the deadline. This matter was then assigned to the Undersigned on February 13, 2025. On February 20, 2025, the Undersigned issued an Order Convening a Prehearing/Status Conference. The conference was set for and held on March 26, 2025. During this conference, the parties presented their version of the salient facts and circumstances surrounding this matter. After taking into account the parties' positions as stated during the conference and in the documents of record, I note that this Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002).¹ On March 27, 2025, the Undersigned issued an Order that dictated the briefing deadlines for this matter. The parties complied with the aforesaid briefing schedule. After reviewing the documents of record, I have determined that no further proceedings 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 Trial Board's decision was supported by substantial evidence, whether there was harmful procedural error, or whether Agency's action was done in accordance with applicable laws or regulations.

¹ 801 A.2d 86 (D.C. 2002). This case will be discussed in further detail below.

SUMMARY OF MATERIAL TESTIMONY

Agency's Case-in-Chief

Taisha Williams ("Williams") Tr. 21-55

Williams worked as a Physician for the Police and Fire Clinic ("PFC") for nine years. She described that her duties as a Physician included treating police and firefighters for various injuries, conducting physical examinations, and evaluating applicants. Williams also mentioned that she performs fitness for duty assessments and medical reviews ("MRO") for individuals with a non-negative urine drug screen to determine the reasons behind it. She recalled Exhibit No. 1 receiving a lab report concerning Employee which indicated that the urine sample they submitted was identified as specimen substituted. Williams identified the laboratory report she received, which showed that Employee's submitted urine sample was classified as specimen substituted. Additionally, Williams noted that the laboratory report explained that Employee's urine sample returned as specimen substituted due to creatinine and specific gravity levels being outside the normal range.²

Additionally, Williams indicated that the permissible range of creatinine in a urine sample for drug screening purposes should exceed 20 milligrams per deciliter. She noted that the urine sample from Employee contained less than 1 milligram per deciliter, which she claims indicates that the acceptable specific gravity range for a urine sample suitable for drug screening is between 1.003 and 1.020. Williams pointed out that the specific gravity of the sample provided by Employee was 1.0001. She also asserted that the submitted sample could not be human urine. Williams identified Exhibit No. 2 as the custody and control form for Employee's urine sample that she approved on September 28, 2023. Furthermore, she highlighted Exhibit No. 4, which is the Quest Diagnostics laboratory report, specifically noting on page 2 that the validity tests for creatinine and specific gravity were found to be inconsistent with typical human urine. Moreover, she confirmed that the laboratory report indicated that follow-up tests for creatinine and specific gravity corroborated the initial findings, and after examining the analytical data and chain of custody documentation, the result was reported as a substitution. Williams affirmed that the Quest Diagnostics laboratory report aligns with her conclusion that the urine specimen submitted by Employee was classified as a substituted specimen.³

Williams recognized Exhibit No. 5 as the memorandum she forwarded to Battalion Fire Chief Derek Hopkins ("Hopkins"). In Exhibit No. 5, page 6, Williams confirmed the punch list she developed during her medical review, which included her conversation with Employee. In that discussion, Employee claimed that she had no medical issues and did not take any prescribed medications, although she occasionally consumed Maca root. Furthermore, Williams indicated that during her conversation with Employee, Employee refused Bottle B, which involves providing a sample that is divided into two separate samples, one sent to a lab and the other retained in case a non-negative result occurs. She also noted that if an individual receives a non-negative result,

² Tr. 22-25.

³ Tr. 25-30.

they have the option to request that the split sample be sent to a different lab for verification. Williams affirmed that someone who is anorexic would be unable to provide a urine sample, as would someone who was drinking a gallon of water daily, leading to a urine sample that would not exhibit the necessary characteristics or would contain less than 2mg/dl of creatinine and a specific gravity below 1.003.⁴

During cross-examination, Williams stated that Quest Diagnostics is among the limited laboratories providing oxidant identification for several frequently used oxidizing adulterants and makes this option available upon customer or MRO request. Williams confirmed that she never requested a test for oxidizing adulterants for Employee's sample and did not ask Quest Laboratories to detect any oxidants in the urine.⁵

Derek Hopkins ("Hopkins") Tr. 56-69

Hopkins served as the Deputy Fire Chief of Logistics for the D.C. Fire and Emergency Medical Services Department ("Agency"). He explained that his responsibilities as Deputy Fire Chief encompassed the procurement and distribution of all logistical necessities related to Agency's emergency support operations for firefighting, emergency medical assistance, urban search and rescue, and hazardous materials response. Hopkins testified that he received a memorandum from Williams of the PFC concerning Employee's urine drug test. Based on Williams' memorandum, he determined that Employee had breached Bulletin No. 5, which outlines the Agency's substance abuse policy. Additionally, Hopkins wrote a memorandum documenting Employee's violation of Agency's substance abuse policy. He identified Agency's Exhibit No. 6 as the memorandum he drafted. Furthermore, Hopkins recognized Agency's Exhibit No. 7 as Bulletin No. 5 of the Agency's substance abuse policy.⁶

Hopkins confirmed that, based on Agency Exhibit No. 7, subsection H, the laboratory conducting the drug test reported and the MRO verified it as a result indicating an adulterated or substituted sample. He stated that if such a situation arises under Bulletin No. 5, a member has refused to undergo a test for alcohol, controlled substances, or illegal drugs. He noted that Employee submitted a urine sample that revealed a creatinine level below 2 mg/dl, which he indicated constitutes a finding of a substituted specimen, representing a breach of Bulletin No. 5. Additionally, Hopkins explained that if Agency cannot verify that its member is not engaging in illegal drug use, it could potentially put citizens at risk.⁷ During the cross-examination, Hopkins confirmed that he cannot definitively state that Employee deliberately switched her urine sample during the drug test conducted in September 2023.⁸

⁴ Tr. 30-34.

⁵ Tr. 44.

⁶ Tr. 56-60.

⁷ Tr. 60-64.

⁸ Tr. 69.

Employee's Case-in-Chief**Derrell Owens ("Owens") Tr. 71-77**

Owens has held the position of Lieutenant at Agency since January 2024 and is part of Truck Eight, Platoon Two. Prior to January 2024, he confirmed that he was a Sergeant and had served in the Battalion of Agency for over a year. He recounted that he is acquainted with Employee, having first met her during a class called "ride along," where a few students joined him at Engine 32 while he was working as a wagon driver for Agency. Once Employee was assigned to Engine 16 at Agency, Owens stated that he collaborated with her again after his promotion to Sergeant, where he served at Tower 3, Platoon Four from June 2020 to December 2021, and later became an aide. He expressed that he has never known Employee to engage in illegal drug use, misuse alcohol, or display any dishonesty. Owens also expressed his belief that Employee would not intentionally tamper with her urine sample during her annual physical examination.⁹ During the cross-examination, Owens confirmed that he and Employee share a more professional relationship than a social one, and he is not informed about Employee's activities outside of work.¹⁰

Employee Transcript Tr. 78-118

Employee has worked as a firefighter at Engine 16, Platoon Four, with Agency for six (6) years. She stated that approximately three to four times a year, she participates in a water and occasionally a vegetable juice fast for religious reasons, lasting anywhere from three to seven days. Regarding her water fasting, she mentioned that she typically fasts two to three times each year. Employee noted that she has been water fasting since she was eighteen and usually does so in September. She recognized Exhibit No. B5 as a text message exchange with a close friend. In this text conversation, on September 23rd, 2023, Employee confirmed that she had told her friend she had been fasting with only water for forty-five and a half hours. Employee affirmed that she began her water fast on or around September 21st, 2023.¹¹

On September 21st, 2023, Employee reported starting her water fast while at work around six or seven p.m. She confirmed that her water fast commenced on September 21st, 2023, and concluded on October 1st, 2023. Employee testified that she undergoes an annual physical every year and submits a urine sample, as it is a requirement for a DC Firefighter EMT to have an annual physical. Employee recognized Exhibit No. B8 as the lab report dated August 22, 2024, and confirmed that there were no abnormal results. She mentioned that she received an abnormal urinalysis result in 2021 when she was contacted by the chief at the PFC while on duty, informing her that her urine specimen had been diluted and that she would need to retest. Employee identified Exhibit No. B9 as the lab results from her 2021 physical, which indicated that her urine specimen was diluted. Additionally, Employee stated that her urine was tested for drug use and returned negative results. She affirmed that the acceptable range for creatinine is greater than or equal to 20 mg/dl, while her creatinine level was measured at 16 mg/dl.¹²

⁹ Tr. 71-76.

¹⁰ Tr. 77.

¹¹ Tr. 78-90.

¹² Tr. 90-101.

Additionally, Employee mentioned that she did not encounter any disciplinary action in 2021 due to the diluted urine sample. She confirmed that the acceptable specific gravity range is between 1.003 and 1.020, while her gravity level in 2021 was recorded at 1.002. In 2022, Employee noted that her urinalysis results were normal. She referred to Exhibit No. B10, a lab result dated September 19, 2022, which she asserts indicated a negative result for the urine substance abuse panel and lab report. Employee indicated that she was on the water fast at the time of testing. On September 28, 2023, during a physical examination, she provided a urine sample while again undergoing water fasting. On October 3, 2023, she received a call from Agency tower lieutenant notifying her that she had to go on sick leave because her urine sample was flagged as abnormal, and she was instructed to reach out to the liaison. Employee relayed that she spoke with the MRO, who informed her that her urine was deemed adulterated, and that the creatinine level was too low to be considered valid urine. Employee noted that the MRO inquired whether she was taking any supplements, and she responded that the only supplement she had taken was Maca root.¹³

Furthermore, Employee mentioned that the MRO told her that her urine sample would be sent to Lab B to check for any underlying health concerns, and no further urine testing would be necessary. Employee confirmed that Williams did not inquire about her family medical history or whether she was fasting on the day of the test. She believes that her water fast might have affected the results of the urine test, and had she been aware that an extended water fast could impact her urine sample, she might have chosen not to fast or consulted her doctor or nutritionist beforehand. Employee stated that during her annual physical in September 2023, she did not engage in any illegal drug use or tamper with her urine sample. She identified Exhibit No. B11 as the disciplinary history memorandum dated December 10, 2023, which indicated she has no previous disciplinary record. She asserted that she would never do anything to endanger her career at Agency.¹⁴

During cross-examination, Employee confirmed that she had not disclosed her test results to her primary care physician or any nutritionist other than Williams at the PFC regarding the urine sample she provided to Quest Diagnostics in September 2023. Employee also confirmed that no physician verified that her water fasting was the cause of the substituted specimen result, nor did her family history of kidney issues contribute to the substituted result.¹⁵

Julian Jones (“Jones”) Tr. 131-144

Jones has been employed at Agency since September 14, 2008, and is currently stationed at Engine Five. Jones notes that he first met Employee five years ago at Agency while they were both doing overtime work on the ambulance, and they have spent time together off duty. Jones characterizes their relationship as akin to that of a brother and sister. He testified that he is aware of Employee undertaking water fasts or trying to follow the same fasting regimen he practices, typically lasting a week. According to Jones, Employee does not misuse alcohol or use any illegal substances to his knowledge. He confirmed that he and Employee have previously worked the same shifts on Platoon 4, where he describes Employee as an excellent EMT and firefighter.¹⁶

¹³ Tr. 101-108.

¹⁴ Tr. 108-115.

¹⁵ Tr. 118.

¹⁶ Tr. 131-139.

Jones expressed that he doesn't believe Employee would have replaced her urine sample during her annual physical in 2023, based on his perception of her as someone who cared for her family and treated him well. Additionally, Jones confirmed that Employee is recognized as someone who adheres to the rules, is trustworthy, and is seen as a leader.¹⁷ During cross-examination, Jones stated that he practices fruit and water fasts and that, as part of his job, he must also take drug tests, which involve submitting a urine sample. He confirmed that his urine samples have never come back with a result indicating that they had been substituted.¹⁸

Tenisha Brown ("Brown") Tr. 149-157

Brown confirmed that she is Employee's sister. She mentioned that Employee consumes alcohol, typically having two to three drinks when she drinks. Brown stated that Employee does not misuse alcohol or use any illegal substances. Brown testified that both she and Employee share meals that include a nutritious diet of proteins, vegetables, and carbohydrates, and that she participates in a juice fast consisting of fruits and vegetables, while Employee engages in water fasting. Brown noted that to her knowledge, Employee began water fasting five years ago when they started living together. She indicated that Employee undertakes a water fast every other month, once per quarter, or whenever she feels the need to reset her digestive system. Furthermore, Brown remarked that Employee's fasts last a minimum of three days and can extend to seven days or more.¹⁹

Brown mentioned that when Employee submitted a urine sample in September 2023, she was also fasting as part of a juice cleanse, and they were both following the same no-food regimen. Brown noted that after completing her fast, she resumed eating whole raw foods, while Employee continued with her water fast. Brown confirmed that Employee informed her upon discovering that her urine sample had been flagged as substituted. Brown expressed confidence in her sister's character and stated that she would never take actions that could jeopardize her job, especially since Employee has found her passion in working for Agency. Brown testified that to her knowledge, Employee does not use illegal drugs, as they live together, and Employee avoid smoking around her, nor has Brown observed any behavior from Employee that might indicate drug use.²⁰

Durell Herman ("Herman") Tr. 159-166

Herman has held the position of Lieutenant at Truck Company 17 at Agency since May 2020. He has been employed at Agency since January 2007. Herman mentioned that he first encountered Employee when she began her career at Agency, as he was one of her instructors during her cadet training. He describes Employee as highly intelligent, motivated, and an excellent colleague. Herman indicated that he is aware of Employee fasting while on duty. He confirmed that he knows about the urine sample from Employee's annual physical in 2023, which was found to be substituted, and he believes that Employee would not intentionally substitute her urine sample because he considers her a reliable individual. Furthermore, Herman states that he has never known

¹⁷ Tr. 140-143.

¹⁸ Tr. 143-144.

¹⁹ Tr. 150-153.

²⁰ Tr. 154-156.

Employee to lie, act deceitfully, or try to take advantage of any situation. Herman asserts that he has never known Employee to use illegal substances.²¹

FINDINGS OF FACTS, ANALYSIS, AND CONCLUSIONS OF LAW

This Office's review of this matter is limited pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). In that case, the D.C. Court of Appeals overturned a decision of the D.C. Superior Court that held, *inter alia*, that this Office had the authority to conduct *de novo* evidentiary hearings in all matters before it. According to the D.C. Court of Appeals:

The OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives the OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings. *See* D.C. Code §§ 1-606.2 (a)(2), 1-606.3 (a), (c); 1-606.4 (1999), recodified as D.C. Code §§ 1-606.02 (a)(2), 1-606.03 (a), (c), 1-606.04 (2001); *see also* 6 DCMR § 625 (1999).

The MPD contends, however, that this seemingly broad power of the OEA to establish its own appellate procedures is limited by the collective bargaining agreement in effect at the time of Pinkard's appeal. The relevant portion of the collective bargaining agreement reads as follows:

[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing has been held, *any further appeal shall be based solely on the record established in the Departmental hearing.* [Emphasis added.]

Pinkard maintains that this provision in the collective bargaining agreement, which appears to bar any further evidentiary hearings, is effectively nullified by the provisions in the CMPA which grant the OEA broad power to determine its own appellate procedures. A collective bargaining agreement, Pinkard asserts, cannot strip the OEA of its statutorily conferred powers. His argument is essentially a restatement of the administrative judge's conclusions with respect to this issue.

It is of course correct that a collective bargaining agreement, standing alone, cannot dictate OEA procedure. But in this instance the collective bargaining agreement does not stand alone. The CMPA itself explicitly provides that systems for review of adverse actions set forth in a collective bargaining agreement must take precedence over standard OEA procedures. D.C. Code § 1-606.2 (b) (1999) (now § 1-606.02 (b) (2001)) states that "any performance rating, grievance, adverse action, or reduction-in-force review,

²¹ Tr. 159-164.

which has been included within a collective bargaining agreement . . . *shall not be subject to the provisions of this subchapter*" (emphasis added). The subchapter to which this language refers, subchapter VI, contains the statutory provisions governing appellate proceedings before the OEA. *See* D.C. Code § 1-606.3 (1999) (now § 1-606.03 (2001)). Since section 1-606.2 (b) specifically provides that a collective bargaining agreement must take precedence over the provisions of subchapter VI, we hold that the procedure outlined in the collective bargaining agreement -- namely, that any appeal to the OEA "shall be based solely on the record established in the [Adverse Action Panel] hearing" -- controls in Pinkard's case. The OEA may not substitute its judgment for that of an agency. Its review of an agency decision -- in this case, the decision of the Adverse Action Panel in the MPD's favor -- is 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. The OEA, as a reviewing authority, also must generally defer to the agency's credibility determinations. Mindful of these principles, we remand this case to the OEA to review once again the MPD's decision to terminate Pinkard, and we instruct the OEA, as the collective bargaining agreement requires, to limit its review to the record made before the Adverse Action Panel.²²

Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* Hearing in an appeal before him/her, but must base his/her decision solely on the record below, when all of the following conditions are met:

1. The appellant (Employee) is an employee of 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 contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and
5. At the agency level, Employee appeared before an Adverse Action Panel 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 adverse action being taken against Employee.

²² *Id.* at 90-92. (citations omitted).

Based on the documents of record and the position of the parties as stated during the conference held for this matter, I find that all of the aforementioned criteria are met in the instant matter. Therefore, my review is limited to the issues set forth in the Issue section of this Initial Decision *supra*. Further, according to *Pinkard*, I must generally defer to the Fire Trial Board's ("Trial Board") credibility determinations when making my decision. *Id.* The Trial Board hearing was held on September 18, 2024, and it issued its Findings and Recommendations for the charge and specification outlined above on November 15, 2024. Ultimately, Employee was found guilty and the Fire Trial Board recommended that she be removed from service. On December 3, 2024, Agency Chief John Donnelly, Sr., provided written notice to Employee that he was adopting the findings and recommendations.

Substantial Evidence

According to *Pinkard*, I must determine whether the Trial Board's findings were supported by substantial evidence. Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."²³ Further, "[i]f the Trial Board's] findings are supported by substantial evidence, [I] must accept them even if there is substantial evidence in the record to support contrary findings."²⁴ FEMS substantially asserted that the creatine levels found in Employee's fated urine sample were not humanly possible to naturally occur without a verified ailment. Rather, it is most likely the result of the sample being adulterated. Agency noted that after conducting a medical review it was determined that the specimen was substituted. A specimen substituted is essentially considered a refusal to submit a sample.²⁵ Regardless of Employee protestations to the contrary, I find that FEMS provided substantial evidence supporting its finding that Employee violated Agency's Bulletin 5, § 13.1 when she submitted a urine sample for drug screening that was determined to have been substituted. In making the determination to remove Employee from service, I see no credible indication that the analysis undertaken by the FTB was done in error or that its Findings of Facts and Conclusions of Law did not causally flow from the facts and pertinent law.

Harmful Procedural Error

Pursuant to *Pinkard* and OEA Rule 631. 3, the Undersigned is required to make a finding of whether or not FEMS committed harmful error. OEA Rule 631. 3, provides as follows: "Notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." Employee seemingly takes issue with the methodology used for collecting her urine sample. She notes that she was undergoing a "water fast" and alleges that this "fast" was possibly responsible for her low creatine levels. However, Agency readily refutes that assertion by noting that Employee did not present any

²³ *Davis-Dodson v. D.C. Department of Employment Services*, 697 A.2d 1214, 1218 (D.C. 1997) (citing *Ferreira v. D.C. Department of Employment Services*, 667 A.2d 310, 312 (D.C. 1995)).

²⁴ *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1159 (D.C. 1989).

²⁵ Agency's Brief pp. 2 – 4 (April 24, 2025).

credible evidence or testimony during the pendency of her pre-termination appeal process that led scientific credence to this assertion.

Employee argues that she did not “refuse to submit” a sample as noted in the adverse action. Agency explains that if it is found, as it was herein, that an employee submitted a “substituted” sample, that it is akin to a refusal to submit. Agency further notes that the process of a “refusal to submit” is clearly denoted in its Bulletin 5 § 3.27(h). Further, Agency’s Bulletin 5 § 13.1, requires FEMS to recommend all employees who refuse to submit a urine sample, for termination. Employee’s argument that she did not “willingly” adulterate her urine sample is of no moment.²⁶ Employees’ explanation of a water fast being a permissible reason for the test result was not corroborated by the evidence presented during the FTB. I find that the seminal fact that her creatine level was absurdly low without providing a credible medical explanation during the FTB hearing makes that determination unnecessary.

Employee made other irregular assertions, that she failed to corroborate, in a failed attempt at undoing her adverse action.²⁷ Employee’s argument that she did not willingly adulterate her sample notwithstanding; I find that FEMS urine collection and drug and alcohol testing process was thoroughly vetted during her appeal process and that no harmful procedural error was committed by FEMS in the processing of her removal from service.

Adverse Action Done in Accordance with Applicable Rules and Regulations

Agency asserts that Employee’s removal did not violate any applicable rules or regulations. According to Agency’s Brief p. 10:

Employee does not have any prior disciplinary history, she is still subject to Bulletin 5, § 13.1’s directive that a member who submits a substituted sample “shall” be recommended for termination; (3) that all Agency employees are instructed that they must follow Bulletin 5 to the letter, meaning that Employee was well aware that if she produced a substituted sample, she would be recommended for termination; and (4) that alternative sanctions would not be effective because the health and safety of Agency members and the public are at risk if Agency were to allow alternative sanctions when Bulletin 5 is not followed.

My examination of the record reveals that Agency’s action was proper. In review of the FTB pre-termination hearing process, Employee did not provide any law or fact (with credible attribution) that would lend itself to reviewing Agency’s action as being done in a perverse application of law and regulations. I find that Employee failed to adequately allege that Agency’s action was not done in accordance with applicable laws or regulations. Given the gravity of the

²⁶ Rebuttal to Agency’s Brief pp. 2 – 3 (May 30, 2025).

²⁷ *Id.* p. 3. This includes Employee’s blanket assertions that she requested multiple urine tests from the Agency; alleged inadequate training provided to FTB hearing members; and alleged HIPAA violations. There is nothing in the record that a finding on any of these issues would upend her termination or that they are relevant to any issue in the instant matter at bar.

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 terminate Employee.

Conclusion

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.²⁸ I conclude that given the totality of the circumstances as enunciated in the instant decision, that Agency's action of removing Employee from service should be upheld.²⁹

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

²⁸ 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 (September 21, 1995).

²⁹ 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").