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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
GEORGE BARKSDALE	)	OEA Matter No. 1601-0072-04
Employee	)	
	)	Date of Issuance: December 2, 2005
v.	)	
	)	Joseph E. Lim, Esq.
METROPOLITAN POLICE DEPARTMENT	)	Senior Administrative Judge
Agency	)	
	)	

Mark Viehmeyer, Esq., Agency Representative  
Hugh Hassan, Employee Representative

**INITIAL DECISION**

INTRODUCTION

On May 21, 2004, Employee, a Motor Vehicle Operator in the Career Service, filed a petition for appeal from Agency’s final decision suspending him for 20 days from his position for “any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious.”

This matter was assigned to me on November 23, 2004. After several postponements requested by the parties, I held a prehearing conference on April 11, 2005 and a hearing on May 11, 2005 after an attempt at mediation failed. The record was closed at the end of the hearing.

JURISDICTION

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

### ISSUES

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

### STATEMENT OF THE CHARGES

By advance notice dated February 4, 2004, Employee was accused of causing property damage and then leaving the scene of an accident without notifying anyone. Agency also accused Employee of being less than truthful about the occurrence.

Agency charged Employee with the cause of "any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious" as defined in Section 1603.3 of the District Personnel Manual. The specifications underlying this charge are:

**SPECIFICATION NO. 1:** On Monday 24 March 2003, you towed an impounded vehicle to the Forensic Science Division garage. While attempting to back the vehicle into a parking space, you struck a parked vehicle, causing minor damage to both vehicles. You left the scene of the accident without notifying the owner of the parked truck or reporting the accident.

**SPECIFICATION NO. 2:** In a statement on Form PD-43, "Report of Damage to or Loss of District Government Property," dated 7 August 2003, you said,

As I was backing into the garage with the 1993 Nissan on the back of Crane #6, I noticed there was a Ford truck parked in the same stall I was attempting to put the Nissan in. I responded to the Office of Mobile Crime to advise them there is a truck parked in the stall where the Nissan had to be dropped. After I notified someone that the truck needed to be moved, I responded back to the bay and waited. After about one hour, nobody responded to move the truck. When I left the building, the Nissan was in fact twenty feet from the Ford truck. I responded to the next call given to me from Communications.

Sergeant Robert Dobbins' investigation determined this statement was untrue because you backed the towed Nissan into the rear of the Ford truck.

## EVIDENCE

1. Sgt. Robert Dobyms (transcript, pages 7 – 17)

Sgt. Robert Dobyms testified that he conducted the investigation into the March 24, 2003 incident. Based on the physical evidence and the witness statements that he obtained, Dobyms' investigation found that Employee, a civilian crane or towing truck driver, acted unprofessionally by leaving the scene of an accident after hitting Police Officer Henderson's vehicle while in the process of towing a vehicle and then failing to notify anyone of the accident.

2. Kimberly Everett (transcript, pages 17 – 35)

Ms. Everett, an administrative assistant to the police captain, explained that Employee's job as a civilian crane driver was to tow in stolen vehicles recovered from a crime scene. Employee was supposed to bring them inside the Forensic Science Division garage. Everett testified that on the morning of March 24, 2003, Employee approached her inside the office to ask for assistance in paging Officer Henderson to move his Ford pick-up truck. Employee indicated that he was trying to bring an impounded car into the garage but that Henderson's vehicle was blocking his path. Everett then paged Henderson who replied that he would be out in about 5 minutes.

Afterwards Everett was walking through the garage of the police vehicle impoundment lot when she heard a loud "boom sound." She turned around and saw Employee backing a tow truck with a blue Nissan hitched at the truck's crane. Employee was stopped near Henderson's black Ford truck. At this point she was six feet away from Employee. She witnessed Employee get out of his truck to look at the cars. Everett was positive that Employee had inadvertently hit Officer Henderson's car with the Nissan he was towing. She heard Employee curse, dropped the blue car he was just towing, and picked up another car.

Employee was on his way out when Officer Henderson drove up in police car. The two had a short discussion at which point Everett went back inside the building. A few days later she told Henderson that it was Employee who hit his car after finding out that Employee never informed Henderson of the incident. Everett described the damage to Henderson's vehicle as a dent with chipped paint on the rear.

3. Officer Joe Henderson (transcript, pages 35 – 67)

Officer Joe Henderson, a senior police officer, testified that in 2003 his job at the mobile crime lab was to ensure that vehicles that had been towed from the crime scene got processed for evidentiary purposes and then sent back to either the Blue Plains impoundment lot or the District's impoundment lot. On the morning of March 24, 2003, Henderson received a call from Ms. Everett. Everett informed him that he needed to move his vehicle from the mobile crime lab garage as Employee was waiting to bring in additional vehicles. Henderson replied that he would be right

over. Once he arrived at the garage, he saw Employee with a vehicle that he had the paperwork for. Before Employee could tow a vehicle to the Blue Plains lot, the police documents must accompany the vehicle so Henderson stopped Employee to tell him that he had the paperwork for the vehicle. Employee replied that he was in a hurry and had no time to wait for Henderson to look through the paperwork. Henderson replied that it would be a shame for Employee to take off without the proper forms because he would have to turn around and come back for it later since Blue Plains personnel will not accept the vehicle without proper documentation. Nonetheless, Employee left, then stopped in the middle of the street and came back for the paperwork.

Henderson then went to pick up his vehicle. He noticed a blue Nissan sitting behind his truck. Henderson asked his technician, Officer Holmes, to start his truck while he carted away the blue vehicle with an electric dolly. As soon as Holmes started the truck, he heard a loud roar from its engine. This surprised him as the engine was normally quiet.

Before Henderson could get a chance to look at his truck, a sergeant came up to report that someone had hit his police cruiser. After Henderson took care of that matter, he came back to his truck. He started up his truck and was mystified at the loud roar of his engine. While driving home, he thought about how he was sure he had not had an accident and resolved to examine the vehicle on a lift the next day.

On a lift the next day, he noticed that the muffler pipe on his truck was broken. He then measured the size of his pipe and discovered that the mark on the blue Nissan's front bumper matched exactly his pipe's measurements. See Agency Exhibit 3 and 4.

When he confronted Employee and showed him the damage, Employee asked what Henderson wanted. Henderson replied that he was going to have his truck repaired and asked Employee to pay the bill. Employee responded, "Well, we'll see how much it cost," and then walked off.

Because Henderson had a good warranty, the bill was only \$40. Employee's response to the bill was "I'm not giving you shit. I don't think I hit your vehicle and I'm ain't giving you shit." Then Employee walked off. At this point, Ms. Everett came up to Henderson and told him that she had witnessed the accident and that Employee did indeed cause the vehicular damage.

Henderson described his working relationship with Employee as difficult at times. Unlike his cordial relationship with the other motor vehicle operators, Employee was often difficult and rude. He said that as a police officer, he was not Employee's supervisor.

#### 4. Dean Aqui (transcript, pages 67 – 79)

Dean Aqui, a supervisory labor relations specialist in the Agency's Office of Labor Relations, testified that part of his job was to ensure that any adverse action undertaken by management must conform with the terms of the union contract, that cause for adverse action exists and that the penalty

chosen is fair and commensurate with the infraction.

In this particular case, the investigation revealed that not only did Employee have an avoidable accident, he lied about it. Management considered dishonesty as a significant offense because it puts a premium on employees being truthful at the police department.

5. Michael J. Pinkert (transcript, pages 79 -- 86)

Michael Pinkert, an officer in the Crime Scene Unit, testified that on March 24, 2003, he saw Employee performing his regular job of towing cars in and out of the garage. He did not witness the accident nor did he hear anything unusual. Pinkert explained that towing cars is a noisy activity. However, he admitted that he was out in the garage for only about half an hour from 7:00 to 7:30 a.m.

6. Employee (transcript, pages 86 – 141)

Employee, a motor vehicle operator for the police department for 21 years, testified that his job was to impound vehicles involved in a crime scene and those that would be used as evidence. He also assists with morning rush hour traffic for vehicles involved in an accident. Employee stated that he had a clean disciplinary record and that his work was always exemplary. His shift is from 6:00 a.m. to 2:30 p.m. but on March 24, 2003, Employee worked a 12-hour shift.

He had responded to a police shooting at the 1600 block of Meigs Place, Northeast, to pick up three vehicles for impoundment at the Mobile Crime Lab. The first one he picked up was the blue Nissan which he backed up into the Forensic Science Lab at around 7:00 a.m. Because Officer Henderson's Ford pick-up truck was blocking his way, Employee went down to ask Ms. Everett to page Officer Henderson.

After he had waited for about 45 minutes to an hour, Employee received another call to pick up another vehicle. Officer Williams accompanied him on this trip. They met Officer Henderson who asked him to wait for the paperwork on the vehicle Employee was towing. Employee replied that he was in a hurry and left. However, on his way out, he saw that someone else was already bringing in the other two vehicles in a flatbed; so he turned back and asked Henderson for the documents.

Employee denied hitting Officer Henderson's truck or causing any accident. He said that Henderson accused him the next day of causing an accident. When asked about the matching physical damage on both vehicles, Employee conceded that the Nissan might have hit the Ford truck at some point, but that he had nothing to do with it.

Henderson discussed with him about paying for the vehicular damage. When Henderson presented him the \$40 bill, Employee refused to pay it, insisting that he did not cause the accident. Employee notified his supervisor, Mr. Rose. Employee also claimed that Captain Williams had told him that Officer Henderson had confided that the truck damage was actually caused by his hitting a road bump.

Employee claimed that the time indicated on his signed statement was wrong but that the person who typed up his statement refused to make the correction. Employee stated that he had witnesses who would back him up. When asked who were his witnesses, Employee named Michael Pinkert and claimed that the other witnesses refused to get involved. In his signed statement, Employee said the time indicated was off about three hours but that the officer taking his statement did not want to correct it.

When asked about Officer Henderson's conversation with him regarding the accident, Employee claimed that he was never asked to pay for the damage. When asked about his assertion that a Captain Williams had told him that Henderson's truck damage was actually caused by Officer Henderson himself hitting a bump, Employee admitted that he never raised that defense at the Agency level nor could he produce Williams as a witness to back up his assertion. He also denied coming down from his tow truck and cursing at the truck damage he caused. Employee could not explain why Captain Williams' statement about the incident contradicted his assertion that he left the garage at around 8:30 a.m. instead of around noon.

Employee admitted that the damage on Henderson's truck matched the damage on the Nissan he was towing, but denied causing the accident. He claimed Ms. Everett lied about witnessing the accident but conceded that he had no idea why Everett would lie against him. When asked why he did not get any of his witnesses to back him up, Employee claimed he was not aware he could despite the fact that he had a lawyer.

#### FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Whether Agency has proven, by a preponderance of the evidence, that Employee's actions constitute cause for taking an adverse action.

Here, Agency charged Employee with: "Any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other any on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious." This is a catch-all phrase that Agency uses to denote employee conduct that is unprofessional and disruptive of efficient government operations.

The only testifying eyewitnesses to the incident are Employee and Ms. Everett. The pivotal witness in this incident is Ms. Everett, who directly contradicts Employee's version. Employee could show no reason why Ms. Everett would lie about the accident. In fact, I note that Ms. Everett was a disinterested bystander who had simply been disturbed by what appeared to her to be highly unprofessional and irresponsible behavior exhibited by a fellow employee towards the property of another employee. Whereas Employee's testimony can be described as entirely self-serving, I find Ms. Everett to be highly credible. There was no other evidence produced to show that she was anything but a disinterested witness.

In addition, Employee does not dispute Officer Henderson's assertion that the damage on his truck exactly matched the damage on the Nissan he was towing. Employee's bald contention that he did not cause the accident and that he did not lie about it is simply incredible.

Based upon the above evidence, I find that Employee's conduct amounted to an on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations. I find that Employee was unnecessarily negligent when he backed a vehicle he was towing and caused it to hit a fellow employee's parked vehicle.

I also find that Employee lied about the incident by first concealing that it even happened, and then denying his involvement both orally and in writing when questioned by his superiors. I therefore find that Employee willingly and knowingly made a false statement to his superior.

I therefore find that Agency has met its burden of proving each and every one of its specifications against Employee. Accordingly, I conclude that the Agency has met its burden of establishing cause for taking adverse action.

If so, whether Agency's penalty was appropriate under the circumstances.

When assessing the appropriateness of a penalty, this Office will leave Agency's penalty undisturbed when it is satisfied, on the basis of the charges sustained, that the penalty is appropriate to the severity of the employee's actions and is clearly not an error of judgment.

Employee argues that he was entirely innocent of the charges and that he was undeserving of punishment. However, I have found that he was indeed guilty. Here, we have an employee who is responsible for safely and efficiently transporting vehicles that serve as evidence to the District's storage facility. Cooperation and trust is also essential between fellow employees on the Agency work force. Employee's dishonesty and deceit regarding an accident that he caused is corrosive to an efficient and trusting work environment. This factor points to the appropriateness of Agency's penalty of a 20-day-suspension. Further, the penalty is clearly not an error of judgment. Accordingly, I conclude that Agency's action should be upheld.

ORDER

It is hereby ORDERED that Agency's action is upheld.

FOR THE OFFICE:

  
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JOSEPH E. LIM, Esq.  
Senior Administrative Judge