

Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals’ website. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
EMPLOYEE ¹)	
)	OEA Matter No. 1601-0026-20
v.)	
)	Date of Issuance: February 24, 2022
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	
)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Bus Attendant for the Office of the State Superintendent of Education (“Agency”). On December 9, 2019, she received a final notice of separation from Agency. The notice provided that on August 29, 2019, Employee submitted a urine sample which tested positive for the presence of marijuana, in violation of 6B District of Columbia Municipal Regulations (“DCMR”) §§ 435.6 and 1605.4(h). Consequently, Employee was terminated effective December 9, 2019.²

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 9, 2020. Employee asserted that the urine sample that she provided did not contain the

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

² *Petition for Appeal*, p. 24-25 (January 9, 2020).

presence of marijuana. Moreover, she provided that the testing process was unusually long. Consequently, she requested that OEA determine if Agency failed to follow the proper policies and procedures, and if it met the appropriate timeframes for testing.³

Agency filed an Answer to the Petition for Appeal on February 11, 2020. It provided that Employee held a safety-sensitive position and was therefore, subject to random drug testing. Agency further asserted that Employee signed a notice which provided that she would be subject to disciplinary action for a positive drug test, pursuant to 6B DCMR §§ 1605.4(h) and 428.1. Agency also argued that it considered the *Douglas*⁴ factors when determining the appropriate discipline. Therefore, it requested that Employee's removal action be upheld.⁵

Prior to the evidentiary hearing, the OEA Administrative Judge ("AJ") ordered Agency to submit briefs addressing its failure to test a split sample when Employee made the request; the

³ *Id.* at 2.

⁴ 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;
- 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.

⁵ *The Office of the State Superintendent of Education's Answer to Employee's Petition for Appeal*, p. 1-4 (February 11, 2020).

chain of custody of the sample; and the storage procedure for the sample.⁶ In its brief, Agency asserted that Employee's removal was within the range of penalties for a positive drug test, as set forth in Chapter 16 of the DCMR Table of Illustrative Actions. As for the testing procedure, it explained that Employee's split sample was retested for the presence of marijuana. According to Agency, both the sample from Employee taken on August 29, 2019 and the split sample retested on July 18, 2020, tested positive for marijuana.⁷ Moreover, it explained that there is no specific timeframe in which a split sample should be tested, but a one-year timeframe is consistent with the federal regulations for drug testing. Regarding the chain of custody, Agency explained that the sample was held in a freezer until it was removed on July 17, 2020, for retesting. Additionally, it provided a detailed explanation of where the sample went from the time of collection until it was retested by a second laboratory.⁸

In her brief, Employee argued that although she submitted her sample on August 29, 2019, she did not receive the results from the drug test until September 16, 2019. Employee provided that it was then that she voiced her concerns about the testing procedures and that the test was wrong. However, her union, DCHR representative Tamika Cambridge, and Hearing Officer Rudy Chounoune, ignored her pleas. Moreover, Employee claimed that Agency admitted to violating her rights. Finally, she asserted that she never saw her identification number indicated on the sample that she provided; therefore, she contended that either her sample was mislabeled or cross-contaminated.⁹

After conducting an evidentiary hearing, the AJ issued her Initial Decision on September

⁶ *Post Pre-hearing Conference Order* (June 29, 2020) and *Order* (July 17, 2020).

⁷ *Office of the State Superintendent of Education Brief in Support of Termination*, p. 3-7 (August 17, 2020).

⁸ *Office of the State Superintendent of Education Supplemental Brief in Support of Termination*, p. 4-9 (February 19, 2021).

⁹ *Brief Response to OSSE* (September 28, 2020).

22, 2021. The AJ held that Agency did not provide justification for its failure to conduct a timely testing of the split sample. She found that DCHR managers Tamika Cambridge and Torey Draughn both testified that they received notification of Employee's request to have a split sample tested, but they failed to test the sample until nearly one year later. The AJ opined that Agency's claim of harmless error for the delayed testing was unfounded. She reasoned that Agency had ample notice to test the sample ahead of the OEA adjudicatory process. The AJ found that Agency failed to act with due diligence to ensure that its procedures and processes were followed. Moreover, she explained that Agency's reliance on testing the sample within a one-year time frame did not cure itself of the oversight. She ruled that Agency's failure was in violation of the Fifth Amendment Due Process and caused prejudice to Employee's rights.¹⁰ Accordingly, the AJ ordered that Agency's termination action be reversed; that Agency reinstate Employee; and that Agency reimburse Employee all pay and benefits lost as a result of her removal.¹¹

On October 26, 2021, Agency filed a Petition for Review. It argues that the Initial Decision is based on an erroneous interpretation of statute and unsupported by substantial evidence. Agency cites to the *Kyle Quamina v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-17, *Opinion and Order on Petition for Review* (April 9, 2019) matter which provides that the harmless error rule requires a two-prong analysis in which an AJ must find both substantial harm or prejudice and a significant affect on an agency's final decision. As it relates to the second prong, the error significantly affecting the agency's final decision, Agency explains that there must be a showing that the procedural error was likely to have caused Agency to reach a different conclusion from the one it would have reached in the absence or cure of the error. It contends that

¹⁰ The AJ explained that Employee was deprived of her protected property interest, and Agency's failure to test the split sample within a timely fashion impacted Employee's ability to respond to Agency prior to her appeal to OEA. Consequently, she determined that Employee's rights were prejudiced.

¹¹ *Initial Decision*, p. 10-13 (September 22, 2021).

Employee cannot assert that but for Agency's failure to test the split sample upon request, she would not have been terminated. It further provides that this assertion cannot be made because Employee's original test and split sample both tested positive for marijuana. Accordingly, even if Agency had conducted the split sample when Employee requested it, it would not have changed the termination action. As it relates to the AJ's due process analysis, Agency asserts that the delay in testing the split sample did not violate Employee's due process rights because it was not new and material evidence.¹² Furthermore, it contends that even if it violated Employee's due process rights by failing to test the sample when requested, it cured the issue.¹³

Test Report Errors

While the termination action was pending before Agency, Employee raised concerns that the test results indicated a different collection date from the date that she provided her sample.¹⁴ According to Employee, the sample was taken on August 29, 2019. However, the collection date listed on the test results was August 28, 2019. This Board takes this concern very seriously. However, after a thorough review of the record, there are several other areas of identification that clearly prove that the sample tested belonged to Employee.

On the Forensic Drug Testing Custody and Control Form submitted by Agency from Quest Diagnostics, Employee's identification number is listed as 00038301. Additionally, the specimen identification number is listed as 5483877. Both numbers correspond with those found on the test results document provided by Quest, which indicated a positive result for the presence of

¹² It is Agency's position that the AJ erroneously interpreted *Ward v. U.S. Postal Service*, 634 F.3d 1274, 1279 (2011). It provides that *Ward* emphasized that not every procedural defect is so substantial and likely to cause prejudice that it undermines due process. Moreover, Agency reasons that the Court in *Ward* followed the standard in *Stone v. Federal Deposit Insurance Corporation*, 179 F.3d 1368 (1999), which held that due process is violated only when the omitted evidence is new and material information.

¹³ *Agency's Petition for Review*, p. 4-10 (October 26, 2021).

¹⁴ *Office of the State Superintendent of Education Prehearing Statement*, p. 9 (June 23, 2020).

marijuana.¹⁵ Further, the same identifying numbers are found on the Split Reanalysis Request Form submitted by Clinical Reference Lab, along with an additional identifying split sample number of N8261132. The split sample documents also reflected that there was the presence of marijuana in the sample.¹⁶ Therefore, although the inaccurate date listed on the forms is concerning, the corresponding Employee identification number, specimen identification number, and split sample number are consistent across the documents and show that the samples tested belonged to Employee.

Testing Delay

In her Initial Decision, the AJ found that Agency failed to act with due diligence to ensure that its procedures and processes were followed. Moreover, she held that Agency's reliance on testing the sample within a one-year time frame did not cure itself of the oversight because its failure prejudiced Employee's rights.¹⁷ However, Agency asserts that the delay was a harmless error.¹⁸

OEA Rule 631.3 provides the following:

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.

As Agency provided, this Board held in *Kyle Quamina v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-17, *Opinion and Order on Petition for Review* (April 9, 2019) that a two-prong analysis should be applied to determine if harmless error exists. The two

¹⁵ *Id.*, 29-30.

¹⁶ *Office of the State Superintendent of Education Brief in Support of Termination*, p. 12-36 (August 17, 2020).

¹⁷ *Initial Decision*, p. 10-13 (September 22, 2021).

¹⁸ *Agency's Petition for Review*, p. 4-6 (October 26, 2021).

prongs to be examined are whether Agency's error caused substantial harm or prejudice to Employee's rights *and* whether such error significantly affected Agency's final decision to take the action against Employee (emphasis added).

This Board is troubled that DCHR managers Tamika Cambridge and Torey Draughn both testified that they received notification of Employee's request to have a split sample tested, but they failed to test the sample until nearly one year later. The delay in testing the split sample was another misstep on DCHR's part. However, it is undisputed that Agency provided witness testimony and documentary evidence to adequately establish the chain of custody of Employee's sample.¹⁹ As it relates to the timeliness of testing the sample, Agency provided that it relied on the federal procedures for drug and alcohol testing found in 49 Code of Federal Regulation ("CFR") Part 40.²⁰ The Department of Transportation Rule 49 CFR Part 40 Section 40.99 provides the following:

(a) As a laboratory testing the primary specimen, you must retain a

¹⁹ As it relates to testing, D.C. Code § 1-620.34 (a) and (b) provide the following:

(a) Testing shall be performed by an outside contractor at a laboratory certified by the United States Department of Health and Human Services ("HHS") to perform job-related drug and alcohol forensic testing.

(b) For random testing of District employees, the contractor shall. . . collect urine specimens on-site, split each sample and perform enzyme-multiplied-immunossay technique ("EMIT") testing on one sample and store the split of that sample. Any positive EMIT test shall be then confirmed by the contractor, using the gas chromatography/mass spectrometry ("GCMS") methodology.

In its Supplemental Brief in Support of Termination, Agency provided a contract between DCHR and the contractor, National Drug Screening, to perform drug and alcohol testing for the District government. The contract provided that D.C. Code § 1-620.31 *et seq.* was applicable and incorporated in the contract. The contract specifically addressed that the contractor's laboratory must be DHHS certified; that initial testing shall be performed using the EMIT technique; and that positive results must be confirmed through use of the GC/MS techniques. *Office of the State Superintendent of Education Supplemental Brief in Support of Termination*, p. 109, 117-118, 120, 123, 133, and 179 (February 19, 2021). Additionally, Agency provided several chain of custody documents that were explained by witnesses Torey Draughn, John Tarver, Dr. Jaworski, and Brett Oswald regarding how the specimen was numbered; the federal storage requirements; and the testing techniques used at both Quest Diagnostic and Clinical Reference Lab. The testimonies were thoroughly summarized in the Initial Decision. *Initial Decision*, p. 3-7 (September 22, 2021).

²⁰ *Office of the State Superintendent of Education Supplemental Brief in Support of Termination*, p. 5, and 117-118 (February 19, 2021).

specimen that was reported with positive, adulterated, substituted, or invalid results for a minimum of one year.

(b) You must keep such a specimen in secure, long-term, frozen storage in accordance with HHS requirements.

Agency's witness, John Tarver, explained that the process of freezing a specimen is done to keep the sample from denigrating and to prevent bacteria from contaminating the sample.²¹ Employee submitted her sample on August 29, 2019.²² Employee's split sample was removed from the freezer on July 17, 2020 and received and tested by Clinical Reference Lab on July 18, 2020. The results were reported on July 19, 2020.²³ Thus, although the split sample was not retested when Employee first requested, it was retained within the federal guidelines of one year.

Moreover, this Board does not believe that there is substantial evidence to uphold the AJ's ruling that Agency's failure to test the split sample in a timely fashion, precluded Employee's ability to respond prior to her appeal at OEA.²⁴ The split sample confirmed the positive result of the original sample. Thus, it is not clear how the split sample results would have better enabled Employee to argue against her termination at the Agency level. Accordingly, we disagree with the AJ's determination that Agency's failure to timely test the split sample caused prejudice to Employee's rights when analyzing the harmless error rule.

The AJ's analysis of the harmless error rule failed to consider the second prong of the two-prong test. The harmless error rule provides that Agency's error must not have caused substantial harm or prejudice to Employee's rights *and* not have significantly affected Agency's final decision to take the action against Employee (emphasis added). Even if there was substantial evidence to

²¹ *OEA Evidentiary Hearing Transcript*, p. 108 (April 26, 2021).

²² *Office of the State Superintendent of Education Answer to Employee's Petition for Appeal*, p. 20 (February 11, 2020).

²³ *Office of the State Superintendent of Education Brief in Support of Termination*, p. 12-36 (August 17, 2020).

²⁴ Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion. *Smallwood v. Metropolitan Police Department*, 956 A.2d 705, 707 (D.C. 2008).

support the AJ's finding of prejudice to Employee's rights, the harmless error analysis would fail on the grounds that Agency's error would have significantly affected its final decision to terminate Employee. As the OEA Board held in *Quamina*, there must be a showing that the error was likely to have caused Agency to reach a different conclusion from the one it reached.²⁵ Employee's original sample and split samples both tested positive for marijuana. Therefore, Agency's error of delaying testing did not affect its final decision. Agency would have still terminated Employee due to the positive drug test results from the split sample.

Cause

Pursuant to 6B DCMR § 409.2(a), "the types of positions that are subject to enhanced suitability screenings for . . . employees . . . with duties and responsibilities that shall be . . . safety sensitive, which are positions with duties or responsibilities if performed while under the influence of drugs or alcohol could lead to a lapse of attention that could cause actual, immediate and permanent physical injury or loss of life to self or others." Additionally, 6B DCMR § 410.1(f) provides that "in addition to the general suitability screening, individuals . . . occupying safety sensitive positions are subject to . . . random drug and alcohol test." Agency established, and Employee conceded that, as a Bus Attendant, she held a safety-sensitive position.²⁶ Therefore, Chapter 4 of the DCMR is applicable to Employee.

As it relates to cause, 6B DCMR § 428.1(a) provides that ". . . an employee shall be deemed unsuitable and there shall be cause to separate an employee from a covered position as described

²⁵ *Kyle Quamina v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-17, *Opinion and Order on Petition for Review*, p. 10 (April 9, 2019)(citing to *Harding v. Office of Employee Appeals*, 887 A.2d 33 (D.C. 2005); *Santos v. Department of Navy*, 58 M.S.P.R. 694 (September 23, 1993); and *Mathis v. Department of State*, No. AT-0432-14-0867-1-1, 2014 WL 6616619 (Nov. 18, 2014) (M.S.P.B. November 18, 2014)).

²⁶ Agency provided two Individual Notification of Requirement for Drug and Alcohol Testing for the Protection of Children and Youth form which were signed by Employee on January 8, 2018 and August 29, 2019. *The Office of State Superintendent of Education's Answer to Employee's Petition for Appeal*, p. 18 (February 11, 2020) and *Office of the State Superintendent of Education Brief in Support of Termination*, p. 12-36 and 63-64 (August 17, 2020).

in §§ 435.9 and 439.3 for a positive drug or alcohol test result.”²⁷ Similarly, 6B DCMR § 435.6 provides that “in accordance with Section 428, a positive drug or alcohol test shall render an individual unsuitable for District employment and constitute cause for purposes of Chapter 16 of these regulations.” 6B DCMR § 1605.4(h) provides that testing positive for an unlawful controlled substance while on duty constitutes cause for an adverse action. Agency provided evidence from both Quest Diagnostic and Clinical Reference Lab that Employee’s original and split samples tested positive for marijuana.²⁸ Because a positive drug test is all that was needed to establish cause, Agency had cause to remove Employee pursuant to 6B DCMR §§ 428.1(a), 435.6, and 1605.4(h).

Penalty Within the Range Allowed by Law, Regulation, or Applicable Table of Penalties

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).²⁹ According to the Court in *Stokes*,

²⁷ 6B DCMR § 435.9 provides the following:

If an employee is deemed unsuitable, the personnel authority may terminate his or her employment pursuant to the appropriate adverse action procedure as specified in this subtitle or any applicable collective bargaining agreement. Instead of terminating the employee, the personnel authority may reassign the employee to a position for which he or she is qualified and suitable.

6B DCMR § 439.3 provides the following:

If the program administrator or employing agency determines that an existing employee is unsuitable to continue serving in a covered position, and that he or she should be separated from employment, the removal action shall be carried out by the personnel authority in accordance with the employee's type of appointment (i.e., probationary, term or permanent, etc.) and service (i.e., Career, Legal, Excepted, Management Supervisory Service, etc.), and the applicable legal and regulatory provisions governing adverse actions, including but not limited to Chapter 16 and applicable collective bargaining agreement provisions.

²⁸ *Office of State Superintendent of Education Brief in Support of Termination*, p. 61-62 (August 17, 2020) and *OSSE Closing Argument*, p. 3-4 (July 16, 2021).

²⁹ *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*

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. 6B DCMR § 428.1(a) offers separation as the only penalty for a positive drug test result. 6B DCMR § 435.9 provides that “if an employee is deemed unsuitable, the personnel authority may terminate his or her employment pursuant to the appropriate adverse action. . . .” However, the section also provides that “instead of terminating the employee, the personnel authority may reassign the employee to a position for which he or she is qualified and suitable.” Therefore, in accordance with Chapter 4, Agency had the choice to terminate Employee or reassign her. Alternatively, 6B DCMR § 1607.2(h)(3) provides that the penalty can range from suspension to removal for testing positive for an illegal drug when reporting to or while being on duty. Thus, pursuant to Chapter 16, Agency had the ability to impose a penalty from suspension to removal.

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.³⁰ 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.³¹

Administration, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

³⁰ *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).

³¹ *Love* also provided the following:

Removal was within the range of penalty for the first occurrence of a positive drug test under 6B DCMR §§ 428.1, 435.9, and 1607. Thus, Agency's penalty determination was appropriate. Furthermore, the record shows that the *Douglas* factors were weighed by Agency before imposing its penalty of removal.³²

Conclusion

Although there was an error of the collection date and a delay in testing the split sample, there are many other areas of identification that clearly prove that the sample belonged to Employee. Moreover, the sample was retained within the federal guidelines of one year. Therefore, Employee's rights were not prejudiced. Furthermore, Agency's delay in testing the split sample did not affect its final decision because those results were also positive for marijuana. Agency had cause to terminate Employee. The penalty was appropriate, and Agency adequately considered the *Douglas* factors. As a result of these findings, this Board must reverse the Initial Decision and uphold Agency's termination action.

[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 the agency's shoes in the first instance; such an approach 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 assure that the agency did conscientiously consider 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 the agency's judgment clearly exceeded the limits of reasonableness, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

³² *Petition for Appeal*, p. 21-25 (January 9, 2020) and *Office of the State Superintendent of Education Brief in Support of Termination*, p. 42-48 (August 17, 2020).

ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**. The Initial Decision is **REVERSED**, and Agency's termination action is **UPHELD**.

FOR THE BOARD:

Clarence Labor, Jr., Chair

Patricia Hobson Wilson

Jelani Freeman

Peter Rosenstein

Dionna Maria Lewis

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.