THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
SHOLANDA MILLER,	)	OEA Matter No. 1601-0325-10
Employee	)	
v.	)	Date of Issuance: April 14, 2015
D.C. METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Sholanda Miller ("Employee") worked as an Officer with the Metropolitan Police Department ("Agency"). On November 23, 2009, Agency issued a Notice of Proposed Adverse Action ("Proposed Notice") to Employee informing her that she would be suspended for fifteen days. Employee was charged with neglect of duty and prejudicial conduct.[1] On February 1, 2010, Agency issued an Amendment to the Proposed Notice ("Amended Notice"), wherein it also charged Employee with Compromising a Felony. The Amended Notice proposed termination instead of the fifteen-day suspension.[2] Employee was subsequently found guilty of

[1] For the neglect of duty charge, Agency provided that a joint investigation with the Federal Bureau of Investigation ("FBI") revealed that Employee had phone conversations with her boyfriend, Eric Shorts, where Mr. Shorts revealed that he threw a brick at an automobile, causing the driver to crash. Agency stated that Employee failed to report, investigate, or ensure that a member of the Department was notified of the alleged criminal conduct. As for the charge of prejudicial conduct, Agency stated that Employee's behavior brought discredit to the Department when the matter was brought to the attention of another law enforcement entity, the FBI. *Petition for Appeal*, p. 7-8 (June 16, 2010).

[2] Agency provided that the charge of compromising a felony related to Employee's discussions with Mr. Shorts regarding a homicide and stolen purses. *Respondent Metropolitan Police Department's Response to Petition for*

all three charges and served a Final Notice informing her that she would be terminated. The effective date of termination was May 21, 2010.[3]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on June 16, 2010. She alleged that Agency's actions were arbitrary and capricious; not supported by substantial evidence or in accordance with the law; and violated her procedural due process rights.[4] In its response to the Petition for Appeal, Agency denied Employee's allegations and provided that removal was in the range of penalties.[5]

The OEA Administrative Judge ("AJ") scheduled a Pre-hearing Conference and ordered both parties to submit Pre-hearing Statements.[6] Agency's Pre-hearing Statement reiterated that Employee was informed by Mr. Shorts of criminal activity but failed to act appropriately.[7] Employee's Pre-hearing Statement provided that the Amended Notice's penalty could not stand because she accepted the penalty provided in the Proposed Notice, thereby creating a contractual agreement with Agency. She further submitted that Agency violated the "90-day rule" and the "55-day rule."[8] Lastly, Employee asserted that Agency failed to properly apply the *Douglass* Factors[9] and that her due process rights were violated when it failed to act in accordance with its

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Appeal, p. 2 (July 19, 2010).
[3] *Id.* at Tab B.
[4] *Petition for Appeal,* p. 3 (June 16, 2010).
[5] *Respondent Metropolitan Police Department's Response to Petition for Appeal,* p. 3-4 (July 19, 2010).
[6] *Order Convening a Pre-hearing Conference (*July 17, 2012).
[7] *Agency's Pre-hearing Statement* (August 30, 2012).
[8] According to D.C. Official Code § 5-1031 ("90-day rule"), no adverse action against a sworn member shall commence more than 90 days after the date that Agency knew or should have known of the act that allegedly constituted cause. Employee explained that Agency "…took 182 business days after the 90-day clock started to run." Employee also contended that in accordance with Agency's Collective Bargaining Agreement ("CBA") with the Fraternal Order of Police, Metropolitan Labor Committee, it had 55 days ("55-day rule") to issue and serve the final decision. *Employee's Pre-hearing Statement,* p. 5-7 (August 30, 2012).
[9] 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 it's 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;

CBA.[10]

Thereafter, the AJ issued an order requiring both parties to submit additional briefs addressing whether Agency violated the 90-day rule; whether Agency violated the 55-day rule; and whether Agency was prevented from removing Employee from service because she accepted the initial proposed penalty.[11] Employee asserted in her brief that the 90-day period commenced on March 5, 2009. She explained that on this date, Agency's investigation came to a close with the arrest of Mr. Shorts and marked the beginning of Agency's administrative review of her case. Employee also claimed that Agency knew of her actions and the criminal allegations as early as December of 2008. With regard to the 55-day rule, Employee provided that Agency violated this rule because the 55 days began to run on November 23, 2009, and Agency did not serve its Final Notice until April 13, 2010.[12]

In its brief, Agency explained that after March 5, 2009, it conducted a criminal investigation to determine whether Employee engaged in criminal activity. It argued that in accordance with D.C. Official Code § 5-1031(b), the 90-day period was tolled until the

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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.

[10] Furthermore, Employee provided that pursuant to *Theodore Adamek v. U.S. Postal Service*, 11 MSPB 482, 13 M.S.P.R. 224 (1982), an employee cannot receive discipline twice for the same incident. *Employee's Pre-hearing Statement*, p. 7-9 (August 30, 2012).

[11] *Order Requiring the Parties to Submit Briefs* (September 28, 2012).

[12] Employee reiterated that the penalty could not stand because she had a contractual agreement with Agency. *Brief of Employee*, p. 4-11 (October 12, 2012).

conclusion of its investigation.[13] Agency asserted that its investigation concluded on July 20, 2009, when the United States Attorney for the District of Columbia issued a letter declining to criminally prosecute Employee. It contended that on July 21, 2009, the 90-day period commenced, and it served the Proposed Notice eighty-six business days later on November 23, 2009.[14]

With regard to the 55-day rule, Agency opined that it complied with this rule because the Amended Notice was served on February 1, 2010, and the Final Notice was served on April 13, 2010.[15] Lastly, Agency stated that the matter was not resolved with the original penalty and argued that the principles of contract law were inapplicable to Employee's matter.[16]

The AJ issued his Initial Decision on December 30, 2013. With regard to the 90-day rule, the AJ considered D.C. Official Code § 5-1031(b), and found that the 90-day period commenced on July 21, 2009. He reasoned that from March 5, 2009 until July 20, 2009, Agency was conducting a criminal investigation of Employee. The AJ found that the criminal investigation concluded with the issuance of the declination letter on July 20, 2009. Accordingly, he ruled that Agency did not violate the 90-day rule because its Proposed Notice was issued eighty-six business days after July 21, 2009. With regard to the 55-day rule, the AJ

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[13] D.C. Official Code § 5-1031(b) provides that:

> if the act. .. . constituting cause is the subject of a criminal investigation[,]. . . the 90 day period for commencing a[n] . . . adverse action . . . shall be tolled until the conclusion of the investigation.

[14] Furthermore, Agency argued that Employee failed to cite any rule of law that prohibited it from issuing the Amended Notice or modifying the penalty imposed.

[15] Agency asserted that the Amended Notice was the relevant notice for the purpose of determining the 55-day rule.

[16] It explained that further consideration was given to the matter, and as a result, it issued the Amended Notice to include additional charges and specifications. *Agency's Brief,* p. 4-10 (December 7, 2012). Employee submitted a Reply Brief that opposed Agency's assertion that the 90-day clock began to run on July 21, 2009. She reasoned that pursuant to the decision in *Fraternal Order of Police/Metropolitan Police Department Labor Committee v. Metropolitan Police Department, Fire and Emergency Medical Services*, Case No. 08-57312 (June 28, 2012), the joint investigation conducted by Agency and the FBI ended on March 5, 2009, with the arrest of Mr. Shorts. Employee argued that Agency's review of the matter after that date was purely administrative in nature. She stated that *assuming arguendo* that July 20, 2009, marked the beginning of the 90-day clock, Agency's Amended Notice still violated the 90-day rule. Ultimately, Employee believed that Agency's Amended Notice violated the intent and purpose of the 55-day rule. *Employee's Reply Brief* (December 21, 2012).

found that Article 12, Section 6 of the CBA provided that an officer ". . . shall be given a written decision and the reasons therefore no later than fifty-five (55) business days after the date the employee [was] notified in writing of the charges or the date the employee elect[ed] to have a departmental hearing. . . ." He found that Employee was served with the Final Notice fifty days after the Amended Notice. Therefore, the AJ ruled that Agency did not violate the 55-day rule.[17]

Finally, with regard to Employee's belief that she had a contractual agreement with Agency, the AJ stated that the principles of contract law were inapplicable to her matter.[18] The AJ did not find any fault in Agency's decisions to amend the Proposed Notice, add additional charges, or enhance the penalty imposed. As a result, he determined that Agency had cause to remove Employee and upheld its decision.[19]

On February 3, 2014, Employee filed a Petition for Review with the OEA Board. She argues that the Initial Decision is based an erroneous interpretation of D.C. Official Code § 5-1031; that the AJ erroneously applied the 55-day rule; and that the AJ erroneously determined that the Proposed Notice was not an offer.[20] Furthermore, Employee believes that the AJ prematurely concluded that the Agency had cause to remove her. Therefore, she requests that the Board set aside the Initial Decision; rule that the 55-day rule was violated; and reinstate her position.[21]

In response to the Petition for Review, Agency states that the AJ's interpretation of D.C. Official Code § 5-1031 and application of the 55-day rule were correct.[22] It believes that the

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[17] *Initial Decision,* p. 4-5 (December 30, 2013).
[18] The AJ reasoned that the principles of contract law are inapplicable in instances when an employee is disciplined for misconduct. *Id.* at 7.
[19] *Id.*
[20] Employee reiterates the previous arguments that were submitted to the AJ. She believes that the AJ failed to consider many of these arguments.
[21] Employee asserts that at a minimum, the Board must remand the matter to the AJ for an Evidentiary Hearing to be conducted. *Petition for Review,* p. 9-24 (February 3, 2014).
[22] Agency argues that Employee fails to cite any legal authority to support her argument that the AJ erred in finding

Initial Decision also correctly determined that the Proposed Notice was not an offer. Thus, Agency contends that the AJ committed no error and that the Initial Decision should be affirmed.[23]

Substantial Evidence

Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[24] The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987) found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. There were three issues presented on appeal before the AJ – whether Agency violated the 90-day rule; whether Agency violated the 55-day rule; and whether Agency is prevented from removing Employee from her position due to a previously proposed 15-day suspension. This Board believes that the AJ's assessments of the 90-day rule and 15-day suspension are based on substantial evidence. However, we must remand the matter to the AJ to adequately consider the issues raised regarding the 55-day rule.

Ninety-day rule

D.C. Official Code § 5-1031 provides the following regarding the 90-day rule:

> (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.

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that the 90-day period began on July 21, 2009. It states that her argument regarding the CBA and the 55-day rule is not consistent with the CBA.

[23] *Agency's Brief in Opposition to Employee's Petition for Review,* p. 5-12 (March 10, 2014).

[24] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

> (b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the Office of the United States Attorney for the District of Columbia, or the Office of Corporation Counsel, or an investigation by the Office of Police Complaints, the 90-day period for commencing a corrective or adverse action under subsection (a) of this section shall be tolled until the conclusion of the investigation.

It is well-settled that the 90-day deadline is a mandatory, rather than directory provision. Therefore, any violation of the statute by an agency would result in a reversal of the adverse action.[25] The only exception to this rule lies within subsection (b) of the statue. According to section (b), the 90-day deadline shall be tolled until the conclusion of a criminal investigation.

In the current matter, Employee was subject to a criminal investigation by an Assistant United States Attorney. The AJ held that in accordance with D.C. Official Code § 5-1031(b), the 90-day period for commencing the adverse action started on July 21, 2009. He reasoned that this was the day after the United States Attorney issued a letter of declination to criminally prosecute Employee. Accordingly, he ruled that because the date between the letter of declination and the first proposed notice was eighty-six business days, then Agency was within the 90-day deadline.

We agree with the AJ's ruling on this issue. The OEA Board previously held in *Timothy Ebert v. Metropolitan Police Department,* OEA Matter No. 1601-0223-98, *Opinion and Order on Petition for Review* (December 31, 2002), that "the date of the declination letter is an objective 'bright line' signaling the end of a criminal investigation." The Board reasoned that agencies should not have to guess about the date the deadline begins to run because, in

[25] *McHugh v. Department of Human Services,* OEA Matter No. 1601-0012-95 (November 20, 1995); *Ross v. Department of Human Services,* OEA Matter No. 1601-0338-94 (May 15, 1995); *Robert L. King v. D.C. Housing Authority,* OEA Matter No. 1601-0062-98, p. 16 (May 24, 2000); *Velerie Jones-Coe v. Department of Human Services,* OEA Matter No. 1601-0088-99, p. 3 (June 7, 2002); *Curtis Adamson v. Metropolitan Police Department,* OEA Matter No. 1601-0041-04 (February 14, 2006); and *Sherman Lankford v. Metropolitan Police Department,* OEA Matter No. 1601-0147-06, p. 3-4 (March 26, 2007).

accordance with the statute, it is tolled as long as there is an on-going criminal investigation. The Board ruled that a formal decision not to prosecute concludes the investigation. Moreover, the Superior Court for the District of Columbia held in *District of Columbia v. District of Columbia Office of Employee Appeals and Robert L. Jordan*, 883 A.2d 124 (2005), that "the natural meaning of the statutory language . . . is that the 'conclusion of a criminal investigation' must involve action taken by an entity with prosecutorial authority—that is, the authority to review evidence, and to either charge an individual with the commission of a criminal offense, or decide that charges should not be filed." In this case, the United States Attorney made a decision not to charge Employee with a criminal offense after reviewing the evidence. Therefore, as the AJ contends, the conclusion of the criminal investigation occurred with the letter of declination. The AJ correctly calculated that there were eighty-six business days between the declination letter of July 21, 2009 and November 23, 2009, the date of the proposed adverse action.[26]

Fifteen-day Suspension

As for the 15-day suspension, this Board also agrees with the AJ's ruling on this issue. Contract law principals are not applicable in this type of employment matter. There is no statutory or regulatory language available that supports Employee's contention that she accepted the 15-day suspension as her punishment. As Agency correctly provided, the Proposed Notice was not dependent on Employee's decision to accept or decline the action. Therefore, the AJ's

[26] Contrary to Employee's assertion, the time prior to the issuance of the declination letter was not an administrative investigation. It is clear from the record that the investigation during this time was criminal in nature. Agency offered four documents in its brief which clearly provide that Employee was a part of an on-going criminal investigation. It submitted a March 13, 2009 MPD Incident Summary Sheet which stated that the type of incident being investigated was "criminal misconduct." *Agency Brief*, Attachment #3 (December 7, 2012). Additionally, there was a March 20, 2009 email that states "please be advised that this pending IAD matter is in reference to allegations of criminal misconduct." *Id.,* Attachment 4. Moreover, on April 2, 2009, there was an Agency email which provided, *inter alia*, that it needed an extension of time for further investigation of allegations of "criminal misconduct by . . . Sholanda Miller." *Id.,* Attachment #1. Finally, there was the declination letter dated July 21, 2009, which provided that "the letter . . . indicating declination of criminal prosecution involving allegations of failure to take police action . . . ." *Id.,* Attachment #2.

decision is based on substantial evidence.

Fifty-five day rule

The Collective Bargaining Agreement between Agency and Employee's Union, the Fraternal Order of Police, MPD Labor Committee, provides the following in Article 12, Section 6:

> The employee shall be given a written decision and the reasons therefore no later than fifty-five (55) business days after the date the employee is notified in writing of the charges or the date the employee elects to have a departmental hearing . . . .

This Board has determined that the AJ failed to provide any reasons, analysis, or basis for his ruling as it relates to the 55-day rule. The AJ merely recited the positions of both parties and offered a curt conclusory statement that ". . . Employee was timely served with the Final Notice and [sic] that MPD did not violate the 55-day rule."[27] Because the AJ offered no conclusions of law to support his finding, we are unable to conclude that his decision is based on substantial evidence.

D.C. Official Code § 1-606.03(c) provides that "all decisions of the Office shall include findings of fact and a written decision, as well as the reasons or basis for the decision upon all material issues of fact and law presented on record . . . ."[28] Moreover, OEA Rule 633.3(d) provides that the Board may grant a Petition for Review when the petition establishes that "the initial decision did not address all material issues of law and fact properly raised in the appeal." Similarly, the D.C. Court of Appeals held in *Dupree v. D.C. Office of Employee Appeals*, 36 A.3d 826, 832 (D.C. 2011), that when the AJ is made aware of material issues in an employee's notice of appeal and there is the absence of any discussion of the employee's arguments in the

[27] *Initial Decision*, p. 5 (December 30, 2013).
[28] Similarly, OEA Rule 631.2(a) provides that "each initial decision shall contain findings of fact and conclusions of law, as well as the reasons or [basis] therefore, upon all the material issues of fact and law presented on the record."

OEA's initial decision, the determination cannot be made that all the issues were fully considered. The *Dupree* court (quoting *Murchison v. District of Columbia Department of Public Works*, 813 A.2d 203, 205 (D.C. 2002)) reasoned that "to pass muster, an administrative agency decision must state findings of fact on each material, contested factual issue; those findings must be supported by substantial evidence in the agency record; and the agency's conclusions of law must follow rationally from its findings."

This Board recommends that the AJ consider some specific issues on remand as he determines if Agency violated the 55-day rule. Historically, OEA has held that an adverse action is deemed to have commenced when an employee is formally notified of the proposed adverse action.[29] OEA held in *Curtis Adamson v. Metropolitan Police Department,* OEA Matter No. 1601-0041-04 (February 14, 2006), that "the 55-day rule is similar to the former '45-day rule'[30] for an agency to commence an adverse action against an employee." The AJ in *Adamson* reasoned that because the 55- and 45-day rules flowed from the same legal principles, then the 55-day rule is mandatory, and an employee invoking the rule is not required to show actual harm as a result of a violation of the rule. The *Adamson* decision further held that any violation by agency should result in summary reversal of the adverse action. Moreover, the OEA Board upheld the AJ's ruling in *Adamson* by finding that because the 55-day rule is mandatory, Agency must process an adverse action in accordance with the rule. Furthermore, it opined that a

[29] *John v. Department of Human Services,* OEA Matter No. 1601-0213-91, *Opinion and Order on Petition for Review* (January 9, 1998); *Robert King v. D.C. Housing Authority,* OEA Matter No. 1601-0062-98, p. 17 (March 24, 2000); *Velerie Jones-Coe v. Department of Human Services,* OEA Matter No. 1601-0088-99, p. 3 (June 7, 2002); *Enid Cruz v. D.C. Office of Employee Appeals,* Civil Case No. 02MPA08, p. 8 (D.C. Super. Ct. January 28, 2004); and *Sherman Lankford v. Metropolitan Police Department,* OEA Matter No. 1601-0147-06, p. 3 (March 26, 2007).

[30] It should be noted that the 45-day rule was replaced by the 90-day rule. The 45-day rule used similar language as that provided in the 90-day rule. In *Finch v. District of Columbia,* 894 A.2d 419 (D.C. 2006), the D.C. Court of Appeals held that "from 1998 until the latter part of 2004 there was no time limit for initiating corrective or adverse action against employees of MPD or the Fire and Emergency Medical Services Department. Concerned about undue delay in resolving disciplinary matters, the Council of the District of Columbia enacted . . . D.C. [Official] Code § 5-1031."

violation of the rule is an absolute bar to the finalization of the adverse action.[31]

Additionally, the AJ must resolve how he relies on November 23, 2009, as the official date Employee received her Proposed Notice for purposes of calculating the 90-day deadline, but he relies on February 1, 2010, as the date to determine the 55-day deadline. As it relates to the 90-day rule, the AJ clearly provides that Agency issued Employee ". . . the November 23, 2009 Notice, 86 business days after the criminal investigation concluded with the issuance of the declination letter." However, when reciting the facts for the 55-day rule, he provides that ". . . Employee was served with the Final Notice fifty (50) days after the February 1, 2010 Amended Notice." This Board does not follow how the AJ relies on the Proposed Notice to support Agency's contention that it was within the 90-day deadline. However, he subsequently relies on the Amended Notice to calculate the 55-day deadline. [32]

Moreover, Agency contends in its Amended Notice that the amendment was ". . . as a result of further consideration of additional information contained in the investigative report, the charges, specifications, and penalty has been modified."[33] However, a review of the record demonstrates that all of the investigative reports, transcripts of wire taps, the declination letter, and FBI interviews were provided between December 1, 2008 and July 20, 2009.[34] The last three actions taken by Agency were its issuance of the notice of proposed action on November 23, 2009; issuance of the amended notice on February 1, 2010; and finally, issuance of the final

[31] *Curtis Adamson v. Metropolitan Police Department*, OEA Matter No. 1601-0041-04, *Opinion and Order on Petition for Review*, p. 4 (September 3, 2008).
[32] This is especially true when even Agency seemed to rely on the November 23, 2009 date as the deadline to complete deliberations and issue its proposed adverse action. In a letter from the Assistant Police Chief to the Director of Disciplinary Review, the Assistant Chief provides that ". . . deliberations with the findings and recommendations shall be issued to Officer Miller no later than November 25, 2009. These procedures will preserve the Department's disciplinary rights under the Fire and Police Disciplinary Procedure Act of 2004." *Respondent Metropolitan Police Department's Response to Petition for Appeal,* Tab G (July 19, 2010).
[33] *Id.*, Tab E.
[34] *Agency Brief*, p. 2-4 (December 7, 2012).

notice on April 13, 2010.[35] Therefore, contrary to Agency's argument, there does not appear to be any "additional information" for it to have considered before issuing the November 23, 2009 proposed action. As a result, the AJ should adequately consider Employee's argument regarding Agency's ability to impose one adverse action charge and later impose another charge for the same incident. The Initial Decision offered no analysis of this material issue which was presented to the AJ on appeal.

Agency provided no case law or regulations to support the Amended Notice in this matter. There is simply not enough evidence in the record for this Board to make a ruling on the 55-day rule. Much more is required to determine if the AJ's decision is based on substantial evidence. Therefore, we are compelled to grant Employee's Petition for Review and remand the matter to the AJ for further consideration.

[35] *Id.* at 4.

ORDER

It is hereby **ORDERED** that Employee's Petition for Review is **GRANTED** and the Initial Decision is **REMANDED** to the Administrative Judge for further consideration.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.