

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. 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:)	
)	
TIMOTHY NICOLAU)	
Employee)	
)	OEA Matter No.:1601-0005-05
v.)	
)	Date of Issuance: April 5, 2007
D.C. METROPOLITAN POLICE)	
DEPARTMENT)	
Agency)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

The D.C. Metropolitan Police Department ("Agency") hired Timothy Nicolau ("Employee") as a police officer on March 27, 2000. At that time Employee was considered a career-conditional recruit officer who had to complete an eighteen month probationary period before attaining permanent status. At some point during this period Agency claimed that Employee engaged in the unauthorized use of his firearm while in an off-duty status. Consequently on May 7, 2001, nearly fourteen months after being hired, Agency revoked Employee's police powers and placed him on Administrative Leave with pay (non-contact status).

On May 23, 2003 Agency's Chief notified Employee that he would be removed from service effective May 30, 2003. The notice provided that because Employee was still a probationary employee, his only appeal rights were to the D.C. Office of Human Rights. On June 6, 2003 Employee filed a grievance with Agency. On June 24, 2003 Agency's Chief denied Employee's grievance on the basis of his probationary status.

On October 5, 2004 Employee filed a Petition for Appeal with the Office of Employee Appeals. Because Employee's status was in question, the jurisdiction of this Office was at issue. The Administrative Judge looked to sections 813.1, 813.4, and 813.6 of the District Personnel Manual to determine Employee's status. Those sections provided as follows:

813.1. An employee who is given a Career Appointment (Probational) shall be required to serve a probationary period of one (1) year, except in the case of an individual appointed on or after the effective date of this provision to an entry-level police officer position, who shall be required to serve a probationary period of eighteen (18) months.

813.4. The probationary period required by § 813.1 shall be extended for an equal amount of workdays in each of the following circumstances:

.....

(b) In the case of an entry-level police officer serving an eighteen (18) month probationary period, for each workday that the employee is unable to perform the full range of police duties of the position to which assigned, including but not limited to, periods of sick leave or a non-contact status.

813.6. For an individual serving an eighteen month probationary period, the extension of the probationary period as provided for in § 813.4 may not exceed an additional eighteen (18) months.

Based on these provisions the Administrative Judge found that Employee's first eighteen month probationary period ended on September 27, 2001. At that point Employee began serving a second eighteen month probationary period which ended on March 27, 2003.

Because Agency did not initiate adverse action procedures against Employee until May 23, 2003, the Administrative Judge found that "when Agency initiated adverse action against Employee, he was a permanent Career Service employee with the right to have adverse action issued only for cause and the right to appeal any adverse action."¹ Further because Agency did not adhere to the guidelines that must be followed when dismissing a Career Service employee, the Administrative Judge issued an Initial Decision on March 31, 2005 in which she reversed Agency's action and restored Employee to his position of record.

Thereafter on May 4, 2005 Agency filed a Petition for Review. In its petition Agency argues that it was necessary for Employee to satisfactorily complete his probationary period before he could be considered a Career Service employee. Agency bases its claim on section 813.11 of the District Personnel Manual which provides that "[s]atisfactory completion of the probationary period is a prerequisite to continued employment in the Career Service." We do not dispute Agency's claim that an employee must satisfactorily complete his or her probationary period as a prerequisite to entering the career service. In this case, however, it is clear that Employee *satisfactorily* completed his initial eighteen month probationary period which ended on September 27, 2001 and then went on to *satisfactorily* complete the extended probationary period which ended on March 27, 2003. Because Agency did not seek to remove Employee prior to March 27,

¹ *Initial Decision* at 6.

2003, he thereafter became a member of the Career Service. As such Agency had to have cause to terminate him. Since Agency did not take the removal action on the basis of cause, we are compelled to uphold the Initial Decision and deny Agency's Petition for Review.

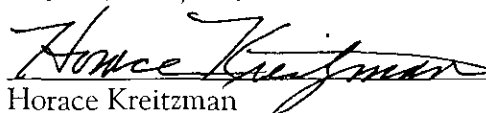
ORDER

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **DENIED**.

FOR THE BOARD:

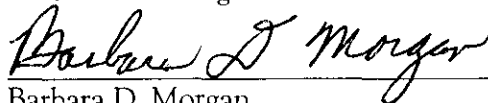


Brian Ledcrer, Chair

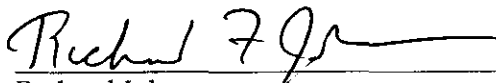


Horace Kreitzman

Keith E. Washington



Barbara D. Morgan



Richard Johns

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.