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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
ANGELINA CHAMBERS,)	
Employee)	OEA Matter No. 1601-0066-12
)	
v.)	Date of Issuance: January 29, 2015
)	
OFFICE OF THE STATE)	
SUPERINTENDENT OF EDUCATION,)	
Agency)	Arien P. Cannon, Esq.
)	Administrative Judge
_____)	
Angelina Chambers, <i>Pro se</i>		
Hillary Hoffman-Peak, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 24, 2012, Angelina Chambers (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) challenging the Office of the State Superintendent of Education’s (“Agency” or “OSSE”) decision to terminate her. At the time of her termination, Employee worked as a Bus Attendant with Agency. The effective date of Employee’s termination was March 8, 2012.

I was assigned this matter in August of 2013. A Status Conference was held on March 28, 2014. Based upon the representation of the parties at the Status Conference, a Prehearing Conference was convened with the anticipation of going forward with an Evidentiary Hearing. After rescheduling this matter a number of times due to an unavailable witness, an Evidentiary Hearing was held on October 24, 2014, where both parties presented documentary and testimonial evidence. Both parties filed written closing briefs. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action (termination) against Employee.
2. If so, was the penalty of termination appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1, 59 DCR 2129 (March 16, 2012) states:

The burden of proof with regard to 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 628.2 *id.* states:

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.

SUMMARY OF TESTIMONY

On October 24, 2014, an Evidentiary Hearing was held before this Office. The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. Both Agency and Employee presented documentary and testimonial evidence during the course of the hearing to support their position.

Agency's Case-in-Chief

Patrice Bowman ("Bowman") Tr. 7-21

Bowman testified in relevant part that: she is the Chief of Bus Operations with Agency and is responsible for the entire operations for Agency's terminals. Bowman was the Terminal Manager at the New York Avenue terminal while Employee was there. As a terminal manager, Bowman was tasked with upholding all of the policies and procedures for the Department of Student Transportation (an Agency subdivision). She stated that fighting at the terminal was not tolerated and considered a dereliction of duties. Agency's policy and procedures manual for the Department of Student Transportation was introduced as Agency's Exhibit 1. Bowman testified that at the New York Avenue terminal, she held monthly meetings and reminded employees that fighting and "escalated arguments" would not be permitted. If employees engaged in these actions, then progressive discipline would follow. Bowman stated that fighting on duty calls for immediate separation and that progressive discipline would not necessarily be applied.

Employee was terminated specifically for fighting on duty.

On cross-examination, Bowden stated that Employee came to her first and told her about the argument she had with Ms. Thomas.

Antoinette Dorsey (“Dorsey”) Tr. 22-32

Dorsey is employed with Agency as a dispatcher at the New York Avenue terminal. Dorsey described the incident that occurred on January 12, 2012, which involved herself, Employee, and Ms. Thomas. Dorsey observed a group of ladies in a circle having a conversation which appeared to be an argument. Dorsey told everyone to calm down and stated that if Bowman saw them arguing, then everyone would be given a five (5) day suspension. At this point, the ladies parted ways.

Dorsey and Employee began walking towards the employees’ trailer when Employee turned around and stated some words to Ms. Thomas. As Employee was talking to Ms. Thomas, she (Employee) was waving her hand and hit Dorsey on the back of her shoulder. Dorsey’s written statement was also introduced as Agency’s Exhibit 4. Dorsey’s written statement indicates that Employee was walking in front of her, and that Thomas was walking to the left of her, leaving her in the middle of Employee and Thomas. Dorsey’s written statement provides that she was trying to get Thomas on her bus and Employee started walking towards her and Ms. Thomas and as Employee tried to hit Thomas, Employee hit her (Dorsey) on her back left shoulder.

After the incident, Dorsey went inside and spoke with Bowman and told her what happened. Bowden asked Dorsey to provide a written statement.

Aquanda Thomas (“Thomas”) Tr. 32-44

Thomas testified that she is employed by Agency as a Bus Attendant. Thomas has known Employee for a long time and said Employee is “like [her] aunt.”¹ On January 12, 2012, Thomas and Employee had a “disagreement” where things got “out of hand.”² As Thomas was getting on her bus to start her route, Employee came over to her to finish discussing their disagreement and Dorsey got in the middle.

Thomas provided a written statement dated January 12, 2012. This was introduced as Agency’s Exhibit 5. Thomas also provided a written statement dated February 22, 2012. In the first statement, Thomas wrote, “[w]e was talking at the bus, and I looked around and [Employee] was running towards us...when I was getting on the bus to do my run, [Employee] swung at me...[Dorsey] was in the middle of us when [Employee] tried to swing on me.” In the second statement, Thomas wrote, “[Employee] did not swing on me.” In explaining the inconsistent statements, Thomas testified that in the first statement she wrote what they told her had happened when she got back to the New York Avenue terminal. She stated that she did not know that

¹ Tr. at 33.

² Tr. at 34.

Employee swung and hit Dorsey until she got back to the terminal and heard from other witnesses to the incident.

Employee's Case-in-Chief

Angelina Chambers ("Employee") Tr. 46-52

Employee testified in relevant part that: on January 12, 2012, she and Thomas had a heated disagreement that was not related to work. After finishing her first route, Employee decided to go talk to Bowden about the incident to "cover [her]self." After returning from her second route, Bowden met with Employee and Thomas, and Bowden told both of them to provide written statements.

Employee stated that she and Dorsey were not walking together outside toward the buses and that is not something the two of them generally do. She further stated that she did not hit Dorsey and she did not swing at Ms. Thomas. Employee relayed that she had never been previously written up or suspended while employed with Agency.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Whether Agency's adverse action was taken for cause

Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the Comprehensive Merit Personnel Act, sets forth the law governing this Office. D.C. Official Code § 1-606.03 reads in pertinent part as follows:

- (a) An employee may appeal a final agency decision affecting a performance rating which results in removal of the employee (pursuant to subchapter XIII-A of this chapter), *an adverse action for cause that results in removal*, reduction in force (pursuant to subchapter XXIV of this chapter), reduction in grade, placement on enforced leave, or suspension for 10 days or more (pursuant to subchapter XVI-A of this chapter) to the Office upon the record and pursuant to other rules and regulations which the Office may issue.

Chapter 16, Section 1603.3 of the District Personnel Manual ("DPM") sets forth the definitions of cause for which disciplinary actions may be taken against Career Service employees of the District of Columbia government. Here, Employee was terminated under Section 1603.3(e): Any on-duty or employment related act or omission that an employee knew or should reasonably have known is a violation of law: fighting on duty.³

³ Fighting on duty is also analogous to an assault (See Table of Penalties 1619.5(c)).

Any on-duty or employment related act or omission that an employee knew or should reasonably have known is a violation of law: fighting on duty.

The District's personnel regulations provide that adverse actions under this section include an employee engaging in activities that have criminal penalties or are a violation of federal or District of Columbia laws and statutes. The District of Columbia Superior Court has held that the OEA should make factual findings relating to whether an employee's conduct meets the factual requirements and legal elements of the crime they are alleged to have violated.⁴ Here, Employee was cited for fighting on duty, which, in the context of this matter, is analogous with an assault. The elements of a criminal assault are that the defendant (Employee) must have made (1) an attempt, with force or violence, to injure another; (2) with the apparent present ability to effect the injury; and (3) with the intent to do the act constituting the assault.⁵

Here, it is undisputed that Employee and Thomas were engaged in a heated argument. While there seems to have been several witnesses to the incident, only three (3) eyewitnesses testified: Dorsey, Thomas, and Employee. Dorsey's testimony essentially describes herself being in the middle of Thomas and Employee as they were arguing. Dorsey describes the exchange between Employee and Thomas and stated that "[a]s Employee was speaking [to Thomas], she was waving her hand, and her hand hit me on the back of my shoulder."⁶ In an effort to further clarify her testimony, Dorsey stated that "[Employee] was waving her hand in a motion where her hand hit me on the back of my shoulder." Dorsey did not believe that Employee intended to hit her, but did intend to hit Thomas. Dorsey felt that Employee intended to hit Thomas because of Employee's demeanor and her actions while she was talking to Thomas, and the words being used by Employee. Dorsey estimated that Employee was about five (5) feet away from Thomas when she made a swinging motion at Thomas.

Dorsey's initial testimony led the Undersigned to believe that Employee was waving her hands as a form of expression while verbally communicating, and not necessarily in an attempt to swing on Thomas. When Agency's Representative asked Dorsey if she believed Employee intended to hit Thomas, Dorsey responded, "yes," based on Employee's overall demeanor. I do not find Dorsey's testimony that Employee swung on Thomas to initiate a physical fight persuasive. Dorsey's initial testimony indicated that Employee was waving her hands while arguing with Thomas, but she did not state unequivocally that Employee swung at Thomas. By Dorsey intervening between Employee and Thomas, it was inevitable that Employee came into contact with Dorsey. However, I do not find that the contact, if any, was an attempt to strike Thomas. Accordingly, I do not find that Dorsey's testimony satisfies Agency's burden that Employee had the intent to hit, physically assault, or initiate a physical fight with Thomas.

Thomas testified about the close relationship she has with Employee and that the incident was a heated argument, rather than a physical fight. Thomas also testified regarding her two inconsistent written statements, in which she wrote that Employee swung at her, and then wrote that Employee did not swing at her. Thomas stated that the first statement was a rendition of what she was told happened when she returned to the New York Avenue terminal. Thomas gave

⁴ See *D.C. DOT v. D.C. OEA*, 2012 CA 002979 P (MPA) (2014).

⁵ *Stroman v. United States*, 878 A.2d 1241 (D.C. 2005).

⁶ Tr. at 23-24.

very direct testimony which led the Undersigned to find that this was a heated argument rather than a physical fight between two employees.

Employee testified that she went directly to Bowman, without being summoned, after her first route to discuss the argument in an effort to “cover [her]self.” This testimony was corroborated by Bowman’s testimony. I found Employee’s testimony to be very forthright and credible. I also found Employee’s testimony that this was nothing more than a heated argument between two employees was persuasive. Thus, I find that Agency did not have cause to remove Employee for fighting on duty.

ORDER

Accordingly, it is hereby **ORDERED** that:

1. Agency’s termination of Employee is **REVERSED**; and
2. Agency shall reinstate Employee to the same or comparable position prior to her termination;
3. Agency shall immediately reimburse Employee all back-pay and benefits lost as a result of her removal; and
4. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge