THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
ROBERT JOHNSON Employee	OEA Matter No. 1601-0042-05
v.	Date of Issuance: April 3, 2006
D.C. FIRE & EMERGENCY MEDICAL SERVICES Agency	Joseph E. Lim, Esq. Senior Administrative Judge

Sandra Little, Agency Representative
Clarissa Edwards, Esq., Employee Representative

INITIAL DECISION

PROCEDURAL BACKGROUND AND FINDINGS OF FACT

On March 24, 2005, Employee appealed his 15-day suspension from service with the agency as a paramedic, DS-699-9 for one hour of inexcusable absence without leave on September 14, 2004.

The matter was assigned to the undersigned judge on November 7, 2005. I held a prehearing conference on November 28, 2005 and closed the record after receiving briefs from the parties. At the prehearing conference, Employee admitted being tardy but argued that his penalty was unduly harsh, considering his years of good service.

JURISDICTION

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

ISSUE

Whether Agency's penalty was appropriate under the circumstances.

FINDINGS OF FACT

The following facts are undisputed.

1. Employee has been employed with the agency since May 3, 1982.

2. On September 14, 2004, Employee did not report for duty at his scheduled time of 0700 hours.

3. Employee did not contact his supervisor prior to his reporting time to indicate that he would be late, nor did he arrange a standby until 0715 hours.

4. At 0701 hours, Lieutenant Charles K. Florence, the officer-in-charge, placed Employee in an AWOL status and ordered Paramedic Angel Lewis (who was waiting to be relieved from duty at 0700 hours by Employee) to remain on duty in overtime status.

5. Employee called Angel Lewis at 0715 hours to standby for him, unaware that Lewis had already been ordered to do overtime. Employee failed to secure the approval of the on-duty company and battalion commanders involved for the number of hours requested. He also failed to submit a F&EMSD Form 163 when he reported for duty.

6. Employee arrived at 0730 hours and was not permitted to assume duty until 0800 hours.

7. At the prehearing, Employee argued that he was only 15 minutes late, but in his September 14, 2004 memo to Fire Chief Adrian Thompson, he admits being 30 minutes late. Employee also stated that he was late because his wife forgot to reset the alarm.

8. Agency deemed Employee's tardiness as inexcusable and charged him one hour of AWOL with a D.C. Standard Form 1199-A, Notification of Charge to Absence Without Official Leave. The AWOL charge is documented on his time and attendance sheet for pay period ending September 18, 2004.

9. Section 9 (Exchange of Duty Hours) of the D.C. Fire and Emergency Medical Services Order Book, states:

> Duty time may be exchanged (standby) between members for periods of less than twelve hours when requested and approved...Exchanges of duty time for less than twelve (12) hours, under this provision, will require the agreement of the member who is to standby, and the approval of the on-duty company and battalion commanders involved for the number of hours requested. No notation shall be made on the Time and Attendance Report (251), however, it shall be the duty of the responsible officers to insure that accurate company journal entries are made, F&EMSD Form 163 submitted by the person requesting the standby when they report for duty and that the exchanges of duty time are completed within the same four (4) week FLSA cycle, whenever possible.

10. December 12, 2004, Agency proposed suspending Employee from his position for fifteen (15) days without pay. In coming to this decision, Employee's superiors looked at his prior disciplinary record and noted that Employee had suspensions for failing to pay attention

while driving, failing to respond on an emergency dispatch, and AWOL. They also noted that Employee had a reprimand for another AWOL.

11. On February 18, 2005, Employee's attorney argued that Employee's tardiness was excusable because it was not intentional and that he had arranged a standby.

12. On February 28, 2005, the deciding official sustained the proposed fifteen (15) calendar day suspension based on his finding that Employee reported late for duty, that he did not arrange for a standby in advance of his reporting time, and that his excuse of his wife not resetting the alarm was insufficient reason to mitigate the penalty.

ANALYSIS AND CONCLUSION

Employee does not deny any of the charges, but he argues that the ultimate penalty of a 15-day suspension is too severe for his actions. Here, it is clear that Employee failed to follow the published procedures of arranging a standby. Because of Employee's admission, there was never any question that the agency had met its burden of establishing cause for taking adverse action. However, Employee asserts that his penalty should either be overturned or reduced significantly.

As noted above, the only remaining issue is whether the discipline imposed by the agency was an abuse of discretion. Any review by this Office of the agency decision selecting an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office. *See Taggert v. Metropolitan Police Department*, OEA Matter No. 2401-0113-92R94, *Opinion and Order on Petition for Review* (January 9, 1998), __ D.C. Reg. __ ( ); *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ ( ); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ ( ).

It is well established that this Office defers to agencies in matters of discipline. Within an agency's responsibility is the decision regarding the appropriate discipline to impose. *See, e.g., Adewetan v. D.C. General Hospital*, OEA Matter No. 1601-0021-93R98, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ ( ). This Office has long held that it will not substitute its judgment for that of the Agency, but will simply ensure that "managerial discretion has been legitimately invoked and properly exercised." *See Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985). A penalty will not be disturbed if it comes "within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment." *Employee v. Agency*, OEA Matter No. 1601-0158-81, *Opinion and Order on Petition for Review,* 32 D.C. Reg. 2915 (1985).

I cannot modify Agency's penalty unless it is so harsh as to amount to an abuse of discretion. *Employee v. Agency*, OEA Matter No. 1601-0012-82, 30 D.C. Reg. 352 (1983). Based on this standard, my review of the record taken as a whole, including Employee's prior disciplinary record, demonstrates that there is substantial evidence in the record to support the penalty of a 15-day

suspension and that Agency's decision to impose that penalty did not constitute an error of judgment.

Other than to argue that his penalty is overly harsh, Employee offers no authority or facts that would warrant a lesser penalty. There is no range of penalties imposed by law, and no prohibition in law, regulation or guideline that bars Agency from suspending Employee for fifteen (15) days. Agency has presented sufficient evidence to establish that its decision was not an error of judgment. Thus I do not find that the penalty constitutes an abuse of discretion and, therefore, I uphold Agency's action.

ORDER

It is hereby ORDERED that the agency's action in this matter is upheld.

FOR THE OFFICE:

JOSEPH E. LIM, ESQ.
Senior Administrative Judge