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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	OEA Matter No.: 1601-0141-12
LINDA JOHNSON,)	
Employee)	
)	Date of Issuance: December 18, 2014
v.)	
)	
DEPARTMENT OF HEALTH CARE)	
FINANCE,)	
Agency)	Sommer J. Murphy, Esq.
_____)	Administrative Judge
Camilla McKinney, Esq., Employee		
Margaret Radabaugh, Esq., Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 10, 2012, Linda Johnson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the Department of Health Care Finance’s (“Agency” or “DCHF”) action of terminating her employment. Employee, who worked as a Management Liaison Specialist, was charged with “any on duty or employment-related act or omission that interferes with the efficiency and integrity of government operations” (neglect of duty). The effective date of Employee’s termination was June 18, 2012.

I was assigned this matter in October of 2013. On November 20, 2013, I issued an order scheduling a Prehearing Conference. During the conference, it was determined that there were material facts in dispute, therefore an evidentiary hearing was held on April 16, 2014, and April 17, 2014. The parties were subsequently ordered to submit written closing arguments on or before July 18, 2014. Both parties responded to the order. 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's action was taken for cause.
2. If so, whether the penalty imposed was 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.

Employee's Position

Employee argues that Agency has failed to prove that Employee was involved in the initial hiring of Lancaster as a student intern in June of 2009. Employee submits that she was not aware that McRae and Lancaster were related at the time Lancaster was hired. Moreover, Employee contends that Agency has not proven that a nexus exists between her removal and her alleged inability to carry out her assigned duties. Employee also believes that her actions did not interfere with the efficiency and integrity of government operations. Lastly, Employee states that the allegations against her do not support removal as the appropriate penalty.

Agency's Position

Agency argues that there is substantial evidence in the record to support a finding that Employee was terminated for cause. In addition, Agency maintains that removal was the appropriate penalty in this case, based on the District Personnel Manual's ("DPM") Table of Appropriate Penalties.¹

¹ Agency's Proposed Initial Decision (April 5, 2013).

SUMMARY OF RELEVANT TESTIMONY

The following represents what I have determined to be the most relevant facts adduced from the transcript generated as a result of the Evidentiary Hearing. Both Agency and Employee had the opportunity to present documentary and testimonial evidence during the course of the hearing to support their positions.

Kira Wilkinson (“Wilkinson”) Tr. pgs. 24-68

Wilkinson worked as a Management Analyst with the DC Department of Human Resources (“DHR”) for four years. She is responsible for conducting investigations for the Office of the Inspector General (“OIG”), and was assigned to perform suitability determinations for individuals that are applying to work with, and around children and youth.

Wilkinson’s involvement in this matter began when the matter was referred to DHR based on an anonymous complaint alleging that Chaise Lancaster (“Lancaster”), who was a Management Analyst at the time, did not disclose on his employment application that his mother was the Director of Human Resources when he applied to be a student intern. DHR was asked to conduct an investigation, and to determine whether or not Lancaster had failed to disclose his familial relationship and whether there was any impropriety involved in the hiring decision.

The Official Personnel Folder (“OPF”) includes the history of an individual’s employment with the District of Columbia. The OPF also includes the individual’s application for a position, and any SF-50s which indicate what a person’s status is with the District of Columbia. The merit case staffing file is directly related to a vacancy announcement for a position, and includes all of the applications for any individuals who apply for a specific position.

According to Wilkinson, the OPF reflected that Lancaster did not indicate that his mother was employed by DCHF. On page 17 of the report, there is an area that asks whether the applicant has any relatives working for the District of Columbia government. Lancaster only indicated that his cousin, Tony Perry, worked for the District. Lancaster was initially hired as a student intern, then moved into a term appointment position as a Management Analyst (Grade 9), and was subsequently converted into a career service employee. After seven months, Lancaster was promoted to a Grade 11 Management Analyst. The promotion occurred prior to the expiration of Lancaster’s one year probationary period. Wilkinson testified that interns are typically hired at a Grade 7.

During Wilkinson’s investigation, she spoke with Lancaster, Kim McRae (“McRae”), who is Lancaster’s mother, Maude Holt (“Holt”), and Employee. Wilkinson stated that when she spoke with Lancaster, he indicated that he had initially contacted the Department of Health to inquire about employment opportunities. Lancaster subsequently asked McRae about interning with DCHF. Lancaster admitted to Wilkinson that he had interned with DCHF for one year. After he graduated from college with a degree in film and video, Lancaster was promoted to a term appointment as a Management Analyst.

Wilkinson further testified that McRae, who was the Director of Human Resources at the time, confirmed that she was involved in the hiring of her son; however, McRae stated that she wasn't the one responsible for determining Lancaster's rating and ranking factors. McRae identified Employee as the person who was responsible for reviewing all the applications for individuals who had applied for vacancy announcements. During Wilkinson's investigation, McRae also stated that Employee was aware that Lancaster and McRae were related.

Wilkinson stated that Lancaster's situation was different from the ordinary process because he was initially hired at a Grade 9, as opposed to typical interns, who are hired at a Grade 7. Kivon Allen ("Allen"), who was also an intern at the same time as Lancaster, was hired at a Grade 7. Wilkinson stated that after McRae reviewed both Lancaster's and Allen's resumes, McRae admitted that Allen was more qualified for the Management Analyst position than Lancaster.

Wilkinson also interviewed Holt, who was a supervisor for Lancaster. During the interview, Holt stated that she was only responsible for telling Human Resources when she needed a position. Human Resources worked with Holt in order to identify and select individuals for the position. Holt explained to Wilkinson that interns are usually hired at a Grade 7 rather than a Grade 9. Additionally, Holt stated that she did not know anything regarding the relationship between Lancaster and McRae until Lancaster was hired as a Management Analyst. Holt expressed concerns about Lancaster being hired at Grade 9 and Allen being hired at a Grade 7.

During Wilkinson's interview with Employee, she stated that although she had nothing to do with hiring Lancaster, she learned that Lancaster was McRae's son, and that she failed to report the information to anyone. She also confirmed that interns are usually hired into Agency at a Grade 7 as opposed to a Grade 9. Also, Employee stated that she signed the selection certificate for Lancaster's position knowing that he was McRae's son.

In the "Findings" section of the investigative report, Wilkinson determined that Lancaster was granted a promotion, and that Employee, who was the liaison for that action, had knowledge that Lancaster was McRae's son. The report further stated that Employee failed to report the familial relationship between Lancaster and McRae, and that Employee assisted in Lancaster's hiring and subsequent promotion. Wilkinson's findings were based in part on conversations with Employee.

Based on her findings, Wilkinson recommended that Employee be terminated because she occupied a position that required good judgment, trustworthiness, and the ability to apply ethical values. Employee's failure to report her knowledge about the relationship between McRae and Lancaster meant that Employee could no longer be trusted to handle the responsibilities of her position. Furthermore, Wilkinson recommended that McRae and Lancaster be removed from their position because of their lack of transparency during the hiring process. Wilkinson also recommended that Allen be re-evaluated because he was unjustly hired at a Grade 7.

On cross examination, Wilkinson admitted that there were no documents submitted as part of her investigation that related to Lancaster's position as an intern. Wilkinson stated that there was also little information in the file regarding Lancaster's conversion to a term appointment Management Analyst. There was also no employment application in the file for Lancaster's application to become a career service employee on February 13, 2011. Wilkinson stated that Lancaster's career service Management Analyst position had non-competitive promotion potential up to a Grade 12, so long as he satisfied the one year probationary period.

Wilkinson confirmed that her investigation folder contained a copy of Lancaster's online employment application (Form DC2000), which did not address relatives of the applicant who are employed by the District government. Wilkinson also confirmed that Lancaster's SF-50 Personnel Action form, which reflected his conversion to a career appointment, stated in the "Remarks" section that his probationary period had been completed.

Wayne Turnage ("Turnage") Tr. pgs. 69-112

Turnage has been employed as the Director of the Department of Health Care Finance since 2011. His primary responsibilities involve managing the overall direction of the agency, setting legislative priorities, budget priorities, and working with City Council and the Mayor's office. The purpose of the Department of Health Care Finance is to ensure access to health care services for persons who are eligible for Medicaid and the Alliance program. Turnage was first apprised of Employee's matter after receiving a letter from OIG, indicating that a complaint had been filed against McRae regarding the hiring of her son. Turnage directed his Chief of Staff, Melisa Byrd, to conduct an investigation into the matter and report her findings back to OIG. He subsequently met with the General Counsel, Charles Tucker ("Tucker"), about results of the investigation. According to Turnage, the investigation concluded that McRae hired her son and that Employee admitted to being aware of this fact, but failed to report it.

Turnage opined that Agency's reputation was damaged by this incident because, when he was hired, it was widely assumed that the DCHF Human Resource Department was not operating in a fair and just manner. The Washington Post published an article when McRae was terminated, which further instigated the allegations of corruption within the HR Department.

On cross examination, Turnage stated that he had no personal knowledge of what was in the investigative report, but relied upon the findings because he assumed the information contained therein was accurate. Turnage was not present when the initial actions surrounding McRae, Lancaster, and Employee took place. However, he orally discussed the investigate findings with Tucker and another employee, Ms. Kirby. He never spoke to Employee about her involvement with Lancaster's personnel actions. Turnage reiterated that he relied on Tucker's report, in which Employee admitted that she was aware of the familial relationship between McRae and Lancaster; that she did not report it; and that Employee knew it was an ethical breach. Turnage believed that this information was sufficient cause to terminate Employee.

Turnage first became aware that McRae and Lancaster were related sometime in 2011 by happenstance. Turnage did not do anything with this information at the time because there was no indication that anything improper had occurred or that Lancaster had been hired improperly.

According to Turnage, it is not illegal to have a relative work in the same agency. However, familial relationships must be disclosed and the family member of the applicant cannot be involved in the hiring decision.

Turnage identified Agency's Exhibit 10 as a document which was given to him to approve Lancaster's non-competitive promotion. The actual signature was provided by Medicaid Director, Linda Elam. Turnage believed that he may have been aware of the relationship between McRae and Lancaster prior to receiving the document, but could not recall definitively. Turnage further stated the following:

"...I think there is a gulf of difference between what's done here and what Ms. Johnson did. The difference is as a Director of the Agency, I am required to sign off on non-competitive promotions. I had no knowledge that any of these promotions were improper. No one told me they were improper. Ms. Johnson...knew that this was improper. She should have told me. Kim McRae should have told me. Because they didn't tell me, that factored into my decision to terminate them. They had knowledge. They had the information. I feel bad for Ms. Johnson because Kim was her supervisor and I understand there are some pressures. But if Linda had come to me and said, "Look, you need to know something about this process," she would not have to worry about retaliation. We would have protected her. I would have fired Kim and Linda would still have her job. But when [the document] was signed on my behalf on...September 28, 2011, nobody had come to me from HR to point out that anything was done improper with any of this process. If they had, I would not have signed it for Chaise and I would have fired the person who was responsible for the improper actions."²

According to Turnage, Employee had the responsibility to make sure that the rules of the District government with respect to personnel issues were followed. Turnage further explained that Employee also had the duty to let him know that McRae was violating the rules, and that it was an ethical violation when Employee became complicit in breaking the personnel rules. Turnage stated that had he been aware of McRae and Lancaster's relationship, he would have stopped Lancaster's promotion and immediately reported McRae to DCHR.

When asked what specifically made Employee's actions improper, Turnage testified that Employee was aware that Lancaster was McRae's son and that Employee was aware that Lancaster was improperly promoted to a Grade 11. Employee's action of signing off on Lancaster's Selection Certificate and promotion were improper. Moreover, Turnage stated that:

"Those are facts that are in evidence and once she admits that, once she said, 'I knew that he was her son, I knew that it was an ethical breach,' but she signed the documents anyway and she

² Tr. pgs. 88-89,

didn't tell me...she has an obligation and neither she nor Kim told me...of the actions that led to [Lancaster] being in the Agency and so I was unaware. If they had informed me, we could have taken some action...[Employee] admitted these things to Mr. Tucker...I had no option as Director of this Agency but to do what I did.”

Turnage further opined that Employee's termination was proper because she could have subsequently rectified the situation by reporting that she improperly signed Lancaster's selection certificate and promotion and failed to report this information at the time.

On redirect, Turnage stated that other employees who were aware that Lancaster was McRae's son were not disciplined because they were not employees of the Human Resources Department. It was not their responsibility to know and report that information.

Sholanda Frazier (“Fraizer”) Tr. pgs 116-143

Shalonda Frazier has worked as a Management Liaison Specialist with DCHF for three (3) years. Her primary responsibilities include serving as a liaison between DCHF and DCHR by providing human resources activities such as recruiting, compensation, labor relations, and payroll. Fraizer identified Agency Exhibit 5 as the position description for the position of a Management Liaison Specialist. At the time of the Evidentiary Hearing in this matter, DCHF employed two Grade 13 liaison specialists. Frazier began working with Employee in December of 2010. In describing the process for hiring employee, Frazier stated the following:

“Management makes the hiring decisions. The process is we post the position. We pull down the applications. We rated and rank the applications. We created the selection certificate....The candidates that made the selection certificate...[are] then forwarded to management. Management will then start the interview process and then the selection is made by management, either a selection or non-selection. And then that package is then returned to us to begin the reference check if a selection is made...to begin the reference check and to draft up the offer letter and then send that package to management.”³

After management receives the package, an assistant schedules interviews with the applicants who were listed on the Selection Certificate. Frazier stated that Agency has several program areas, including Reform, Operations, and the Office of the Director. McRae was responsible for assigning the Management Liaison specialists to oversee the respective program areas. At the time Frazier worked with Employee, McRae was responsible for processing all promotions. Frazier further stated that all applicants are required to disclose on their application if they had a relative working for the D.C. government. If Frazier knew that an applicant in her program area disclosed that they had a relative who was a District government employee, she would identify the relative and relay the information to Agency management. Frazier did not

³ Tr. pg. 122.

work in the Office of Human Resources when Lancaster was hired and was never assigned to process any of his application materials.

On cross examination, Frazier testified that online applications for Agency positions do not have questions about whether or not the applicant has a family member who is employed by the District. Frazier further stated that a position can be non-competitive at a Grade 12 salary and below.

Maude Holt (“Holt”) Tr. pgs. 144-192

Maude Holt has worked for Agency since 1995. She is currently the Health Care Ombudsman for the District of Columbia. The Ombudsman is responsible for advocating on behalf of D.C. residents and employees of D.C. government that have insurance governed by the Department of Insurance Securities and Banking. Holt served as Lancaster’s supervisor when he first began working as an intern with DCHF. Lancaster worked for Holt until 2012, when he was terminated. According to Holt, McRae asked her if she needed an intern. Holt replied that she was interested in having an intern because of staffing issues. After Lancaster graduated from college, Holt expressed interest in hiring him as a full time employee because of his excellent work performance. Holt further stated that:

“...after Chaise graduated, I went into Kim’s office and I...told Kim I was interested in bringing Chaise on as a full time employee. And what she said to me, I didn’t have any positions. And I said to Kim...“You have all these vacant positions up here and...how come I don’t have a position?” she said, ‘You don’t have any.’ And I said, ‘What do you mean I don’t have any positions?’ So she said, ‘You don’t have any.’ So I said, ‘Well, I’ll go and ask Julie.’ And Julie was the Director of Health Care Finance. So I turned around, walked out of her office and I went to Julie’s office and I said, ‘Julie...I went in to ask Kim if I could hire Chaise as a seven...and all of those vacant positions on the board and she tells me that I can’t hire somebody and you have all these jobs up here and I don’t understand it.’ So she said, ‘Well, Maude, you can hire him...just go tell Kim that you can hire him.’ So I went back. I said, ‘Kim, Julie said I can hire him.’ She said, ‘You don’t have any jobs. You can’t hire him...So I just walked out and went back to my office...I don’t know what happened after that but...[Lancaster] did get hired as a name request.’⁴

Holt further stated that Lancaster initially applied for a term appointment, which is a non-competitive appointment. A name request is when an individual is referred for a position. Name requests can be done when there is a vacant, non-competitive position. After an employee has been hired pursuant to a name request, they must serve a term appointment. At the expiration of the term, the employee can apply for a permanent position. According to Holt, Lancaster was

⁴ Tr. pgs. 152-153.

hired at a Grade (7) based on her submitting a name request. Holt described Lancaster's work performance as great. Employee stayed to himself, performed his assigned duties, and exceeded his performance goals.

Regarding the vacancy announcement for the career position as a Management Analyst, Holt stated that:

"...I wanted to have a full-time position and then the full-time position [was] in my budget, because my budget [is] not District funds, its revenue generated from the commercial insurance companies that pay for our office...And so I posted the position and I had asked...can we post these positions so that employees can have career ladder positions and if we can do positions as nine slash eleven; how can they have promotional opportunities because oftentimes, since I have been in this government, I saw employees come in and...they stay at these grades forever and then you end up losing great employees because there was no room for...upward mobility...and I asked Kim if that could be done and she said, "Yes." I said, "If you can show me how to do that, that's what I would like to do" because by that time, I had two additional students that I had hired on as interns and they were great employees....⁵

Holt also hired Kivon Allen and Rebecca Clark as Management Liaison Specialists at the same time as Lancaster. She identified Agency Exhibit 1 as the Selection Certificate, which included Lancaster's name. Holt signed the certificate and hired Lancaster for the permanent position at Grade 9. Regarding the process for non-competitive career ladder promotions, Holt explained that if there is only one person on the Selection Certificate, then the candidates may or not be required to interview. However, if there are multiple candidates and interviews are held, each person must be interviewed for the promotion. In Lancaster's case, Holt stated that there was only one person on the Selection Certificate and that she elected not to interview Lancaster. An email was subsequently issued by McRae, requesting managers to submit the names of employees who were eligible for step increases. Holt testified that she thought Lancaster was eligible for the career ladder, non-competitive promotion to a Grade 11, but was unsure if he actually received the increase or not.

Holt recalled having a conversation with McRae regarding the OIG investigation. During the conversation, McRae informed Holt that Lancaster was her son. Holt never discussed Lancaster's family during the course of his tenure, but she knew that he had a daughter.

On cross examination, Holt testified that she did not know that McRae and Lancaster were related at the time she signed the Selection Certificate. Holt also stated if she had known of the relationship, she would have still wanted to work with Lancaster and would have asked what actions should be taken to ensure that there was no favoritism occurring.

⁵ Tr. pgs. 160-161.

Jennifer Campbell (“Campbell”) Tr. pgs 4-27⁶

Jennifer Campbell worked for DCHF from April 2008 until June of 2012. The last position she held prior to her departure was the Chief Operating Officer (“COO”). As a COO, Campbell was responsible for the oversight of eight (8) departments within Agency. Campbell first became aware of OIG’s investigation in 2011. According to Campbell, an executive staff meeting was held to discuss the investigation. She was aware that union members were threatening to file a complaint prior to OIG’s investigation based on alleged wrongdoing in the HR Department. Campbell did not have any role with respect to the OIG complaint. She also did not attend an initial DCHF executive tier meeting wherein they discussed the investigation.

Prior to the OIG investigation, Campbell spoke with two or three people about the rumored familial relationship between McRae and Lancaster. Campbell testified that she had a discussion with Director Turnage approximately three months prior to OIG’s formal investigation. During the conversation, Turnage told Campbell that he suspected that McRae’s son was working for DCHF. Campbell stated the following about a conversation she had with Melissa Byrd:

“Once I assumed the position of COO, we were still dealing with some of the paperwork and some of the other things that we have to put in place after the departure of Kim and Linda. And so I think at that point, they decided to tell me the full story because I had that position in HR now reporting to me. So Melissa Byrd shared...how it came about in some of the chronology leading up to where we were and some of the things that we needed to deal with.”

“[Byrd] told me that there was a suspicion that someone had mentioned to Wayne Turnage that Kim McRae’s son was Chaise and that they had a particular issue with him being promoted and seeming to receive preferential treatment and that...if that weren’t happening, they probably would not have brought him in...I believe that [Turnage] discussed it with Melissa as well as Brenda. And what they decided to do was to just kind of some look-behind before they actually asked her, some informal investigation.”

“And in the midst of that, Melissa shared with me that she had to go. She was working late and I believe Kim McRae did not drive that day or did not drive to work for some reason and was taking the Metro. And so Melissa had offered to give her a ride to the Metro...Kim declined but then still went all the way down to the garage level of the building, where Melissa...followed her shortly because it was after business hours...[Melissa] saw Kim with a file...a manila folder, and saw her reach into the driver’s side of

⁶ The second day of hearings was held on April 24, 2014.

the car and hand the folder to Chaise...and that prompted [Melissa] to look for the records pertaining to Chaise...they were no longer in Kim's office. So I guess, through deduction, they put together that that was Chaise's file and Kim was handing that to Chaise."⁷

Campbell further testified that Byrd informed her that HR also pulled Chaise's personnel file to review his original employment application. According to Campbell, Byrd stated that Lancaster marked "No." in the space on the application that asked if the applicant is related to or has a relative that works for the District. Byrd also told Campbell that Lancaster subsequently modified his application to change the answer to "Yes." and asked if he could resubmit it to DHR, approximately two to three months prior to the formal OIG investigation. McRae continued to work for Agency during this time. Campbell stated that she had some follow-up questions for Byrd regarding McRae's and Employee's timesheets.

Linda Johnson ("Employee") Tr. pgs. 28-87

Linda Johnson ("Employee") worked for the District government beginning in the 1980s until June of 2012, when she was terminated. Employee began working as a Management Liaison Specialist with DCHF in March of 2009. Her duties included processing employment applications and reviewing and ranking applications. She was also a HR generalist. Employee stated that she was involved with processing Lancaster's employment application. She did not recall the exact time when she became aware that Lancaster was McRae's son. Employee did not see Lancaster's DC-2000 employment application or the attachment to his application for a student internship position while she was employed at DCHF. She stated the following with respect to the application process:

"Once we put the application on the website, we pulled down the application. It has a closing date on here. After that closing date, we pulled all applicants that applied for the position and their applications...once we pulled them down, we pulled everything together. And through a ranking and rating process...it's a form that we use for DCHR to say if the person is qualified/not qualified, how they qualify...once we get all the applications...we rate/rank. We proceed to do a package for the HR Director. And we set up the interview."⁸

According to Employee, the aforementioned process is competitive because an announcement was made for the position for DCHF employees only. Holt was responsible for approving the vacancy announcement because she was the supervisor. Employee said that Lancaster submitted his online application, which did not have a certification regarding applicants having relatives who worked for the District. She further stated that once an applicant was rated and ranked, an employee from the department prepares the Selection Certificate for the approving selecting official manager, who was Holt in this case. Holt was given the option to

⁷ Tr. pgs. 17-18.

⁸ Tr. pgs. 35-36.

interview, not interview, select or not select the applicant. In this case, Holt decided not to interview Lancaster. Once the Selection Certificate is sent to an HR representative, the applicant's package is sent to DCHR for approval because DCHF is not an independent agency and is required to approve all personnel actions.

Employee stated that she did not review any candidates' official personnel files because it was not part of the process; each vacancy announcement has its own separate set of required documents. Employee further testified that she had no reason to believe that Lancaster's competitive career selection was improper. Employee processed the paperwork for Lancaster's noncompetitive promotion as a Management Liaison Specialist and stated the following:

“We do a noncompetitive promotion that you see because the job in which the applier has promotional potential. And if [the position] has...promotional potential...the HR Director sent the email out to say, “Do you want to promote or do you want this person to go to the next grade level because he...had promotional potential.”

According to Employee, the job vacancy announcement for the Management Liaison Specialist stated that there was a potential for promotion up to a Grade 12. Employee did not recall whether the HR director or the manager was responsible for initiating Lancaster's noncompetitive promotion. The documents included in Lancaster's career ladder promotion package included the vacancy announcement, the Selection Certificate, and the justification memo from Turnage stating that the position was within Agency's budget. Employee stated that Lancaster's application package did not include the DC-2000 form, which certified if an applicant had a relative working for the District. She also opined that there was no reason to believe that there was anything improper about Lancaster's noncompetitive promotion. Employee noted that she had never been disciplined during her twenty (20) year tenure with the District. She generally received outstanding or excellent performance ratings, and received performance-based awards in 2006 and 2007.

On cross examination, Employee conceded that in her position as a Management Liaison Specialist, she was required to be a subject matter expert on issues related to the D.C. Merit Personnel System, federal and local government relations, and policy and procedures. Employee was also tasked with making recommendations to her supervisor concerning the approval or disapproval of requests for various personnel actions. Employee stated that she did not hear rumors about Lancaster being related to McRae until approximately two to three years after Lancaster began working for Agency. When asked if Employee submitted an affidavit on May 24, 2012, stating that she was aware of the relationship between McRae and Lancaster in January of 2010, Employee stated “Yes, but that should have been...it was two years after. In my previous statement, I think it says I didn't know until two or three years before that.”⁹ Employee also admitted to signing off on Lancaster's' noncompetitive term appointment to a Grade 9 Management Liaison Specialist. She was aware that Lancaster's career service position had a

⁹ Tr. pg. 72.

one-year probationary period, which began on February 13, 2011, and that he was subsequently noncompetitively promoted to a Grade 11 in October of 2011.

On redirect, Employee admitted that she did sign an affidavit under the penalty of perjury that she was aware that Lancaster was McRae's son in January of 2010. However, she stated that her affidavit inadvertently contained a few typos and that she only heard about the rumors circulating around Agency regarding McRae's son. Employee testified that she was not aware of McRae's and Lancaster's relationship at the time he was hired as an intern and was not aware of the relationship when Lancaster received his term appointment.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

Uncontested Facts

1. Employee worked as a Management Liaison Specialist with Agency's Office of Human Resources.
2. Employee's duties included serving as a subject matter expert on various personnel issues, including staffing, recruitment, labor, employee relations, and administering Agency's job application procedures.
3. On January 13, 2012, the D.C. Office of the Inspector General ("OIG") notified the Department of Human Resources ("DCHR") regarding the relationship between Chaise Lancaster ("Lancaster"), a Management Analyst for Agency, and Kim McRae ("McRae"), who worked as Agency's Supervisory Management Liaison. OIG's notification asserted that Lancaster failed to disclose on his employment application that McRae was his mother, and that she was responsible for hiring him.
4. OIG subsequently requested that DCHR conduct an investigation into the matter. On April 3, 2012, DCHR issued its investigative report regarding the allegations of Lancaster's hiring.
5. On April 11, 2012, Agency served Employee with an Advance Written Notice of Proposed Removal in accordance with Chapter 16, Section 1608 of the D.C. Personnel Regulations. Employee was charged with "any on duty or employment-related act or omission that interferes with the efficiency and integrity of government operations" (neglect of duty).
6. Employee was given the opportunity to submit a response in writing within six (6) days of receiving the notice.
7. Employee submitted a written response to the Advance Written Notice of Proposed Removal. On June 8, 2012, the reviewing Hearing Officer determined that Agency's proposed removal action was supported by a preponderance of the evidence.

8. On June 14, 2012, Agency issued a Notice of Final Decision on Proposed Removal. The notice sustained the proposed removal action. The effective date of Employee's termination was June 18, 2012.
9. Employee subsequently filed a Petition for Appeal with this Office.

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.

In accordance with Section 1651 (1) of the CMPA (D.C. Official Code §1-616.51 (2001)), disciplinary actions may only be taken for cause. Section 1603.3 of the District Personnel Manual ("DPM") defines cause to include "[a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations."¹⁰ Specifically, neglect of duty includes the failure to follow instructions or observe precautions regarding safety; failure by a supervisor to investigate a complaint; failure to carry out assigned tasks; and careless or negligent work habits.¹¹ In light of the above, the outcome in this matter turns upon the determination of when Employee became aware of the familial relationship between McRae and Lancaster; and whether Employee's failure to report this information constituted a neglect of duty.

According to the record, Employee's primary responsibilities as a Management Liaison Specialist included reviewing employment application materials submitted by candidates or employees seeking a promotion within Agency. Employee's position description also required her to review all personnel actions for accuracy, completeness, and compliance with personnel policies and procedures.¹² Employee was also responsible for completing the ranking and rating score sheets and preparing the Selection Certificates for the hiring manager. Based on the documentary evidence and the testimony provided during the evidentiary hearing, I find that Employee was unaware of the relationship between McRae and Lancaster at the time Lancaster was hired as an intern with DCHF. However, Employee, through a signed affidavit conducted during DCHR's investigation, stated the following:

¹⁰ Chapter 16 DPM § 1603.3.

¹¹ See Table of Appropriate Penalties. District Personnel Manual § 1619(6)(c).

¹² Agency Exhibit 5.

“I did not know that Chaise Lancaster was Kim McRae’s son when he was hired into the Intern position in October of 2008. I do not know exactly when I learned that Mr. Lancaster was Ms. McRae’s son. Mr. Lancaster and Ms. McRae have different last names and there was no clear indication that they were related.”

“I was aware of the relationship by the time Mr. Lancaster applied to the Management Analyst position in January 2010. However, by 2010, Mr. Lancaster had already been working with DC government of a little over two years. Senior management officials of the Agency, as well as other administrative employees, were aware of the familial relationship between Mr. Lancaster and Ms. McRae, but no one did anything about the situation. I reasonably assumed that, because upper Agency management did nothing, this was in a tacit endorsement of Ms. McRae’s actions.”¹³

Employee admitted during an interview with Wilkerson that she did not inform anyone in DCHF that she knew of Lancaster’s familial relationship to McRae. Furthermore, Employee admitted that she was aware that it was unethical for the hiring authority within her agency to employ a family member without informing anyone.¹⁴ Although Employee testified during the evidentiary hearing that she misspoke during her interview with Wilkerson about the exact date on which she became aware that Lancaster was McRae’s son, the Undersigned is not persuaded by the veracity of Employee’s testimony. By her own admission, Employee signed the Selection Certificate to promote Lancaster to the position of Management Analyst, DS-343-09, Grade 9. She also confirmed that interns are usually hired into Agency at a Grade 7 as opposed to a Grade 9. At this time, Employee was aware of the relationship between Lancaster and McRae. Thus, she had an affirmative duty to report this information, as it was an ethical violation not to do so. Moreover, Employee’s assertion that upper level management was complicit in failing to act after becoming aware of McRae’s and Lancaster’s relationship did not divest Employee of her ethical responsibility to report the improper promotion of McRae’s son.

Employee’s failure to report is also supported by the testimonial evidence of Turnage, who stated that it is not illegal to have a relative work in the same agency. However, familial relationships must be disclosed, and Employee could have reported the information without fear of retaliation. In summation, Employee participated in the improper promotion of McRae’s son by signing the Selection Certificate, and failed to disclose this information after she became aware that McRae and Lancaster were related. Based on the foregoing, I find that Employee’s actions interfered with the efficiency and integrity of government operations, and serves as grounds for termination based on neglect of duty.

Employee also argues that Agency failed to prove a nexus between her termination and her alleged inability to carry out her assigned duties. I disagree. In Employee’s Administrative Review of Proposed Removal, the Hearing Officer stated the following:

¹³ Agency Answer, Attachment D.

¹⁴ Investigative Report (April 3, 2012).

“Improper hiring practices negatively impact the rights of prospective and current employees as well as the expectations of the District Government that the competitive selection process will be followed. District employees must always adhere to ethical guidelines, but where, as here, the employee works for an agency that performs services closely tied to the disbursement of funds, ethical obligations are brought into sharp relief....Also key to analyzing this factor is whether Ms. Johnson’s conduct relates to the heart of her duties and responsibilities. As a Management Liaison Specialist, Ms. Johnson served as a “subject matter expert” in the areas of personnel management, as was the go-to person for senior officials who needed assistance in these areas. She failed to follow district guidelines in the performance of her duties....”¹⁵

In this case, I find that Agency has proved by a preponderance of the evidence that there was a nexus between Employee’s misconduct and the efficiency of her service. Employee’s failure to report her knowledge of the relationship between McRae and Lancaster called into question her ability to perform the functions of her job in an ethical manner and lessened management’s trust and confidence in Employee’s job performance. Moreover, Employee’s actions were repugnant to Agency’s mission of providing healthcare services to District residents in a reliable and transparent manner.

Whether the penalty was appropriate under the circumstances.

With respect to Agency’s decision to terminate Employee, 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.¹⁶ Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but simply to ensure that “managerial discretion has been legitimately invoked and properly exercised.”¹⁷ When the charge is upheld, this Office has held that it will leave Agency’s penalty “undisturbed” when “the penalty is within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment.”¹⁸

In *Douglas v. Veterans Administration*¹⁹, the Merit Systems Protection Board, this Office’s federal counterpart, set forth a number of factors that are relevant for consideration in

¹⁵ Agency Answer to Petition for Appeal, Attachment E.

¹⁶ See *Huntley v. Metropolitan Police Dep’t*, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review (March 18, 1994); *Hutchinson v. District of Columbia Fire Dep’t*, OEA Matter No. 1601-0119-90, Opinion and Order on Petition for Review (July 2, 1994).

¹⁷ *Stokes v. District of Columbia*, 502 A.2d 1006, 1009 (D.C. 1985). 1601-0417-10

¹⁸ *Employee v. Agency*, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C. Reg. 2915, 2916 (1985).

¹⁹ 5 M.S.P.R. 280, 305-306 (1981).

determining the appropriateness of a penalty. Although not an exhaustive list, the factors are as follows:

1. The nature and seriousness of the offense, and its relation to the employee's duties, including whether the offense was intentional or technical or inadvertent, or was committed intentionally or 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 the 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.

In analyzing the *Douglas* factors, Hearing Officer Andreeze Williams, stated that “[i]mproper hiring practices negatively impact the rights of prospective and current employees as well as the expectations of the District Government that the competitive selection process will be followed.”²⁰ The Hearing Officer noted that, while Employee did not occupy a visible position, her job was nonetheless critical to the staffing goals of DCHF. Moreover, Employee’s actions were found to be ethical violations which could not be waived. Employee had over twenty (20) years of experience working for the District government, and had no prior disciplinary actions levied against her. However, according to the Hearing Officer, termination was the appropriate penalty for Employee’s actions, in light of the notoriety of the offense and Employee’s job duties.²¹

Agency has the discretion to impose a penalty, which cannot be reversed unless “OEA finds that the agency failed to weigh relevant factors or that the agency’s judgment clearly exceed the limits of reasonableness.”²² The Table of Appropriate Penalties, found in Section 1619 of the DPM, provides general guidelines for imposing disciplinary sanctions when there is a finding of cause. The penalty for a first offense of any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, including neglect of duty, is reprimand to removal.

In this case, I find that Employee’s actions constituted an act which interfered with the efficiency and integrity of Agency’s operations. I further find that Agency properly weighed the *Douglas* factors, and acted reasonably within the parameters established in the Table of Penalties. Based on the foregoing, I conclude that Agency’s decision to terminate Employee was not an abuse of discretion and its decision should therefore be upheld.

ORDER

It is hereby **ORDERED** that Agency’s action is **UPHELD**.

FOR THE OFFICE:

SOMMER J. MURPHY, ESQ.
ADMINISTRATIVE JUDGE

²⁰ Administrative Review of Proposed Removal in the Matter of Linda Johnson (June 8, 2012).

²¹ *Id.*

²² See *Stokes v. District of Columbia*, 502 A.2d 1006, 1011 (D.C. 1985).