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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
GLORIA EVANS,	)	
Employee	)	OEA Matter No. 1601-0055-11
	)	
v.	)	Date of Issuance: June 27, 2013
	)	
D.C. DEPARTMENT OF YOUTH	)	
REHABILITATION SERVICES,	)	
Agency	)	STEPHANIE N. HARRIS, Esq.
	)	Administrative Judge

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Gloria Evans, Employee *Pro-Se*  
Lindsey Appiah, Esq., Agency Representative

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 3, 2011, Gloria Evans (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the District of Columbia Department of Youth and Rehabilitation Services’ (“Agency” or “DYRS”) action of placing her on enforced leave. The effective date of Employee’s enforced leave was December 6, 2010. Employee’s position of record at the time of her termination was Program Analyst. Employee was serving in Career Service status at the time she was placed on enforced leave. Agency submitted its Answer in response to Employee’s Petition for Appeal on March 28, 2011.

I was assigned this matter on July 26, 2012. On August 10, 2012, I ordered (“August 10<sup>th</sup> Order”) Employee to submit a brief addressing whether this matter should be dismissed for lack of jurisdiction due to Agency’s assertion that Employee had resigned from her position. Employee’s brief was due on or before August 22, 2012. Agency was given an option to file a brief on or before August 31, 2012. No response was received from Employee as directed by the August 10<sup>th</sup> Order. Accordingly, on August 24, 2012, I issued an Order for Statement of Good Cause wherein Employee was required to submit her brief, along with a statement explaining her failure to adhere to the prescribed deadline. Employee submitted her Statement of Good Cause, as well as her brief, on September 4, 2012. Agency submitted a response to Employee’s Statement of Good Cause on September 10, 2012.

After reviewing the jurisdictional briefs submitted by the parties, I issued an Order on February 7, 2013 (“February 7<sup>th</sup> Order”), wherein I found that this Office retained jurisdiction over the instant matter, despite Employee’s resignation. As will be explained in detail below, the undersigned found that OEA retained jurisdiction and an employee’s resignation does not render her appeal of enforced leave moot.

Both parties were present for a Prehearing Conference on March 19, 2013 (“March 19<sup>th</sup> Prehearing Conference”). Subsequently, I ordered the parties to submit Post Prehearing Conference Briefs to address any outstanding issues presented at the March 19<sup>th</sup> Prehearing Conference. Both parties have submitted their written briefs. After considering the parties’ arguments as presented in their submissions to this Office, I have decided that there are no material facts at issue in dispute, and as such, an Evidentiary Hearing is not required. The record is now closed.

### JURISDICTION

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

### ISSUE

Whether Agency’s action of placing Employee on enforced leave was done in accordance with District laws, rules and regulation.

### FINDINGS OF FACTS, ANALYSIS AND CONCLUSIONS OF LAW

Employee worked as a Program Analyst, which is a position that Agency describes as involving the management of highly sensitive programmatic information, including setting priorities for the effective and efficient management of the support service for the youth of DYRS.<sup>1</sup> On November 19, 2010, Agency received a copy of an Arrest/Prosecution Report from the District of Columbia Metropolitan Police Department (“MPD”) indicating that on November 18, 2010, Employee was arrested and charged with: 1) Possession with Intent to Distribute PCP; 2) Driving Under the Influence (Drugs); 3) Operating [a Vehicle] While Impaired; and 4) Reckless Driving.<sup>2</sup>

On November 22, 2010, Agency issued and hand delivered an Advanced Notice of Proposed Enforced Leave (“Advanced Notice”) to Employee, who signed and acknowledged it.<sup>3</sup> The Advanced Notice detailed that the bases for the proposed enforced leave were:

- 1) Employee was “indicted on, arrested for, or convicted of a felony charge (including conviction following a plea of *nolo contendere*). Felony Charge (Specify): Possession with Intent to Distribute PCP.”

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<sup>1</sup> Agency Prehearing Statement, p. 1 (March 8, 2013)

<sup>2</sup> Agency Answer, Tab 2 (March 28, 2011).

<sup>3</sup> *Id.*, Tab 3.

- 2) Employee was “indicted on, arrested for, or convicted of any crime (including conviction following a plea of *nolo contendere*), and these crimes bear a relationship to your position of Program Analysis. The specific crimes are as follows: (1) Possession with Intent to Distribute PCP; (2) Driving Under the Influence of Alcohol/Drugs; (3) Reckless Driving; and (4) Operating (a vehicle) While Impaired.”

Employee was informed through the Advanced Notice that she was being placed on five (5) days Administrative Leave (“AL”) from November 23, to November 30, 2010.<sup>4</sup> The Advanced Notice also stated that if a determination was made to take the proposed action, she would be placed on enforced leave beginning December 1, 2010. Employee was advised that she could submit a written or oral response to the Advanced Notice, furnish written statements of witnesses or other documentation in support of the response, and had the right to be represented by an attorney or other representative.<sup>5</sup>

Subsequently, on December 3, 2010, Agency issued a Written Final Decision on Proposed Enforced Leave (“Final Decision”), wherein Employee was informed that she was being placed on enforced leave beginning December 6, 2010. The Final Decision also noted that Employee was granted an extension to submit her response to the Advanced Notice to the Deciding Official in this matter by December 1, 2010.<sup>6</sup> Employee was informed that according to Chapter 16 of the District of Columbia Personnel Regulations (“DCPR”), she would remain on enforced leave status until such time that disciplinary action was taken as a result of the event that cause the enforced leave, or a determination was made that no disciplinary action will be taken. Agency’s Final Decision also notified Employee of her right to appeal this action with OEA.<sup>7</sup>

In her Petition for Appeal, Employee contends that Agency unfairly placed her on enforced leave, without giving due consideration to her medical condition, a substance abuse problem. She also notes that she was seeking help for her substance abuse through the Employee Assistance Program (“EAP”). Employee argues that Agency did not consider her “track record” during her District Government career or the fact that she was not employed in a safety-sensitive position. Employee also notes that the alleged incident causing her arrest did not occur while she was on duty at work and that placing her on enforced leave would cause a hardship on her co-workers. She also contends that Agency’s decision was not supported by substantial evidence and that the enforced leave was a result of harmful procedural error.<sup>8</sup>

In its Answer, Agency submits that it had sufficient cause to place Employee on enforced leave after reviewing official documentation, in this case a Police Arrest/Prosecution Report from MPD, detailing the circumstances of Employee’s arrest and the resulting charges, which included a felony. Agency relies on DCPR §1620.1, which authorizes a personnel authority to

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<sup>4</sup> *Id.*, Tab 3.

<sup>5</sup> *Id.*

<sup>6</sup> Employee’s attorney, Mr. Boniface K. Cobbina, Esq. submitted a response on December 1, 2010; *See also* Agency’s Prehearing Statement, p. 3 (March 8, 2013) -Employee was allowed to remain on paid administrative leave to allow her time to submit her response for review by the Deciding Official.

<sup>7</sup> *See* Agency Answer, Tab 4 (March 28, 2011).

<sup>8</sup> *See* Petition for Appeal (January 3, 2011).

place an employee on enforced leave if the employee has been indicted on, arrested for, or convicted for a felony. Additionally, DCPR §1620.3 states that an employee may be placed on enforced leave after a personnel authority has obtained documentation, including, but not limited to, arrest records. Agency relays that Employee's arrest report, which was signed by both of the arresting officers, specifically states that Employee was charged with possession with intent to distribute PCP, driving under the influence of drugs, operating a vehicle while impaired, and reckless driving. Agency claims that this documentation serves as confirmation that Employee had been arrested for a felony and that Agency had credible information to support placing Employee on enforced leave.<sup>9</sup>

Furthermore, Agency submits that Employee subsequently entered into a plea bargain agreement, in which she pled guilty to the felony charge of unlawful possession of PCP.<sup>10</sup> As part of this agreement, Employee resigned from her position. Employee submitted a resignation letter with an effective date of March 25, 2011, which was accepted by Agency.<sup>11</sup> Agency also contends that Employee's resignation renders her appeal moot.

### ***Jurisdiction***

In its Answer to Employee's Petition for Appeal, Agency asserts that OEA does not have jurisdiction over enforced leave because it is not an adverse action. While Agency is correct in its assertion that enforced leave is not an adverse action,<sup>12</sup> I find that this Office has jurisdiction over this matter. Title 1, Chapter 6, Subchapter VI of the D.C. Official Code (2001), a portion of the CMPA, sets forth the law governing this Office. D.C. Official Code § 1-606.03 ("Appeal procedures") reads in pertinent part as follows:

- (a) An employee may appeal [to this Office] a final agency decision affecting a performance rating which results in removal of the employee . . . , an adverse action for cause that results in removal, reduction in grade, *placement on enforced leave*, or suspension for 10 days or more . . . , or a reduction in force [RIF]. . . . (Emphasis added).

Initially, the issue of jurisdiction was raised due to Agency's contention that Employee voluntarily resigned. However, upon further review of the record, the threshold jurisdiction in this matter related to whether Employee's resignation while on enforced leave was a matter that can be heard before this Office. OEA has held that jurisdiction is retained when an Employee is placed on enforced leave, which constitutes an adverse action.<sup>13</sup> Further, DCPR § 1619.10 states that if the enforced leave *lasts longer than ten (10) days*, the Employee has the right to file an appeal with this Office within thirty (30) days of the final decision (emphasis added). In this case, the effective date of Employee's enforced leave was December 6, 2010 and her Petition for Appeal contesting her placement on enforced leave was filed on January 3, 2011, which is

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<sup>9</sup> See Agency Answer (March 28, 2011).

<sup>10</sup> *Id.*, Tab 6.

<sup>11</sup> *Id.*, Tabs 7, 8.

<sup>12</sup> See DPM § 1620.2.

<sup>13</sup> See *Hairston v. District of Columbia Department of Corrections* (OEA Matter No. 1601-0059-07), *Opinion and Order on Petition for Review* (September 18, 2012);

twenty-nine (29) days after the effective date. Thus, pursuant to 6 DCPR § 1619.10, Employee is entitled to appeal the final decision regarding her enforced leave to this Office.

Regarding Agency's contention that Employee's Petition for Appeal is moot because she resigned on March 25, 2011, I disagree and find that Employee's resignation does not render her claim contesting her placement on enforced leave moot. While this Office has generally held that there is a lack of jurisdiction in cases of voluntary resignations, there is an exception in matters where meaningful relief can be given, as opposed to reinstatement.<sup>14</sup>

In *Settemire v. D.C. Office of Employee Appeals*,<sup>15</sup> the District of Columbia Court of Appeals held that a case is moot when the issues presented are no longer live or the parties lack a legally cognizable interest in the outcome. The Court also found that it is well settled that an appeal is moot when while the appeal is pending, an event occurs that renders relief impossible or unnecessary.<sup>16</sup> Moreover, the Court reasoned that in order to overcome a determination of mootness, the case must provide that some meaningful relief could be granted and is available to an employee.<sup>17</sup> Subsequently, in *Grant v. District of Columbia*,<sup>18</sup> the Court held that while a voluntary retirement *does moot* an employee's request for reinstatement, it *does not moot* a request for relief for monetary compensation, reasoning that unresolved issues of damages constitute a sufficient, concrete stake in the litigation (emphasis added).<sup>19</sup> Further, in *Keegan v. D.C. Metropolitan Police Department*,<sup>20</sup> the OEA Board, relying on the decisions in *Settemire* and *Grant*, found that while OEA lacks jurisdiction where employees voluntarily resign or retire and subsequently request reinstatement, this Office could grant relief where an employee suffered a loss of pay and benefits that violated his property interests.

Similarly, in the instant case, because Employee suffered a loss of pay from her enforced leave, she may still contest this action, with the relevant time period beginning with the effective date of her enforced leave, December 6, 2010, and concluding with the date of her resignation, March 25, 2011.<sup>21</sup> Employee's resignation does not render this claim moot because her Petition for Appeal specifically contests her placement on enforced leave. Accordingly, in a February 7, 2013 Order on Jurisdiction, I found that OEA retained jurisdiction in this matter.

### ***Prehearing Conference***

A Prehearing Conference was held in this matter on March 19, 2013. Both parties were ordered to submit Prehearing Statements and Post Prehearing Conference Briefs, which were timely received by this Office.

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<sup>14</sup> See *Keegan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0044-08, *Opinion and Order on Petition for Review* (May 24, 2010), pp. 5-7 (OEA retained jurisdiction where an employee voluntarily retired, but could still be rewarded the monetary difference in his loss of salary and benefits, resulting from a demotion.

<sup>15</sup> 898 A.2d 902 (D.C. 2006).

<sup>16</sup> *Id.*

<sup>17</sup> Citing *Vaughn v. United States*, 579 A.2d 170, 175 n.7 (D.C. 1990).

<sup>18</sup> 908 A.2d 1173 (D.C. 2006).

<sup>19</sup> Citing *Taylor v. Resolution Trust Corporation*, 56 F.3d 1497 (1995).

<sup>20</sup> See *Keegan v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0044-08-R10, *Opinion and Order on Petition for Review* (September 18, 2012).

<sup>21</sup> See Agency Answer, Tabs 1, 7, 8 (March 28, 2011).

In her Prehearing Statement, Employee claims that her placement on enforced leave was unfair and unjust and that she was asked to resign without proper consideration of all the facts, such as Agency not recognizing substance abuse as a medical condition, her attempt to seek help through the EAP, and her contributions and track record with Agency. She also claims that Agency's actions were improper because the decision was made by an official "based on his personal feelings and not his professional opinion." Employee notes that since the basis for placing her on enforced leave did not result in disciplinary action, referencing DCPR §1620.15, she should be reinstated and her annual leave and lost pay should be restored retroactively.<sup>22</sup>

Additionally, in her Post Prehearing Conference Brief, Employee argues that her termination should be considered an adverse action because she was asked to resign, and she should have had the right to respond and have a hearing regarding Agency's decision. She claims that evidence that she was eligible and received unemployment benefits shows that she did not willfully resign. Further, Employee argues that "if Agency is claiming that there were no adverse or corrective actions, then DCPR §1620.15 should be imposed," granting her back pay and restoration of leave. Employee also provided copies of her records showing that she received help from the EAP.<sup>23</sup>

In its Prehearing Statement and Post Prehearing Conference Brief, Agency contends that it had sufficient cause to place Employee on enforced leave, based on Employee's Arrest/Prosecution Report from MPD.<sup>24</sup> Agency further contends that Employee's former position, Program Analyst, is charged with duties that "require the exercise of sound judgment."<sup>25</sup> Agency argues that Employee's claim that the enforced leave was not based on substantial evidence is unfounded. Further, Agency asserts that there was no procedural error in placing Employee on enforced leave. Specifically, Agency contends that the following actions, shows that it complied with the relevant provisions of DCPR, Chapter 16:

- 1) The Advanced Notice of enforced leave was hand-delivered to Employee on November 22, 2010 (DCPR § 1620.8).
- 2) The Advanced Notice informed Employee that she was on notice of a proposal to place her on enforced leave and that she would be placed on paid administrative leave for five (5) days, November 23, 2010 through November 30, 2010, and that if upheld, the enforced leave would be effective December 1, 2010 (DCPR § 1620.6(c)(d)).
- 3) The Advanced Notice further informed Employee that the proposed enforced leave was based upon information received by Agency regarding her arrest for the enumerated offenses in the MPD Arrest/Prosecution Report (DCPR §1620.6 (a)(b)).
- 4) The Advanced Notice also informed Employee of her right to submit a response and retain counsel (DCPR §1620.6 (e)-(g)).
- 5) Not only was Employee apprised of her rights and the information pertaining to the proposed enforced leave, Employee was granted an extension to respond to the proposal until December 3, 2010, at her request, although her response was originally due on November 23, 2010 (DCPR 1620.6(e)).

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<sup>22</sup> See Employee Prehearing Statement (March 8, 2013).

<sup>23</sup> See Employee Post Prehearing Conference Brief (April 12, 2013).

<sup>24</sup> Agency Answer, Tab 2 (March 28, 2011).

<sup>25</sup> Agency Prehearing Statement, p. 1 (March 8, 2013).

Further, Agency argues that Employee's assertions about her work performance issues are not relevant because there was no adverse or corrective action taken against Employee. Agency notes that DCPR, Chapter 16 expressly states that enforced leave is not a corrective or adverse action, and in this case, enforced leave was an administrative action undertaken pursuant to DCPR §1620.1. Agency asserts that it is only required to consider whether there is sufficient evidence that an employee was arrested for or pleaded guilty to a felony when determining whether to place that employee on enforced leave. Agency also disagrees with Employee's contention that it should have considered the circumstances of her employment, including her duties, performance, and the impact on her co-workers when deciding on the enforced leave. Agency submits that it was not required to consider any of the factors Employee raised in her appeal and further notes that "OEA 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."<sup>26</sup> Agency notes that even if the above referenced factors were appropriate considerations, it still would have been justified in the enforced leave due to Employee's numerous performance, conduct, and time and attendance issues in the year preceding her arrest.<sup>27</sup> Moreover, Agency concludes that consideration was not given to performance issues raised by Employee "as no corrective or adverse actions was ever taken because Employee resigned prior to the Agency addressing any disciplinary actions arising out of her criminal conduct."<sup>28</sup>

Additionally, Agency also asserts that Employee's argument that she was not on duty at the time she was arrested or that her work did not involve direct contact with the youths in Agency's care is of no moment, because DYRS is an agency charged with the responsibility and care of supervising and rehabilitating youths, and therefore must hold its employees to a particularly high standard of conduct. Agency contends that Employee's conduct was not only illegal and a violation of District and Agency employee conduct policies, it also had the potential to adversely affect the public's confidence in the integrity of the government. Additionally, Agency notes that Employee informed police that she was on her way home from work when she was arrested, which questions when Employee began smoking PCP before she was stopped by the MPD. Further, Agency argues that despite it not being a proper point for consideration, due to the confidential nature of the EAP, Agency was not aware that Employee was seeking treatment. However, Agency asserts that the reckless driving behavior exhibited by Employee at the time of her arrest after admittedly leaving from work, demonstrates the potential safety risk imposed to coworkers and youths under Agency's care, which mitigates against any other such consideration.<sup>29</sup>

### ***Enforced Leave***

Pursuant to OEA Rule 628.2<sup>30</sup> Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, DCPR § 1620.1

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<sup>26</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985)

<sup>27</sup> Agency Prehearing Statement, p. 3 (March 8, 2013).

<sup>28</sup> Agency Post Prehearing Brief, p. 3 (April 9, 2013).

<sup>29</sup> See Agency's Prehearing Statement (March 8, 2013); Post Prehearing Brief (April 9, 2013).

<sup>30</sup> 59 DCR 2129 (March 16, 2012).

provide as follows: [n]otwithstanding any other provision of this chapter, a personnel authority may authorize placing an employee on enforced leave if:

- (a) A determination has been made that the employee utilized fraud in securing his or his or her appointment or that he or she falsified official records;
- (b) The employee has been indicted on, *arrested for*, or convicted of a felony charge (including conviction following a plea of nolo contendere) (Emphasis added); or
- (c) The employee has been indicted on, *arrested for*, or convicted of any crime (including conviction following a plea of nolo contendere) that bears a relationship to his or her position; except that no such relationship need be established between the crime and the employee's position in the case of uniformed members of the Metropolitan Police Department or correctional officers in the D.C. Department of Corrections. (Emphasis added).

Here, Agency placed Employee on enforced leave after she was arrested and charged by the MPD with Possession with Intent to Distribute PCP; Driving under the Influence of Alcohol/Drugs; Reckless Driving; and Operating (a vehicle) While Impaired.<sup>31</sup> I find that Employee's MPD Arrest/Prosecution Report serves as substantial evidence in upholding Agency's decision to place employee on enforced leave pursuant to DCPR §§ 1620.1, 1620.3.

Regarding the procedural requirements surrounding placing an employee on enforced leave, I find that there was no procedural error and Agency fully complied with DCPR, Chapter 16 as follows:

- Employee was initially placed on administrative leave for a period of five (5) days, with the first day commencing the first workday after notice was given, pursuant to DCPR §§ 1620.4, 1620.5.<sup>32</sup>
- The Advanced Notice informed Employee of the reasons for the proposed enforced leave; the specific basis and documentation used in the decision to propose enforced leave; the beginning and end dates of the five (5) workdays of administrative leave; the beginning date of the proposed enforced leave; the right to make an oral response or furnish written statements in response to the Advanced Notice; whom the response should be directed to; the right to be represented by an attorney or other representative, pursuant to DCPR §1620.6.<sup>33</sup>
- A final written decision was issued to employee while Employee was on paid administrative leave, pursuant to DCPR §1620.6(h).<sup>34</sup>
- The Advanced Notice was hand delivered to Employee, and she signed and acknowledged receipt, pursuant to DCPR §1620.8.<sup>35</sup>

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<sup>31</sup> Agency Answer, Tab 2- Arrest/Prosecution Report (March 28, 2011).

<sup>32</sup> *Id.*, Tab 3.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*, Tab 4.



- The Final Decision informed Employee of the date that she was being placed on enforced leave and that she had the right to grieve this action with this Office if her enforced leave lasted longer than ten (10) days, pursuant to DCPR §1620.10.<sup>36</sup>
- The enforced leave period commenced on the first workday following the end of Employee's extended administrative leave, pursuant to §DCPR 1620.11.<sup>37</sup>
- Employee's resignation renders DCPR §1620.14 moot in this matter because no final determination of corrective action could be taken once Employee no longer worked for Agency.<sup>38</sup>

### ***Forced Resignation***

In her September 4, 2012, Statement of Good Cause, Employee acknowledges that she resigned from her position, but claims that she only agreed because the District Attorney ("DA") told her that Agency wanted her to resign and in return, the DA would reduce the pending charges. She contends her resignation was not voluntary and that she resigned due to fear of repercussions from the DA and Agency. She also claims that she was afraid of facing all of the charges from her arrest. Additionally, Employee included copies of her subsequent treatment records after her resignation.<sup>39</sup>

Here, the record shows that Employee submitted a letter of resignation to the Agency, dated March 11, 2011.<sup>40</sup> On March 21, 2011, Agency issued a letter to Employee acknowledging receipt of her resignation.<sup>41</sup> Employee willingly participated in plea bargaining negotiations with the DA and while she may have found this process difficult, there is no evidence of coercion by Agency or the DA to force her to resign. Employee was simply given an option that allowed her to lessen the charges that she faced. There is no evidence that anything in the plea bargain negotiations threatened Employee or gave her a *mandate to resign*. I find that Employee elected to voluntarily resign to reap the benefits of plea bargaining to her benefit in a criminal matter. Employee's choice to resign in the face of a seemingly unpleasant situation – facing multiple criminal charges, does not make Employee's resignation involuntary.<sup>42</sup> Furthermore, I find no *credible* evidence of misrepresentation or deceit on the part of Agency in procuring the resignation of Employee. There is no evidence that Agency misinformed Employee about her option to resign as part of her plea bargaining with the DA.

Employee also claims that because there was no resulting corrective action in this case, she should be retroactively granted any annual leave, compensatory time, or pay that was lost as a result of the enforced leave, pursuant to DCPR §1620.15. However, Employee's argument is flawed because her resignation is the reason that no final determination of corrective action was

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<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*, Tabs 7, 8.

<sup>39</sup> Employee Brief (September 4, 2012).

<sup>40</sup> Agency Answer, Tab 7 (March 28, 2011).

<sup>41</sup> *Id.*, Tab 8.

<sup>42</sup> The court in *Covington* held that "[t]he fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives does not make an employee's decision any less voluntary." *Covington*, 750 F.2d at 942.

taken. If Employee had not resigned, Agency would still be charged with making a final determination to determine if corrective action was warranted. But this factor became moot once Employee voluntarily resigned. Further, after Employee's resignation, she was no longer considered Agency's employee, and therefore, they would not be able to take any possible corrective action after this point. Thus, I find that DCPR §1620.15 is inapplicable in this matter due to Employee's voluntary resignation.

### ***Unemployment Benefits***

The eligibility of unemployment benefits is not dispositive of whether an employee voluntarily or involuntarily resigned. In this case, Employee submits her approval letter for unemployment benefits as evidence that she did not resign voluntarily. The unemployment benefits letter specifically states that Employee voluntarily resigned her position, albeit, at her employer's request. Further, it appears that Agency did not contest Employee's request for unemployment benefits, although it had an opportunity to. However, Agency was not required to contest Employee's unemployment benefits in order to corroborate the nature of Employee's resignation.

### ***Medical Condition***

Employee has submitted various documentation showing that prior to and after her arrest she sought help for substance abuse problems.<sup>43</sup> While it is admirable that Employee sought help, this does not render Agency's decision to place her on enforced leave due to her arrest improper. The undersigned commends Employee's noble attempts to seek treatment for her substance abuse problem; however, evidence showing that Employee sought help does not have a legal bearing upon whether Employee was properly placed on enforced leave. As noted above, Agency's placement of Employee on enforced leave was correct and within Agency's authority because Employee was arrested and later convicted of a felony.

### ***Enforced Leave as an Adverse Action***

As noted above, DCPR § 1620.2 states that placement of an employee on enforced leave is not an adverse action. Thus, as Agency correctly pointed out, the placement of Employee on enforced leave in this matter was an administrative action triggered by Employee's arrest. DCPR, Chapter 16 does not require Agency to consider ancillary factors such as conduct, work performance, track record, and participation in an EAP. Further, I disagree with Employee's contention that her enforced leave should be treated as an adverse action because she was asked to resign. As noted above, Employee's resignation was part of a plea agreement that she voluntarily entered into with the DA.<sup>44</sup> Employee's plea agreement allowed her to face and plead guilty to one of the four charges she was facing after her arrest.

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<sup>43</sup> Employee Statement of Good Cause (September 4, 2012); Employee Post Prehearing Conference Brief (April 12, 2013).

<sup>44</sup> Agency Answer, Tab 6 (March 28, 2011).

CONCLUSION

Based on the foregoing, Agency was authorized to place Employee on Enforced Leave pursuant to DPM § 1620.1.

ORDER

It is hereby **ORDERED** that Agency's action of placing Employee on enforced leave is **UPHELD**.

FOR THE OFFICE:

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STEPHANIE N. HARRIS, Esq.  
Administrative Judge