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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
DELIGHT SWANN,	)	
Employee	)	OEA Matter No. 1601-0003-13
	)	
v.	)	Date of Issuance: September 30, 2014
	)	
D.C. PUBLIC SCHOOLS,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
Delight Swann, Employee	)	
Sara White, Esq., Agency Representative	)	

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL HISTORY**

On October 1, 2012, Delight Swann (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District of Columbia Public Schools’ (“DCPS” or the “Agency”) action of removing her from service. Employee’s last position of record with DCPS was Special Educational Aide. I was assigned this matter in or around January 2014. Thereafter, I convened a prehearing conference on March 13, 2014. During the conference, I determined that an evidentiary hearing in this matter was unnecessary. Accordingly, I issued an order wherein the parties were required to support their opposing positions through written briefs. Both parties have complied with this order. The record is now closed.

**JURISDICTION**

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

**ISSUE**

Whether the Agency’s action of removing the Employee from her last position of record was supported by cause and whether the penalty was appropriate.

### BURDEN OF PROOF

OEA Rule 628 *et al*, 59 DCR 2129 (March 16, 2012) states:

628.1 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 the 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.

628.2 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.

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

The following findings of facts, analysis and conclusions of law are based on the documentary evidence as presented by the parties during the course of Employee's appeal process with this Office.

DCPS asserts that Employee knowingly and willfully failed to fully and accurately report her earnings from DCPS when she applied for and ultimately received unemployment insurance benefits through the District of Columbia Department of Employment Services ("DOES") Office of Unemployment Compensation. As a result, Employee simultaneously collected unemployment insurance benefits while also receiving compensation for working for DCPS. DCPS further asserts that Employee was not entitled to receive unemployment benefits while also employed by DCPS. Accordingly, DCPS terminated her employment pursuant to Title 5 § 1401.2 (h) falsification of official records; (i) dishonesty; and, (u) any other cause authorized by the laws of the District of Columbia.

Employee's explains that she was a part time ten month employee for DCPS and that she had filed for unemployment because she had lost another job with Coastal International Security. Moreover, she started receiving her unemployment compensation during the summer of 2011. Employee asserts that when she first started receiving her benefits it was her only source of income at that moment. However, in her letter dated March 27, 2014, Employee states the following "I... am writing this letter (sic) brief letter to explain why I strong feel that I should have been given a little more time to start paying off my overpayment from DOES."

Employee admits that she was by paid by both DOES and DCPS thereby resulting in an overpayment. Moreover, at no time has Employee presented evidence that she has mitigated this overpayment by repaying DOES for the unemployment compensation that she erroneously received in 2011. The Board of the OEA has previously held that an employee's admission is sufficient to meet Agency's burden of proof. *See Employee v. Agency*, OEA Matter No 1601-0047-84, 34 D.C. Reg. 804, 806 (1987). Accordingly, I find that the Agency's adverse action

was taken for cause. Considering as much, I find that the Agency has met its burden of proof in this matter. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. *See 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. \_\_ ( ). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *See Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. *See Stokes supra*. I further find that based on the preceding findings of facts and resulting conclusion thereof that the penalty of removal was within managerial discretion and otherwise within the range allowed by law.

#### ORDER

Based on the foregoing, it is ORDERED that Agency's action of removing Employee from service is hereby UPHELD.

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.  
Senior Administrative Judge