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**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
TEMISHA LASSITER,	)	
Employee	)	OEA Matter No. 1601-0039-14
	)	
v.	)	Date of Issuance: September 16, 2016
	)	
DISTRICT DEPARTMENT OF	)	
TRANSPORTATION,	)	
Agency	)	Eric T. Robinson, Esq.
	)	Senior Administrative Judge
_____	)	
June M. Marshall, Esq., Employee Representative		
Michael O'Connell, Esq., Agency Representative		

**INITIAL DECISION**

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 20, 2013, Temisha Lassiter (“Employee”) filed a petition for appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the District Department of Transportation (“DDOT” or the “Agency”) action of removing her from service. According to DDOT, Employee was terminated for; any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of duty, pursuant to District Personnel Manual (“DPM”) §1603.3(f)(3) and §1619.1(6)(c); and any knowing or negligent material misrepresentation on other document given to a government agency: Falsification of time and attendance records pursuant to DPM §1603.3(d) and §1619.1(4)(b). It was also alleged that Employee failed to properly update DDOT as to her current mailing address. DDOT argues that this caused a delay in Employee receiving correspondence after she was placed on administrative leave just prior to her removal being finalized.<sup>1</sup>

This matter was assigned to the Undersigned on or about July 18, 2014. The parties appeared, pursuant to Order, for a Prehearing Conference on October 21, 2014. During this

<sup>1</sup> I find that Employee adequately informed Agency of her new mailing address when she submitted Employee’s Exhibit No. 2 to both Katherine Jefferson and Steve Messam on July 26, 2013. However, disposition of this issue does not impact the ruling in this Initial Decision.

conference, Employee challenged the validity and veracity of DDOT's removal action and the evidence used to support it. I determined that an Evidentiary Hearing would be held on February 19, 2015. The Hearing was held as scheduled. Thereafter, the parties submitted their written closing arguments. After review of the record, I have determined that no further proceedings are required. The record is now closed.

### JURISDICTION

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

### BURDEN OF PROOF

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

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 628.2 *id.* states:

The employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

### SUMMARY OF RELEVANT TESTIMONY

#### Agency Case-In-Chief

#### Steve Messam ("Messam") Transcript p. 9 – 56

Messam testified in relevant part that: he has worked at DDOT for approximately seven years. He is currently employed as DDOT's Operations Manager within the Administrative Services Administration. He was serving in this capacity in 2013. He described his on-the-job duties as consisting of human resource management, recruitment, labor and employee relations, and employee discipline. With respect to his duties regarding employee discipline, he ensures that whatever action is being conducted is compliant with agency policy and procedures.<sup>2</sup> Messam answered as follows when asked if he was familiar with the PASS<sup>3</sup>:

...it's a system where goods and services are basically secured, and the

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<sup>2</sup> Tr. at 10 – 11.

<sup>3</sup> Procurement Automated Support System.

funds for those goods are within that system. And there's a process of tracking and making sure that whatever the District and whoever the buyer is, (sic) is that there's an agreement. And through that system, its contract, and everything is maintained there.<sup>4</sup>

Messam testified that he was made aware that Employee was trained in PASS and as a Contract Administrator. After consulting Agency's Exhibit No. 2, Messam confirmed that Employee was hired by DDOT as a Staff Assistant grade 11. Messam confirmed that a part of Employee's assigned duties required her to generate requisitions. In doing so, she would be required to "take the documentation of whatever service is being requested ... and create ... what's going to transpire, as far as the specific service or goods that's being requested and how much that's going to be, what's it going to cost the District, what funding is going to be associated as well. So it basically creates ... the scenarios between the parties."<sup>5</sup> Messam explained that a requisition cannot be created unless there is authorized funding to cover the expense.<sup>6</sup> From his viewpoint, Employee was not authorized to approve an invoice or requisition. She was only authorized to generate a requisition for approval by someone who was vested with that authority. Messam went on to explain that Employee could be subjected to discipline if she were to generate requisitions that did not conform to the contracts requirements or if she were to approve an invoice without authorization.

During cross examination, Messam explained that he did not work directly with Employee during their time together at DDOT. Messam further explained that he was only asked to consult regarding the merits of undertaking Employee's removal from service.<sup>7</sup> Messam noted that he was not in Employee's chain of command.<sup>8</sup> He further explained that he had no first hand involvement in proposing Employee's removal. Moreover, he did not have decision making authority regarding Employee's removal.<sup>9</sup> Messam was asked to explain the differences between the Staff Assistant position descriptions contained within Agency's Exhibit No. 1 and Employee's Exhibit No.1. More specifically, he was unable to determine which one was Employee's actual position description.<sup>10</sup>

During redirect examination, Messam testified regarding Agency's Exhibit No. 3 which consisted of an e-mail from Katherine Jefferson (Employee's superior) on which Messam copied. It was noted that Employee claimed nine hours of regular pay in PeopleSoft, however, she was allegedly present at work from 10am to 2pm on June 21, 2013. There were other instances wherein Employee allegedly was not working the hours that she claimed. During recross examination, Messam explained that he was only copied on the email exchanges in Agency Exhibit No. 3 but he had no personal knowledge of what was being alleged in said emails. He was only courtesy copied in order to keep him abreast of what was transpiring.

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<sup>4</sup> Tr. at 12.

<sup>5</sup> *Id.* at 18.

<sup>6</sup> *Id.* at 19.

<sup>7</sup> Tr. at 30 - 35

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

Employee Case-In-ChiefTemisha Lassiter ("Employee") Tr. 55 - 138

Employee testified in relevant part that she had worked for DDOT for approximately 13 years before her termination. Her last position of record with DDOT was Staff Assistant. Her longest tenured supervisor was Robert Marsili ("Marsili"). Initially, Marsili worked for DDOT but was subsequently transferred to the Department of Public Works ("DPW"). When she was removed, Employee's primary activities centered on DPW's and DDOT's shared responsibility for snow removal. Employee also had some work related activities regarding PASS procurement for parking meters and street lights. Employee explained the PASS system as follows:

A. PASS, which is the procurement [program] that the government agency are using ... it has a layer built in there wherein you enter a requisition as a requisitioner (*sic*). I can ask for money ... it is only approved when it goes through the operations manager, the budget officer, the contract specialist, and then the contracting officer... it's a funding system that the government uses to manage its money.

Q. And what was your involvement with PASS?

A. I was a requisitioner, which means I entered the requisition only. The attributes, the direction comes from the program manager and the budget analyst.<sup>11</sup>

Employee went on to explain that her day to day activities would fluctuate depending on seasonal need. During the snow season, most of her activities revolved around snow planning. Outside of the snow season, her work related activities shifted to parking meters and street lights and Employee's work station shifted to Citywide. When she returned in May 2013 to Citywide, she continued doing the tasks that she normally undertook which included tracking invoices and alerting management when money was lacking for existing projects. Employee testified that her last position of record was the Staff Assistant position (DS 301-11) denoted in Employee's Exhibit No. 1. She did not recognize the position denoted in Agency Exhibit No. 2.

With respect to her normal duties and responsibilities Employee explained that she worked under the general supervision of her Deputy General Manager. When she returned to Citywide in May 2013, her supervisor was Angelo Rao. The focus at that time was why DDOT procurements were not being approved by OCP<sup>12</sup>. In trying to fix this problem, she worked collaboratively with Robert Marsili.<sup>13</sup> She further explained that when she receives an invoice, the matter has already been approved. It just needs to go through procurement so that appropriate parties can be paid for work commenced or completed. Sometimes, there is not enough money properly approved in the PASS system for the work and this can create a delay

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<sup>11</sup> Tr. at 61.

<sup>12</sup> Office of Contracting and Procurement.

<sup>13</sup> At this time, Mr. Marsili no longer worked with DDOT but rather was then employed by the Department of Public Works. Accordingly, Mr. Marsili no longer supervised Employee.

because monies have to be approved before the invoices may be paid. Employee explained that it is fairly typical for funds to be lacking in this manner.

Employee explained that Employee's Exhibit No. 5 is a spreadsheet that she "would manage for [her] program managers to allow them to be apprised and kept aware of where the existing purchase orders were in terms of funding."<sup>14</sup> She explained that Employee's Exhibit No. 7 was a series of e-mails that depicted her confusion with how some contracts were being administered by her peers and superiors. As part of this conversation, Cora Boykin admitted to Employee that a number of contracts had not been updated over a couple of years. According to Employee, Ms. Boykin, is a Contract Specialist.

Regarding Employee's Exhibit No. 2, Employee submitted this letter to Katherine Jefferson (DDOT Associate Director of Transportation) and Steve Messam so that she could have an explanation, in writing, detailing why she was being put on administrative leave. She sent this letter certified mail and in it she informed them that she had a new mailing address that they should utilize for future correspondence. Employee testified that she never received her proposed or final notice of removal as they were sent to an old address.

With respect to her AWOL on June 10, 2013, Employee explained that she was in training at the Federal Highway Administration ("FHA") that morning and that her presence there had been preauthorized by her supervisor Angelo Rao. Afterwards, she reported back to her regular workstation at approximately noon. With respect to her AWOL on June 13, 2013, she explained that occasionally there are issues with PeopleSoft and she was unable to enter her time before the pay period ended.<sup>15</sup> With respect to her AWOL on June 17, 2013, she explained that was her Alternative Work Schedule ("AWS") day and that she only came in momentarily, at Mr. Rao's request, to help out with a problem that surfaced regarding a contract. She reported for a short time in order to get this matter rectified. She admits to bringing her child into work that day but only because Mr. Rao needed her to come in and she had a Doctor's appointment scheduled for later in the day for her child. Employee stated that "I wasn't supposed to be there at all, which is the reason why they seen (*sic*) me come late and leave early."<sup>16</sup> In terms of the time entry misunderstanding, she asserts that the scenario was worked out with her manager's approval so that she could be compensated for the time she was present without having to "worry about overtime" and all of the myriad rules that allow or disallow its use. She also noted that she would come in on Saturdays to work on different projects at her manger's request. She would receive "comp time" where in return she would get another day off in order to compensate her for coming on a scheduled off day. Employee noted that Ms. Jefferson's tenure with DDOT was relatively short and that she may have not been aware of the practice of awarding "comp time" but nonetheless it was a common practice.

With respect to Employee's Exhibit No. 14, it is her submission to the Undersigned wherein she cites to the District of Columbia Municipal Regulations (DCMR) 27-2004, that the Contracting Officer ("CO") shall make *inter alia* "all determinations and findings required by the Act or this title for each solicitation or contract for which he or she is responsible. Employee

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<sup>14</sup> Tr. at 78.

<sup>15</sup> Tr. at 109 - 113.

<sup>16</sup> Tr. at 111.

asserts that she was only a Staff Assistant and that Damon Harvey and/or Angelo Rao were the CO's and that her duties and responsibilities had never been altered to include a delegation of authority from either CO to her regarding any of the contracts in question.<sup>17</sup>

During cross examination, Employee explained that she tried to go into PeopleSoft to update her mailing address, however, she assumes that since she was on administrative leave the system did not recognize her attempt to change her address. Employee admitted to being trained in the PASS system. She further admitted that she was trained as a Contract Administrator ("CA") and that she performed those duties when she was working on some snow contracts in fiscal years 2009 through 2011.

Regarding her involvement with the IPS group parking meter contracts that, in part, led to her removal; she explained that she did not work those contracts but rather she only generated requisitions and invoices for same. As a Staff Assistant, she did not have the authority to approve invoices. However, when directed by her supervisor, she can move an invoice so that it can be paid. Employee further explained that she when she does this, she is not operating under her own authority but rather under the authority of the supervisor who is directing her to act. During the events in question, Employee asserted that if her signature appears on an invoice it was under the express direction of one of her supervisors. In the matter at hand, that directive would have come from either Mr. Harvey or Mr. Rao.

With respect to the overtime in question, Employee explained that in order to enter overtime into PeopleSoft, you must first obtain an override code from your supervisor, otherwise PeopleSoft would not allow you to be credited for the requested overtime.

Jerry Lyle ("Lyle") Tr. 138 - 144.

Lyle testified in relevant part that he is a Supervisor and Compliance Review Specialist for parking meters. He is responsible for overseeing the contractors. Lyle ensures that the contractor is properly collecting from meters, installing meters, adjusting or installing meter related signage, etc. Lyle explained that Employee would assist his unit in a number of areas including submitting Notice of Intent ("NOI"). Lyle also noted that Employee assisted his supervisor, Mr. Harvey, when it came to the financial aspects of the parking meter contracts. During cross examination, Lyle admitted that he had no involvement with generating or approving the IPS group contracts.

Jama Abdi ("Abdi") Tr. 144 - 147.

Abdi testified in relevant part that he is the Citywide Asset Manager. Primarily he is focused on streetlight management and all Citywide related contracts, construction and maintenance. Abdi testified that Employee supported the streetlight program but that she was not involved in either negotiating or maintaining the contract.

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<sup>17</sup> Tr. 114 - 121.

Cora Devine ("Devine") Tr. 147 - 151.

Devine testified in relevant part that she retired from the D.C. Water and Sewer Authority as its Acting Director and Supply Management Officer. At the time of the hearing she had been retired for approximately 10 years. Devine did not have any direct knowledge of the events in question that led to Employee's removal from service.

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

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

As was stated above, Employee was removed from service based on the following allegations:

- Cause 1: Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: Neglect of duty, pursuant to 16 District Personnel Manual ("DPM") §1603.3(f)(3) and §1619.1(6)(c);
- Cause 2: Any knowing or negligent material misrepresentation on other document given to a government agency: falsification of time and attendance records pursuant to 16 DPM §1603.3(d) and 16 DPM §1619.1(4).

DDOT presented oral testimony from Messam in order to meet its burden of proof in this matter. Messam credibly testified that he reviewed all of the paperwork involving Employee's removal. He also credibly testified that he had no authority over the decision to remove Employee. Messam explained that he was solely tasked with making sure that the paperwork that was used to justify Employee's removal was in order.

Employee credibly testified on her own behalf and explained that she was employed by the Agency for approximately 12 years. When she started working for the Agency, she worked as a Statistical Assistant and then as a Customer Service Specialist. Sometime between 2005 and 2006, Employee became a Staff Assistant. As a Staff Assistant, Employee performed a variety of administrative support duties for DDOT and Citywide. With respect to the Neglect of Duty charge, Employee contends as follows:

The Agency contends that Ms. Lassiter was negligent performing in her duties by generating Purchase Order Requisitions for pending invoices without comparing the invoices to the terms of the Contract. Nothing in Ms. Lassiter's Position Description (PD) requires her to compare the approved invoices to the relevant contract. In fact, Ms. Lassiter's PD requires her to provide "support" duties. The evidence here shows that Ms. Lassiter was doing just that, i.e. performing support duties.

Regarding her procurement duties, Ms. Lassiter testified that she was the requisitioner, which means she entered the requisitions only. The attributes or direction would come from the program manager and the budget analyst. The program manager would tell her what he wanted her to do in the procurement system. If there was a requisition that needed to be put in for a contract, the manager was required to give Ms. Lassiter those attributes. The program managers were also required to manage the money. Employee Ex. 4 shows some 35 invoices from IPS Group, Inc., covering a period from 2011 to 2013. All but one invoice (dated May 31, 2012) indicates that a program manager approved the invoice for payment. (A Ex. 4) Regarding the one invoice, Lassiter testified that as the support employee, Ms. Lassiter prepared and submitted the invoice request as required by her position authority. She did not have independent authority to refuse to submit the request or had any reason to believe that she had such authority.<sup>18</sup>

Of note, Messam had no first-hand knowledge of the events in question that led to Employee's ouster. Usually, it is helpful (for an agency) to have a second set of eyes look over matter such as this before it is effectuated. However, to use Messam's testimony as the sole source of justifying a removal action (before the OEA) is problematic. As was stated above, Messam further explained that he was only asked to consult regarding the merits of undertaking Employee's removal from service.<sup>19</sup> Messam noted that he was not in Employee's chain of command.<sup>20</sup> He further explained that he had no first hand involvement in proposing Employee's removal. Moreover, he did not have decision making authority regarding Employee's removal.<sup>21</sup>

The primary issue that this matter presents is that DDOT did not offer any testimony from a witness that was directly involved in effectuating Employee's removal or was in her chain command and could propose removal (e.g. Katherine Jefferson, Angelo Rao, and/or Damon Harvey). The primary purpose of an evidentiary hearing is to assess witness credibility with respect to the actors that either viewed and/or in some fashion participated in the events that lead to an employee's removal. Here, the Undersigned is presented with someone who readily admits he had no first-hand knowledge of the events in question and had no authority to propose or authorize the decision to terminate Employee.<sup>22</sup> If Messam's testimony were presented with other persons who either witnessed Employee allegedly violating the enumerated causes of action or someone who personally acted to effectuate Employee's removal after conducting an investigation, that may constitute an adequate defense of DDOT's instant action. Such was not the case in this matter. Therefore, I am left with Employee's essentially uncontroverted first hand testimony. As part of it, Employee explains that her PD does not authorize her to act independently when creating requisitions, invoices or approving contracts. Employee worked at the behest of her supervisor. During the events in question, she was supervised by either Mr.

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<sup>18</sup> Employee Post Hearing Brief at 9 – 10 (May 19, 2015).

<sup>19</sup> Tr. at 32 - 35

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*



Rao or Mr. Harvey. Moreover, she asserted that she had her supervisors' approval for every instance cited by Agency in support of her removal. Employee merely supported her superiors in creating and moving requisitions, invoices and contracts along towards payment to the vendor. I also note that both Agency and Employee had different versions of her position description and that Messam could not confirm which document was Employee's actual position description.<sup>23</sup> I find that Employee's testimony in this matter was credible, forthright and flowed logically from her explanation. Accordingly, with respect to the Neglect of Duty charge, I find that Agency has failed to meet its burden for proof.

With respect to the charge of falsification of time and attendance records, Employee contends that on June 10, 2013, she was scheduled to attend training at the FHA and that her attendance at the FHA had been preauthorized by her direct supervisor, Mr. Rao. On that date, she returned to her duty station at approximately 12:00pm and worked the remainder of her shift. On June 17, 2013, she explained that she was scheduled as AWS on that date. However, her manager, Mr. Rao, had asked her to come in to assist with a situation that had arisen. She reported to work in order to handle this situation. She admits that she was present for only a few hours and that she had brought her child with her due to a Doctor's appointment (for her child) that was held later that day. Employee noted that she was not supposed to come in to work on June 17, 2013, due to her AWS, which is why it would seem to the uninformed that she was not working her full shift. Employee further explained that any further time entries that were in question were preapproved "comp time", whereby her direct supervisor would repay her for working odd hours (e.g. working Saturday morning) by allowing her to claim time elsewhere. Employee further contends that this was a common practice prior to Ms. Jefferson's arrival at DDOT. Agency did not present any witness testimony to refute Employee's rendition of events, rather DDOT relied on the documentary evidence presented as part of its defense of this matter. Incorporating by reference the reasoning from above, I find that Agency has failed to meet its burden of proof with regard to the charge of falsification of time and attendance.

### CONCLUSION

As noted above, I CONCLUDE that DDOT did not meet its burden of proof in this matter. Considering as much, I conclude that Employee was improperly terminated.

### ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of removing Employee from service is **REVERSED**;  
and
2. The Agency shall reimburse Employee all back-pay and benefits lost  
as a result of her removal; and

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<sup>23</sup> See Agency Exhibit No. 2 versus Employee Exhibit No. 1.

3. The Agency shall file with this Office, within thirty (30) calendar days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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ERIC T. ROBINSON, ESQ.  
SENIOR ADMINISTRATIVE JUDGE