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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

| | | |
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| _____ |) | |
| In the Matter of: |) | |
| |) | |
| JAQUELINE NEAL, |) | |
| Employee |) | OEA Matter No. 1601-0027-15 |
| |) | |
| v. |) | Date of Issuance: April 4, 2016 |
| |) | |
| DISTRICT OF COLUMBIA DEPARTMENT |) | |
| OF MOTOR VEHICLES, |) | |
| Agency |) | Arien P. Cannon, Esq. |
| |) | Administrative Judge |
| _____ |) | |
| Gina Walton., Employee Representative |) | |
| Lindsay Neinast, Esq., Agency Representative |) | |

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Jaqueline Neal (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 23, 2014, challenging the Department of Motor Vehicles’ (“Agency”) decision to remove her from her position as a Legal Instrument Examiner. Employee’s removal was based on a charge of violating District Personnel Manual (“DPM”) §§ 1603.f(2) and (3): Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: absence without official leave and neglect of duty.¹ Employee was also cited under DPM § 1603.3(i) “drunkenness on duty.”² Agency filed its Answer on January 27, 2015. This matter was reassigned to me on September 29, 2015.

¹ Agency’s Notice of Final Decision, issued on November 28, 2014, also includes a charge of unauthorized absence. During a Prehearing Conference, Agency asserted that it elected not to defend against the unauthorized absence charge and proceeded against the remaining charges. Additionally, in the Final Decision, Agency’s Director states that she was “accepting the Hearing Officer’s recommendation to eliminate the charge of unauthorized absence...” (See Agency’s Answer, Tab 5 at 3 (January 27, 2015)).

² DPM § 1603.3(i) reads, “Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result.” The language “drunkenness on duty” is a catchall phrase found in DPM § 1619.7, Table of Appropriate Penalties.

Subsequently, I held a Telephonic Status Conference on November 4, 2015. Thereafter, an evidentiary hearing was held on January 11, 2016, during which the parties presented testimonial and documentary evidence. Both parties submitted written closing arguments. 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 had cause to take adverse action (termination) against Employee.
2. If so, whether removal was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.³ “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.

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.⁴

SUMMARY OF TESTIMONY

The following represents a summary of the relevant testimony given during the hearing as provided in the transcript (hereinafter denoted as “Tr.”) which was generated following the conclusion of the proceeding.

Agency’s Case-in-Chief

Mercy Moore (“Moore”) Tr. 12-29

Moore is a Lead Legal Examiner with Agency and was also the Lead Legal Examiner during the relevant time periods when Employee worked at Agency’s Southwest inspection station and Agency’s 301 C Street location. Moore testified regarding the importance of a legal examiner in processing applications or titles accurately and the consequences of failing to do so.

³ 59 DCR 2129 (March 16, 2012).

⁴ OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

Agency's Exhibit 12, which is an e-mail from Warren Farrar ("Farrar") sent on October 29, 2013, stated that Moore called Farrar and told him that Employee was outside across the street from the fire station on the ground in between two vehicles. Moore further stated that when Employee came to work that day she seemed "under the influence because of the odor of alcohol."⁵ Employee left for lunch around 12:00 noon that day and around 1:00p.m., when Moore was headed to lunch, she asked Mr. Farrar, the manager on duty at the time, whether he had seen Employee, to which he responded in the negative. When Moore exited the building to go to her car in the parking lot across the street, she observed a "clump of red hair" lying on the ground, which she was able to identify as Employee when she got closer. Moore then called Farrar to report what she observed. When Farrar came out to assist and called Employee's name, she did not initially respond. Eventually Employee responded to Farrar and "abruptly...sat up."⁶ A gentleman outside of the fire station began to assist Farrar with Employee and Moore continued on her lunch break. The gentleman went to seek further assistance for Employee and an ambulance was called to the scene. Employee was convinced to go with the ambulance for further treatment. Employee did not return to work for the remainder of the day.

On cross-examination, Moore stated that on October 29, 2013, when she observed the smell of alcohol on Employee, she notified Farrar. Moore further stated that during the course of the day she observed Employee's work performance and Employee had a habit of locking herself out of her computer. There were times where Employee would lock herself out of the computer six to seven times a day because she would always forget her password.

Joan Saleh ("Saleh") Tr. 32-74

Saleh is a Driver Services Administrator with Agency and oversees employees and the operation for all of Agency's service centers. Saleh testified that Legal Instrument Examiners are Agency's frontline customer service representatives, and are responsible for reviewing and authenticating documents, as well as reviewing applications to issue a driver's license and identification cards.

Saleh issued the proposed removal of Employee (Agency's Exhibit 1). Saleh testified that Employee was a poor performer for several years and her work performance was inadequate. Employee also had attendance issues. Agency's Exhibit 2, AWOL forms issued to Employee for her attendance issues, were also addressed by Saleh. These forms are typically issued to employees when they return to work or mailed to their address of record if an employee is out for an extended duration of time. Employees can still be marked AWOL despite having annual leave hours if the leave was not approved, or if an employee did not show up to work.

Agency's Exhibit 4 was introduced during Saleh's testimony, which is an e-mail from Employee's manager to her union representative, seeking help in counseling Employee with her attendance and tardiness issues. Agency has an agreement with the union which provides that prior to taking disciplinary actions, Agency should get the union involved to try and help Agency management with coaching an employee to try and change their behavior. In the instant case,

⁵ Tr.at 18.

⁶ Tr. 20

Employee was counseled by her supervisors and managers regarding her AWOL hours and she was placed on a 90-day performance improvement plan (“PIP”). During this time, Employee had one-on-one counseling by management to help her improve her attendance and work production.

Agency’s Exhibits 6 and 7 are comprised of annual performance evaluations for Employee. The documents represent a total of three consecutive years. Based on these documents, Saleh described Employee’s work as “well below the office average.” The transaction accuracy that Employee processed for two years while on a PIP were sixty (60) and seventy (70) percent lower than those of her co-workers, respectively.

Employee was placed on performance improvement plans during 2011, 2012, and 2013. Despite Employee not improving during the first year of her performance improvement plan, Agency continued to work with Employee “for three years, and she showed no effort whatsoever in improving.”⁷

Saleh further testified regarding Agency’s Exhibit 9, which is an e-mail from an Agency Processing Center Manager to Employee’s then-manager, Warren Farrar, stating that Employee was disrupting operations of the processing center and abandoning her workstation in the service center.

Agency’s Exhibit 10 is an e-mail from an Agency trainer to Employee’s manager about Employee being disruptive in his training class. The e-mail states that Employee was having conversations with other participants in the class while the trainer was giving his presentation. Employee also fell asleep during the class and was eventually asked to leave and go back to her work area. Employee then left work for the day.

Agency’s Exhibit 11, describes an incident where Employee reached out to one of her managers for assistance with helping a customer register their vehicle. When the manager arrived at Employee’s workstation, it was discovered that the customer actually was there to obtain a driver’s license. While the manager was helping Employee and looking into the system to see what had been processed, Employee began to talk to herself, stating, “Whew, I could lose another 140 pounds before the summer,” while leaning back in her chair and rubbing her stomach. As the manager was looking to see what Employee had processed so far, she noted that Employee has made several errors when she input the customer’s information into the computer.

Saleh has observed Employee drunk at work and stated that Employee told her that she had a drinking problem. Other employees have also told Saleh that they smell alcohol on Employee and that they did not want to sit next to her.

Agency’s Exhibit 3 is a follow up e-mail about an incident were Employee had fallen down by the side of the building and had to be helped and placed in her car. When Saleh returned to work, she observed Employee sleeping in her car, as depicted in the e-mail attachment with Agency’s Exhibit 3. Saleh called Employee’s name but did not get a response.

⁷ Tr. 42.

Saleh then notified Employee's supervisor. Sometime thereafter, Employee had left work in her car. The following day, Saleh and Employee's immediate supervisor asked her what happened and she had no recollection of being asleep in her car. When Employee was showed the picture of her sleeping, she began to cry and acknowledge that she had been drinking while on her lunch break and that she was drunk.⁸

Saleh referred Employee to COPE, an Employee Assistance Program, and Employee stated that she had been there before and it was not helping her. Agency's Exhibit 5 is a document from Employee's manager stating that she was interested in sending Employee to COPE. Employee had been referred to COPE before, but Employee's manager was seeking to make COPE mandatory. Employee stated that she did not need help from COPE.

On cross-examination, Saleh stated that Agency's Exhibit 3 was Employee's formal referral to COPE. Saleh further testified regarding Employee's Exhibit 23 and 23A, the Collective Bargaining Agreement in which Employee belongs to (AFGE Local 1975), which states that a COPE referral should be in writing.

Saleh stated that a PIP is valid even if the Employee is not present to sign it. If an employee is not present to sign the PIP, it will be mailed to the employee.

Warren Farrar ("Farrar") Tr. 75-105

Farrar currently works as an Operations Manager with the Office of Tax and Revenue for the District government. Farrar formerly worked with Agency from January 2013 through April 2014 as a Service Center Manager. In this role, Farrar was tasked with evaluating employees and making sure that customers were being serviced timely and accurately. During a portion of Farrar's time with Agency, he was Employee's supervisor.

Farrar also testified regarding Agency's Exhibit 2, which contain several AWOL notifications issued to Employee. Farrar described the e-mail in Agency's Exhibit 2, document 10A, which was an e-mail sent from an Agency trainer who informed Agency management about the disruption that Employee was causing during a presentation.

Farrar testified regarding Employee's annual performance evaluation for fiscal year 2013 October 1, 2012, through September 30, 2013. Employee received an overall score of 2, representing that she was a marginal performer. Employee's evaluation was a result, in part, for repeated issues with keeping track of her computer system passwords and causing a delay in customers being processed. Employee also failed to meet her goal requirements for the year. Farrar placed Employee on a Performance Improvement Plan (PIP) (Agency Exhibit 8) as a result of her low performance during the fiscal year. The PIP further informed Employee that she needed to work on her attendance issues. Employee did not successfully complete the PIP.

Farrar also discussed an e-mail he received from another Agency manager discussing Employee disrupting Agency operations (Agency Exhibit 9). In addition, Farrar testified

⁸ Tr. 48,

regarding the incident on October 29, 2013, where he observed Employee lying on the curb apparently under the influence and the paramedics were called to assist Employee (Agency's Exhibit 12).

On cross-examination, Farrar was questioned about Agency's Exhibit 2, documents 9, 10, 11, and 12, which indicate that Employee refused to sign the AWOL notice on September 27, 2013. However, in Agency's Exhibit 2, document 14, Farrar documents that Employee was AWOL on September 27, 2013. Farrar was unsure as to why September 27, 2013, was written by the date Employee refused to sign, although she was AWOL on that same date.

Keisha Hawkins ("Hawkins")⁹ 106-134

Hawkins is currently the Deputy Director for Administration for the Child and Family Services Agency with the District government. Previously, Hawkins was a Senior Service Center Manager with Agency from 2007 through 2012. Hawkins was located at the 95 M Street location and oversaw the operations at this location, including technical, staffing, training, janitorial, and support services, including Legal Instrument Examiners. Hawkins worked with Employee beginning sometime in 2011. Hawkins described the chain of command as follows: legal instrument examiners, the lead legal instrument examiner, the supervisor, and then the service center manager.

Hawkins testified that on many occasions she had issues with Employee being AWOL without calling in, and often times returning from her breaks late. Hawkins reached out to the union regarding Employee's attendance issues (Agency's Exhibit 4). Employee also had performance issues which included not remembering what workstation she was assigned to and forgetting her password on the computer system.

Hawkins issued an annual performance appraisal of Employee from October 1, 2011, through September 30, 2012 (Agency Exhibit 6). Hawkins explained that she was Employee's manager at this time despite Farrar's name appearing on the document. Hawkins explained that when Employee got a new manager, the new manager's name appeared on all the existing documents, which is what happened in this case. Employee received a 1.6, a marginal performer rating, on her competencies summary during this performance evaluation period. Hawkins placed Employee on a PIP to help her correct the deficiencies she had in her work performance. (Agency's Exhibits 15 and 16).

Hawkins referred Employee to COPE, which is documented by Agency's Exhibit 5, although Employee stated that she "[didn't] need that kind of help." Hawkins testified regarding Agency's Exhibit 3, which is a follow-up e-mail to an incident where Employee was found sleeping in her car after her lunch break and eventually left duty for the day. The following day during a meeting with her superiors about the previous days' events, Employee acknowledged that she had been drinking during her lunch break and did not return to work afterwards.

⁹ Hawkins' name appears on several documents throughout the record as "Keisha Seagraves." Seagraves was Hawkins' married name, but she has since reverted to her maiden name, Hawkins.

On cross-examination, Hawkins stated that she did not complete Agency's Exhibit 26 when referring Employee to COPE.

Lucinda Babers ("Babers")

Babers is Agency's Director and issued the Final Decision to remove Employee from her position. Babers considered the three PIPs that Employee was subject to in previous years and the three annual evaluations where Employee had a less than satisfactory rating. Babers also considered the DPM Table of Appropriate Penalties when she issued her final notice to Employee.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

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.

Chapter 16, Section 1603.3 of the District Personnel Manual ("DPM") sets forth the definitions of cause for which disciplinary actions may be taken against Career Service employees of the District of Columbia government. Here, Employee was terminated under Sections 1603.f(2) and (3): Any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, specifically: absence without official leave and neglect of duty. Employee was also cited under Section 1603.3(i) "drunkenness on duty."¹⁰ During the evidentiary hearing and throughout several filings in this matter, Agency presents several instances in support of its removal of Employee.

Absence Without Official Leave (AWOL)

Agency's Exhibit 2 includes several documents addressing Employee's AWOL charge. Saleh testified that AWOL forms are typically issued to employees when they return to work or mailed to their address of record if an employee is out for an extended duration of time. During

¹⁰ DPM § 1603.3(i) reads "Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result." The language "drunkenness on duty" is a catchall phrase found in DPM § 1619.7, Table of Appropriate Penalties.

Farrar's testimony, he was unable to explain why documents 9, 10, 11, and 12 within Agency's Exhibit 2, indicate that Employee refused to sign AWOL notices on September 27, 2013, despite the fact that she was marked AWOL on that same date she supposedly declined to sign the notices.¹¹ Although Farrar was unable to explain these discrepancies, there still remain several AWOL notices within Agency's Exhibit 2 that demonstrate that Employee was in fact AWOL on numerous occasions, ranging from September 2012 to January 2014. In several of these documents, Employee actually signs and acknowledges the AWOL notices.¹² In many of these instances Employee did not have the accrued leave for unscheduled absences or was not approved for leave on a particular date. Saleh testified that there were occasions where Employee did not show up to work and did not call in.

Employee's attendance issues prompted an Agency Administrator (Saleh) to reach out to a union representative to assist Employee with this issue.¹³ Employee's attendance issues are well documented in her annual performance evaluations, where she received inadequate ratings for attendance.¹⁴ Employee's absenteeism issues are also addressed in her PIPs.¹⁵ I found Saleh, Farrar, and Hawkins' testimony regarding Employee's attendance issues very credible. Based on the aforementioned, I find that Agency had cause to take adverse action against Employee for being absent without official leave.

Neglect of Duty

The District's personnel regulations provide that there is neglect of duty in the following instances: (1) failure to follow instructions or observe precautions regarding safety; (2) failure to carry out assigned tasks; or (3) careless or negligent work habits.¹⁶ Here, Agency presented testimonial and documentary evidence regarding Employee's careless work habits and failure to carry out assigned tasks. Agency's Exhibits 6 and 7 are comprised of three annual performance evaluations for Employee. Saleh discussed the three consecutive annual performance evaluations and stated that Employee's work was "well below the office average." Employee received an overall performance evaluation as an inadequate performer for fiscal year ("FY") 2012.¹⁷

Employee was placed on performance improvement plans during FY 2011, 2012, and 2013. Despite Employee not improving during the first year of her performance improvement plan, Agency continued to work with Employee "for three years, and she showed no effort whatsoever in improving."¹⁸

Agency also adduced evidence that Employee often times failed to carry out her assigned tasks and exhibited careless and negligent work habits. Specifically, Saleh testified that Employee abandoned her work station while on duty and caused disruptions in other Agency

¹¹ See Agency's Exhibit 2, document 14

¹² See Agency's Exhibit 2, documents 1, 3, 4, 5, 6, 7, 8, and 18.

¹³ See Agency's Exhibit 4.

¹⁴ Agency's Exhibits 6 and 7,

¹⁵ Agency Exhibit 8.

¹⁶ See D.C. Mun. Regs. tit. 16 § 1619.1(6)(c). Table of Appropriate Penalties.

¹⁷ See Agency Exhibit 6.

¹⁸ Tr. at 42.

departments.¹⁹ There was also an occasion when Employee was in training and became disruptive to the point where she was asked to leave by the instructor.²⁰ Furthermore, Moore, Farrar, and Hawkins provided testimony that Employee had repeated issues of locking herself out of her computer and carelessly inputting data into the computer system. On one particular occasion, when Employee sought help from another Agency employee, it was discovered that Employee had entered incorrect information regarding a customers' information.²¹ As Saleh testified, inaccuracies on the part of Agency regarding a customers' driver's license can have lasting consequences. Based on the documentary and testimonial evidence presented by Agency, I find that it had cause to take adverse action against Employee for neglect of duty.

Drunkenness on Duty

Agency cited DPM § 1603.3(i) as a cause for adverse action against Employee. Agency lists this charge as "drunkenness on duty." The language of DPM § 1603.3(i) reads, "Use of illegal drugs, unauthorized use or abuse of prescription drugs, use of alcohol while on duty, or a positive drug test result." Employee argues that the language "drunkenness on duty" does not fall under the section cited by Agency (DPM § 1603.3(i)), but rather, that the "drunkenness on duty" language is a separate charge for adverse action purposes. Thus, Employee asserts that Agency cited to the incorrect section in its Notice of Final Decision regarding "drunkenness on duty." I find that the language, "use of alcohol while on duty," is closely aligned with the "drunkenness on duty" language and that Employee had adequate notice to defend herself against this charge.

Agency provided evidence regarding two specific instances where Employee was under the influence of an intoxicating substance while on duty. Saleh testified about an incident that occurred on August 23, 2012, where Employee had fallen down by the side of the building and had to be helped and placed in her car. When Saleh returned to work from lunch, she observed Employee sleeping in her car, as depicted in the e-mail attachment with Agency's Exhibit 3. The following day, Saleh, along with Employee's immediate supervisor, met with Employee. During this meeting Employee was shown the picture of her sleeping in her car. Employee then began to cry and subsequently acknowledged that she had been drinking during her lunch break with a friend and became drunk.²² I found Saleh's testimony to be credible.

Additionally, Moore testified with great credibility that she observed Employee was "under the influence because of the odor of alcohol" on October 29, 2013.²³ Moore also testified regarding an incident the same day when she was going to lunch and observed Employee on the ground outside of her work location and an ambulance was called to assist Employee in her apparent state of intoxication. When Moore observed Employee on the ground, she called Farrar to assist Employee. Agency presented a photograph of Employee lying on the ground as testified to by Moore.²⁴ Employee did not deny that the picture was of her nor did she offer any evidence

¹⁹ See Agency's Exhibit 9.

²⁰ Agency's Exhibit 10

²¹ Agency Exhibit 11.

²² Tr. at 48.

²³ Tr.at 18.

²⁴ Agency Exhibit 12.

to rebut this assertion. Farrar also testified about this incident since he was called outside by Moore to assist Employee. Farrar spoke about the interaction Employee had with the paramedics who asked Employee a series of questions to check on her stability, such as “who was the president;” to which Employee responded, “you know who it is.”²⁵

Saleh stated that she was aware of Employee’s drinking problems and recommended and referred her to COPE, an employee assistance program, as evidence in her e-mail outlined in Agency’s Exhibit 3. On cross-examination, Employee’s representative introduced a COPE Referral form as Employee’s Exhibit 26. Employee’s representative also introduced a portion of the relevant Collective Bargaining Agreement which provides that agency management should refer an employee to the Employee Assistance Program (“EAP”) in writing. I find that the e-mail issued to Employee from Hawkins recommending her for the EAP, satisfied the writing requirement. The evidence supports the assertion that Employee stated that she did not need to be referred to the assistance program because it did not work for her on a previous occasion.

Employee elected not to call any witnesses to support her position that Agency did not have cause to take adverse action. The only evidence Employee presented at the evidentiary hearing was during the cross-examination of Agency witnesses. It is apparent and unfortunate that Employee’s personal issues negatively impacted her work habits; however, I find that Agency went to great lengths to accommodate Employee and work with her regarding these issues, to no avail. Thus, I find that Agency had cause to take adverse action based on the aforementioned charges.

Appropriateness of penalty

In determining the appropriateness of an agency’s penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes*, OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors, and whether there is a clear error of judgment by agency. In the instant case, Employee was cited with AWOL, Neglect of Duty, and Drunkenness on Duty/Use of Alcohol While on Duty. As discussed above, I find that Agency had cause to take adverse action for each charge discussed.

DCMR § 1619.1(6)(b) (Table of Appropriate Penalties) provides that an appropriate penalty for a first time offense for AWOL ranges from reprimand to removal. DCMR § 1619.1(6)(c) also provides that an appropriate penalty for a first time offense of neglect of duty ranges from reprimand to removal. Lastly, DCMR § 1619.6(9) provides that an appropriate penalty for a first time offense for use of alcohol while on duty ranges from a fifteen (15) day suspension to removal. As such, Agency was well within its discretion to remove Employee based on the AWOL, neglect of duty, and use of alcohol while on duty charges.

Agency has the primary discretion in selecting an appropriate penalty for Employee’s

²⁵ Tr. at 94.

conduct, not the Administrative Judge.²⁶ The undersigned may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.²⁷ When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.²⁸ Here, in Agency's Final Notice on Proposed Removal, Director Babers explicitly states that she considered the *Douglas* factors as part of her decision to sustain Employee's removal.²⁹ Accordingly, I find that Agency reasonably concluded that termination was an appropriate penalty under the circumstances.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's decision to remove Employee from her position is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

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

²⁷ See *Id.*

²⁸ *Id.*

²⁹ Agency's Answer, Tab 5 (May 22, 2014); *Douglas v. Veteran Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors, which are not exhaustive, include:

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