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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	OEA Matter No. 1601-0043-24
Employee	)	
	)	Date of Issuance: May 7, 2026
v.	)	
	)	Joseph E. Lim, Esq.
D.C. DEPARTMENT OF INSURANCE,	)	Senior Administrative Judge
SECURITIES, AND BANKING.	)	
	)	
<u>Agency</u>	)	
Employee, <i>Pro Se</i>		
Daniel Thaler, Esq. Agency Representative		

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 22, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) appealing the Department of Insurance, Securities, and Banking’s (“DISB” or “Agency”) decision to terminate her from her position as a Fraud Investigator, effective March 28, 2024. Employee was terminated for the following cause of action: Unauthorized absence of five (5) workdays or more.¹ On April 22, 2024, OEA requested that Agency submit an Answer to Employee’s Petition for Appeal. Agency submitted its Answer on or about May 7, 2024.

This matter was assigned to the undersigned Senior Administrative Judge (“AJ”) on May 7, 2024. A Prehearing Conference was initially scheduled for August 21, 2024. However, on August 16, 2024, Employee filed a Complaint against the District of Columbia Government and against the undersigned in my capacity as an Administrative Judge (“AJ”) at the Superior Court for the District of Columbia (“DCSC”), alleging mistreatment and wrongful termination and sought \$1.5 million for damages.² On

¹ Agency Answer, Exhibit 10.

² *Employee v. District of Columbia Government, et. al.* Case No. 2024-CAB-005229 (D.C. Super. Ct. 2024).

September 16, 2024, Employee also filed for a Temporary Restraining Order at the Superior Court for the District of Columbia (“DCSC”) against the undersigned and various other District of Columbia employees.³ Employee also filed a Consent Motion requesting a new Prehearing Conference date. On November 14, 2024, I denied Employee’s Motion for Postponement of OEA proceedings. On or about November 15, 2024, the DCSC dismissed Employee’s Complaint and Request for a Restraining Order. The Prehearing Conference was held on November 19, 2024.

At the November 19, 2024, Prehearing Conference, I issued orders pertaining to discovery and held another conference on February 3, 2025, after granting Employee’s request to postpone a January 31, 2025, conference. I then held a Status Conference on April 18, 2025, wherein, the parties were ordered to submit their list of witnesses and proposed dates for an Evidentiary Hearing. After I granted Employee’s motion to postpone a scheduled October 29, 2025, Evidentiary hearing due to her car accident, I held a virtual Evidentiary Hearing via WebEx⁴ on December 5, 2025. Both Agency and Employee presented documentary and testimonial evidence during the Evidentiary Hearing to support their positions. Documentary evidence entered into the record at the Evidentiary Hearing are noted as Exhibits in the footnotes. On January 20, 2026, Agency submitted its closing argument. Employee did not submit a closing argument. This decision is based on the documentary and testimonial evidence presented at that proceeding. The record is closed.

JURISDICTION

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

ISSUES

- I. Whether Agency had cause for adverse action against Employee.
- II. If so, whether Employee’s removal was appropriate.

POSITION OF THE PARTIES

On December 19, 2023, Agency proposed the termination of Employee’s employment and issued its Final Decision on its Notice of Separation on March 21, 2024, for the following alleged charges and specifications against Employee:⁵

6B DCMR §§ 1605.4(f)(2), §1607.2(f)(4) “Unauthorized absence of Attendance Related Offenses: Unauthorized absence of five (5) workdays or more.

Specification: You failed to attend work without proper authorization from your

³ *Id.*

⁴ WebEx is a software program that enables participants to engage in a hearing or meeting remotely via an electronic device.

⁵ Agency Answer.

supervisor on the following dates: October 24, 2023 (AWOL); October 25, 2023 (5 hours AWOL); November 17, 2023 (AWOL); November 21, 22, and 23, 2023 (6 hours AWOL); November 27 - December 1, 2023 (AWOL); December 4, 2023 - December 8, 2023 (AWOL); and December 11 - 14, 2023 (AWOL).

Employee responded that because Agency harassed, bullied, and intimidated her, she developed mental health issues and Agency failed to properly consider the relevant factors set forth for her charges.

Summary of December 5, 2025, Transcript:⁶

Brian Bressman (“Bressman”) Tr. Pp. 13-76.

Bressman worked as the Director of Agency. He testified that there were approximately six (6) employees employed as fraud investigators under his chain of command. Bressman stated that Employee worked as a fraud investigator at Agency. He explained that fraud investigators were responsible for investigating cases of potential regulatory and fraud violations committed by individuals and entities which are regulated under district law. Bressman testified that employees working in the office instead of teleworking, allowed employees to meet with witnesses or with victims to take statements. Additionally, investigators were able to inspect areas where fraud may have occurred.

Bressman testified that he was the deciding official in the Final Agency Decision regarding Employee’s termination of employment. He confirmed Employee received the Final Notice on March 21, 2024.⁷ Bressman testified that the decision to terminate Employee was in accordance with 6-B D.C. Municipal Regulations (“DCMR”) §§ 1605.4(f)(2) and 1607.2(f)(4). The document further provided that the cause of Employee’s termination was attendance-related offenses, specifically, unauthorized absences of five workdays or more.

Employee received a Leave Restriction Notice (“LRN”) on October 23, 2023, after Bressman, in his capacity as deciding official and Director of Agency’s division, noted Employee’s pattern of unscheduled leave abuse between July 28, 2023, and October 13, 2023.⁸ The notice documented at least eighteen (18) instances when Employee incurred unscheduled leave and described how Employee’s poor attendance had negatively impacted Agency’s operations. The LRN, in effect from October 23, 2023, to December 8, 2023, revoked Employee’s telework schedule and imposed conditions on Employee with regards to her tardiness, unscheduled annual leave, unscheduled sick leave, leave without pay, and absence without leave. Bressman testified that despite the imposition of the leave restriction, Employee’s attendance did not improve.

⁶ Evidence includes witness testimonies and exhibits admitted at the hearing.

⁷ Agency Exhibit 12.

⁸ Agency’s Exhibit 7.

Bressman further testified that Employee was also served a November 15, 2023, letter from Assistant Director Michael Ross (“Ross”), wherein she was informed that the medical documentation she had submitted for several absences from October 26, 2023, to November 13, 2023, were insufficient because they did not attest to her incapacitation for duty.⁹ The letter warned Employee that further instances of AWOL would require her to submit medical documentation from her medical provider stating her capacity for work. Bressman asserted that following the issuance of that letter, Employee still failed to provide sufficient medical documentation.

Bressman noted that the December 19, 2023 Advance Notice of Proposed Removal with Attachments (“Advance Notice”) was sent to Employee and which documented her AWOL from October 24, 2023, to December 14, 2023, was due to the fact that Employee failed to submit any medical documentation regarding her absence.¹⁰ Although her absence from November 21 to 23, 2023, was covered with a medical note, the Advance Notice informed Employee that the note did not comply with her LRN as it had no information regarding her medical capacity to work. It also noted that Employee was emailed instructions on November 20, 2023, on how to rectify the insufficiency of her medical note. The Advance Notice provided email correspondence from Ross to Employee, Katrice Purdy, Marlene Simmons, Jacinda Miller, and Bressman, acknowledging receipt of Employee’s November 20, 2023, medical certification note. According to Bressman, Ross provided that the certification was insufficient and did not attest to Employee’s incapacity for duty. The Advance Notice also noted that on November 20, 2023, Agency retroactively granted Employee Paid Family Medical Leave from October 27, 2023, to November 15, 2023. Following the email, Employee did not return to work.

Bressman stated that all twelve *Douglas* factors were considered in the Advance Notice. He explained that the aggravating factors outweighed any mitigating factors. Under the first *Douglas* factor, “Nature and Seriousness of Conduct,” it noted that Employee’s conduct undermines the mission of Agency. Bressman agreed with that assessment explaining that Agency has specific policies and procedures in place and Employee was unavailable for conducting investigations and writing reports, which management concluded meant that she was not producing work. Moreover, because Employee was underperforming, her reports were not generated, her cases were not investigated and were ultimately reassigned to other employees within the group which added to their workload. Bressman said that Employee failed to complete any work.

With regard to past disciplinary action against Employee, Bressman testified that Employee was issued a notice to serve a five-day suspension on July 7, 2023.¹¹ He testified that on March 31, 2023, and June 6, 2023, Employee sent inappropriate emails to broad audiences. Bressman further stated that he was the deciding official for the suspension. He testified that following the suspension, Employee’s communications with Agency did not improve.

⁹ Agency’s Exhibit 8.

¹⁰ Agency Exhibit 9.

¹¹ Agency’s Exhibit 4.

An administrative review by Assistant General Counsel Enriquez regarding the instant matter noted that Employee suffered pre-existing Post Traumatic Stress Disorder (“PTSD”) from her previous employer and despite explicit instructions from her LRD, Employee continued to submit inadequate medical reports for her absences.¹² On cross-examination, Bressman testified that he was not aware that Employee submitted documentation for her Family Medical Leave Act (“FMLA”). He also could not confirm that she experienced medical issues.

Bressman attested that he reviewed all documentation to make his final determination. He stated that he was not aware of any recorded telephone conversations that took place between Employee and Ross. Bressman testified that when Employee was charged with Absent Without Official Leave (“AWOL”), Agency requested medical documentation to explain her absence. However, Employee failed to produce the required documents.

Katrice Purdy (“Purdy”) Tr. Pp. 77-96.

As the Chief of Policy and Administration with Agency, Purdy managed the administrative functions of the office to include, but not exclusive of, human resources, performance management, risk management, procurement, budget items, and Americans with Disabilities Act (“ADA”) accommodations. Purdy testified that she reviewed and signed Agency’s March 24, 2023, ADA accommodation to Employee granting her telework from March 27, 2023, to May 26, 2023.¹³ According to Purdy, it was standard for an accommodation to be set for a fixed duration. She also provided that when Employee’s accommodation expired, Employee requested for her accommodation to be renewed; however, Purdy could not recall if the accommodation was granted.

Purdie testified that there is a limit to the amount of leave that an employee can receive for themselves and a limit that can be received for the care of a family member. She further testified that Employee received the maximum paid medical leave of ten (10) days for herself. Employee’s medical leave dates covered the period from October 27, 2023, to November 15, 2023.¹⁴ Once her leave expired on November 15, 2023, Employee was required to report to work. On cross-examination, Purdie could not recall the number of Office of Human Rights (“OHR”) Complaints that Employee filed against her.

Shavon McLeod (“McLeod”) Tr. Pp. 97-109.

As a Human Resource (“HR”) Specialist with Agency, McLeod was responsible for handling all HR matters and was an ADA coordinator for Agency. McLeod testified that she denied Employee’s ADA accommodation because she was unable to continue interviewing Employee to process Employee’s request for a new telework schedule.¹⁵

¹² Agency’s Exhibit 11.

¹³ Agency’s Exhibit 2.

¹⁴ Agency Exhibit 6.

¹⁵ Agency Exhibit 5.

McLeod further explained that during her meeting with Employee, Employee was combative and discussed individuals who handled her case prior to McLeod.

McLeod testified that the denial letter was issued on September 12, 2023. Following the denial, Employee was required to report to work. McLeod denied discussing her personal medical conditions with Employee.

Employee Tr. Pp. 114-154.

Employee testified that she inquired about the ADA accommodations process and believed that she was receiving pushback from management because of her request. Employee stated that she should have been able to request the accommodation without retaliation. Ultimately, Employee tried to ascertain why a new request was needed for her accommodation as opposed to a renewal of a previous request. Because of this, she filed several OHR¹⁶ complaints to get help with her request. Employee stated that she did not request one hundred percent teleworking, as she wanted a renewal of her previous accommodation where she came in on Fridays. Employee said that McLeod was combative and rude during her interview and that it was McLeod who stopped the interview.

Employee stated that she decided to use her remaining leave balance and file for the Family Medical Leave Act ("FMLA"). According to Employee, Agency delayed the process of her approval of FMLA by requesting supplemental medical documentation. Employee provided that this process has financially incapacitated her. Employee also testified that she was handed her termination papers during the period that she was on FMLA. She stressed that her medical and mental condition was such that there was a time that she had to go to the emergency room almost every night.

Employee testified that during those periods of incapacitation and illness, she felt vulnerable and admitted she was feeling that way when she filed a Complaint and a Temporary Restraining Order at the DCSC against the OEA Administrative Judge and other District employees. On cross-examination, Employee testified that she submitted documentation for her medical leave. She explained that Agency requested that she produce further documentation. However, when she forwarded Agency's request to her medical providers, they were unsure of what Agency was requesting. Employee denied that Agency granted her medical leave for the maximum time of November 15, 2023. She claimed that the maximum time would have been December 2023.

Employee testified that she suffers from anxiety, post-traumatic stress disorder, and suicidal ideations. She stated that she provided documentation for the period of AWOL for the period of October 24, 2023, to October 25, 2023. She also stated that she provided documentation for November 17, 2023, November 21, 2023, and November 23, 2023. Employee further testified that she had medical documentation to support her absence from November 27, 2023, through December 1, 2023. Additionally, she stated that she possessed medical documentation supporting her intermittent absences from work on December 4, 2023, through December 8, 2023, and December 11, 2023, through December 12, 2023.

¹⁶ Employee did not elaborate, but OHR stands for Office of Human Rights.

When asked why she still failed to submit any medical reports that would cover her AWOL, Employee said that she already did and could not understand what else Agency is asking for.

Employee testified that included with her Advance Notice is a medical note attached to an email chain.¹⁷ She explained that she had attached all medical notes that she had in her possession to show that she was in a legitimate facility to address her medical issues.

Employee testified that the AWOL dates were inaccurate because she was either on sick or medical leave during those periods and she informed Agency via email. She stated that she worked for Agency for five or six months prior to going out on FMLA. Employee testified that she was in her position for over a year with Agency.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

I. Whether Agency had cause for adverse action against Employee.

In this matter, Agency had charged Employee with the following:

6B DCMR §§ 1605.4(f)(2) “Unauthorized absence,” and §1607.2(f)(4) “Unauthorized absence of Attendance Related Offenses: Unauthorized absence of five (5) workdays or more:

Specification: Whether Employee was inexcusably absent without leave from October 24, 2023 (AWOL); October 25, 2023 (5 hours AWOL); November 17, 2023 (AWOL); November 21, 22, and 23, 2023 (6 hours AWOL); November 27 - December 1, 2023 (AWOL); December 4, 2023 - December 8, 2023 (AWOL); and December 11 - 14, 2023 (AWOL).

Agency’s witnesses credibly testified with supporting document records that Employee was absent without leave from her job as a Fraud Investigator at the Agency on the dates that she was charged as AWOL. Employee does not deny that she was absent from work on those days. However, Employee insisted that she had submitted doctor’s notes for those days. Aside from a doctor’s note covering Employee’s absence from November 21, 2023, to November 23, 2023, Agency’s witnesses credibly denied receiving any doctor’s note for all the other days that Employee was charged AWOL. Agency’s witnesses, however, assert that Employee’s doctor’s note for November 21, 2023, to November 23, 2023, is insufficient as it did not provide information on whether Employee was unable to work as instructed in Employee’s LRN.

Although Employee insisted that she had submitted medical reports covering all the days that she was charged AWOL, she never submitted them to Agency; nor did she submit them at the hearing. Thus, based on the testimonial and corroborating documentary evidence presented, I find Agency to be more credible than Employee. I therefore find that

¹⁷ Agency’s Exhibit 9.

Agency has met its burden of proof that Employee was AWOL for the dates of October 24, 2023; October 25, 2023 (5 hours); November 17, 2023; November 27, 2023 - December 1, 2023; December 4, 2023 - December 8, 2023; and December 11, 2023, - 14, 2023.

However, because Agency received a doctor's note covering the period of November 21, 2023, to November 23, 2023, I find that Agency's AWOL charge for these dates must fail. This Office has consistently held that when an employee offers a legitimate excuse, such as incapacitation due to illness for being absent without leave, the absence is excusable, and therefore, cannot serve as a basis for an adverse action.¹⁸ I therefore find that Employee was not AWOL from November 21, 2023, to November 23, 2023, as her absence was medically excusable. Although it is true that the doctor's note is insufficiently informative as to Employee's ability to work on those days, Agency could have charged her for failure to comply with her LRN but failed to do so.

II. Whether the penalty of removal was appropriate.

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).¹⁹ 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 Illustrative Actions ("TIA"); 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, I find that Agency has met its burden of proof for all its charges and specifications against Employee.

In reviewing Agency's decision to terminate Employee, OEA may look to the TIA. Chapter 16 of the DPM outlines the TIA for various causes of adverse actions taken against District government employees. The penalty for a first offense for Unauthorized Absence of five (5) workdays or more is removal.²⁰ In this matter, I found that Agency has proven that Employee was AWOL for more than five (5) days. Agency's choice of termination as the penalty is consistent with the language of the DPM. Therefore, I find that, by terminating Employee, Agency did not abuse its discretion.

¹⁸ *Teshome Wondafrash v. Department of Human Services*, OEA Matter No. 1601-0126-96, *Opinion and Order on Petition for Review* (April 14, 2008) and *Victor Hines v. Department of Transportation*, OEA Matter No. 1601-0116-05, *Opinion and Order on Petition for Review* (February 25, 2009).

¹⁹ See also *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

²⁰ DPM §1607.2(f)(4).

As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.²¹ 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. I find that the penalty of removal was within the range allowed by law. Accordingly, I further conclude that Agency's action should be upheld.

ORDER

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

FOR THE OFFICE:

s/Joseph Lim

JOSEPH E. LIM, Esq.

Senior Administrative Judge

²¹ *Love* also provided that “[OEA’s] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency’s shoes in the first instance; such an approach would fail to accord proper deference to the agency’s primary discretion in managing its workforce. Rather, the [OEA’s] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency’s judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency’s decision should be corrected to bring the penalty within the parameters of reasonableness.” citing *Douglas v. Veterans Administration*, 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981).