THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0046-12
WILLIE PORTER,	)	
Employee	)	
	)	Date of Issuance: December 24, 2013
v.	)	
	)	
DEPARTMENT OF MENTAL HEALTH,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

Willie Porter, *Pro se*
Eric Adam Huang, Esq., Agency's Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Willie Porter ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") on December 29, 2011, challenging the Department of Mental Health's ("Agency") decision to terminate him. Employee was employed as a Psychiatric Nurse at the time of his termination.[1] Employee's removal was based on the following cause: "Any knowing or negligent material misrepresentation on an employment application." This removal became effective August 5, 2011. Agency filed its Answer on February 6, 2012. This matter was assigned to me on August 9, 2013.

A Prehearing Conference was convened on October 7, 2013. Agency raised the argument that this Office lacked jurisdiction to hear this appeal. The basis for Agency's jurisdiction argument was that Employee's appeal was untimely and did not articulate a reason for his appeal. Agency's Motion to Dismiss for Lack of Jurisdiction was denied. The record supports that Employee sent his appeal to this Office via U.S. Postal Service, certified mail, and it was delayed because of mailing issues the OEA experienced when it relocated. Consequently,

[1] Employee was a Psychiatric Nurse at Saint Elizabeths Hospital, which falls under the ambit of the District of Columbia's Department of Mental Health.

a Post Prehearing Conference Order was issued which required the parties to submit briefs on the issues presented. The parties have submitted their briefs and it has been determined that an evidentiary hearing is not warranted. 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 sufficient cause for disciplinary action (termination); and

2. Whether Agency's removal of Employee was an appropriate penalty under the circumstances.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSION

On September 16, 2010, Employee applied for a position as a Psychiatric Nurse with Agency. Employee asserts that he resubmitted his application on October 6, 2010, upon Agency's request because the initial application was not properly entered into the computer.[2] The first Employment Application, or DC 2000 form, *did not* provide Employee's work experience with Walter Reed Army Medical Center ("WRAMC"). The second application *did* provide Employee's work history with WRAMC. Employee provided his previous work history under item number 9 entitled, "Work Experience…List paid or unpaid work experience relevant to the position for which you are applying," in both applications.

Employee signed the DC2000 form, agreeing to the notations in item number 11, which state: "I understand that a false statement on any part of my application may be grounds for not hiring me, or for firing me after I begin work…I certify that, to the best of my knowledge and belief, all my statements are true, correct, and complete." Employee was subsequently hired in a Career Service appointment as a Psychiatric Nurse with Agency as a result of his Employment Application. Employee's position became effective January 18, 2011.

On or about April 1, 2011, Agency's Human Resource department received a copy of Employee's Official Personnel File ("OPF"). The OPF revealed that there was information regarding Employee's previous employment history that was not contained in his first Employment Application, submitted September 16, 2010. Namely, it was revealed that Employee had previously worked for Walter Reed Army Medical Center ("WRAMC") from September 19, 2005—June 12, 2006. Employee was employed as a Clinical Nurse at WRAMC. According to the Standard Form 50-B ("SF-50"), dated June 12, 2006, Employee was removed from his position at WRAMC for "sleeping on the job, AWOL, failure to follow orders,

[2] *See* Agency's Brief at Attachment 12 (October 30, 2013). Agency maintains that it relied upon the September 16, 2010 application in offering Employee his position. It should also be noted that Agency calls into question whether or not Employee actually submitted a second application on October 6, 2010. *See* Agency's Reply Brief (December 9, 2013.)

discourtesy, [and] negligent discharge of duties."[3] Based on the discovery of this information, Agency elected to remove Employee from his position.

Employee received an Advanced Notice of Proposed Removal on May 13, 2011.[4] In this notice, Employee was advised of the following: (1) he had the right to reply to the proposed removal within ten (10) calendar days from receipt of the letter; (2) full consideration would be given to any reply made; and (3) he would be notified in writing of Agency's final decision. Employee responded to the proposed removal and a Hearing Officer was assigned to review Employee's answer to the charges against him. Specifically, Employee was terminated based on the cause of: "Any knowing or negligent material misrepresentation on an employment application." The specification of this charge provided that Employee knowingly omitted information in his D.C. Employment Application regarding his past employment that would have precluded his appointment to his position with Agency.

On May 19, 2011, Employee, via counsel, submitted a response to the Hearing Officer addressing the proposed adverse action. After an Administrative Review of the record by the Hearing Officer, it was determined that Agency's proposal to removal Employee was supported. Accordingly, Employee was issued a Notice of Final Decision on July 28, 2011, removing him from his position with Agency effective August 5, 2011.

Employee's position

Employee asserts that he provided Agency with a SF-50 form documenting his employment at WRAMC on two separate occasions.[5] Employee also asserts that he sent the form via facsimile and also personally delivered it to Ms. Elizabeth Falodum, an employee in the Human Resources Department at Saint Elizabeths Hospital. Employee maintains that he did, in fact, notify Agency of his employment with WRAMC prior to Agency offering him employment.[6] Employee also provided an addendum to his response to the Hearing Officer in support of his position that Agency was aware of his employment with WRAMC. To further support this argument, Employee states that he sent a facsimile to Agency with all of his prior work history in chronological order. This information was provided to Agency once Employee became aware that Agency did not properly input his application for employment into the computer system.[7] Employee further contends that the Standard Form 50-B, dated June 12, 2006, which removed Employee from his position with WRAMC is inaccurate.[8] Employee argues that he was not terminated from WRAMC, but rather resigned from his position due to "insurmountable personal, family, and medical issues[.]"[9] Employee provided a copy of his resignation letter, dated April 20, 2006, which he asserts was submitted to the appropriate

[3] *See* Agency's Brief at Attachment 3, Notification of Personnel Action (October 30, 2013).
[4] *See* Agency's Brief at Attachment 4, Advanced Notice of Proposed Removal, "Acknowledgement of Receipt" (October 30, 2013).
[5] *See* Agency's Brief at Attachment 6 (October 30, 2013).
[6] *Id.*
[7] *See* Agency's Brief at Attachment 7. (October 30, 2013).
[8] *Id.*
[9] *Id.*; *See also* Employee's Response to Agency's Brief, Attachments (November 25, 2013).

personnel at WRAMC.[10] Employee contends that Agency was aware of his employment with WRAMC two months prior to him being offered a position.

Agency's position

Agency argues that Employee was terminated from his employment with WRAMC for cause. Specifically, Agency argues Employee was removed from his position at WRAMC for "sleeping on the job, AWOL, failure to follow orders, discourtesy, negligent, [and] discharge of duties." Agency further asserts that although Employee contends he resigned from his position on April 20, 2006, from WRAMC, there is no evidence that his resignation was ever accepted. Moreover, the Standard Form 50 ("SF-50) which indicates that Employee's removal was approved on June 12, 2006, reflected that Employee's resignation was not accepted. Agency asserts that if it had known about the circumstances in which Employee's employment ended with WRAMC, then that would have precluded him from employment with Agency. Agency is firm in its position that it believes Employee knowingly omitted material information in his DC2000 form (Employment Application) that would have prevented his employment with Agency.

Whether Agency had sufficient cause for disciplinary action

Any knowing or negligent material misrepresentation on an employment application.

The District Personnel Manual ("DPM") sets forth the definitions of cause for which disciplinary actions may be taken against a Career Service employee of the District of Columbia. Specifically, Chapter 16, Section 1603.3(c) provides that there is cause to take disciplinary action if an employee makes "[a]ny knowing or negligent material misrepresentation on an employment application." The DPM, § 405.10(a), also provides that misconduct in prior employment is a basis for disqualification of an appointee.

Here, Employee submitted an Employment Application for a Psychiatric Nurse position with Agency on September 16, 2010. The vacancy announcement number for this position was 15352.[11] Upon request by Agency, Employee resubmitted an application for employment on October 6, 2010, for a Psychiatric Nurse position. Employee contends that he resubmitted his application after he was informed by Agency that his initial application was not properly entered into the computer system. The vacancy announcement number for Employee's second application was 15348.[12] In a letter sent to Stephen Baron, Agency's Director, dated August 3, 2011, Employee states that the discrepancy with the vacancy numbers was an error on his part when he provided the incorrect vacancy number on the second application. Subsequently, Employee was offered a position with Agency as a Psychiatric Nurse as a result of vacancy number 15352.[13] Employee filled this position based on the vacancy number provided in the first application.

[10] *See Id.*
[11] *See* Agency's Brief at Attachment 1 (October 30, 2013).
[12] *See* Employee's Response to Agency's Brief, Attachment (November 25, 2013).
[13] *See* Agency's Brief at Attachment 2, "Remarks" section.

The significance of which Employment Application Agency relied upon is material because the September 2010 application *did not* contain Employee's employment with WRAMC under the "Work Experience" section. The October 2010 application *does* contain Employee's employment with WRAMC. Employee states that he provided the newer, October 2010 application, at the Agency's request because he was told by an Agency Representative that there "was not evidence that the September application was ever submitted." Employee further argues that he received a Notice of Status of Employment Application, dated October 6, 2010, which demonstrates that he did in fact submit an application on October 5, 2010. While Employee asserts that he received information from Agency that his employment application was not properly input into the computer system, Employee does not provide any evidence or documentation to support this assertion.

Employee submitted a copy of a resignation letter that he contends was provided to WRAMC. Employee does not provide any documentation or evidence that his resignation was ever accepted. Employee does provide a facsimile transmission verification report indicating that Curtis Gray of Agency successfully received his resignation letter. However, the verification that Agency received Employee's resignation letter still does not demonstrate that Employee's resignation was accepted. In fact, Agency provides a SF-50, which serves as an official document of any personnel action taken, that states that Employee was removed from his position as a Clinical Nurse at WRAMC. The reasons provided on the SF-50 for removal include: "sleeping on the job, AWOL, failure to follow orders, discourtesy, [and] negligent discharge of duties." Despite Employee's contention that he resigned from WRAMC due to "insurmountable personal, family, and medical issues[,]" there is no evidence in the record to support that his resignation was accepted. The record supports the contrary. Employee was removed from his previous position with WRAMC for misconduct. Once it was discovered that Employee was removed from his position at WRAMC for misconduct, Agency elected to remove Employee pursuant to the DPM § 405.10(a). While Employee also states that he provided Agency with SF-50 forms on two separate occasions documenting his employment with WRAMC, those forms do not illustrate the circumstances in which Employee's employment ended with WRAMC. The only form which addresses how Employee's employment ended with WRAMC was the SF-50, dated June 12, 2006, provided by Agency, which demonstrates Employee was removed for cause.

Even if Agency did become aware of Employee's previous employment with WRAMC, it is clear that Agency was unaware of the true circumstances in which Employee's employment ended with WRAMC. In Employee's October 2010 application, Employee states that he resigned from his position with WRAMC.[14] However, the SF-50 provided by the OPF indicates otherwise. Employee offers no evidence to contradict the accuracy of the SF-50 indicating that he was removed from his position with WRAMC for cause. Employee also offers no evidence that his resignation letter was ever accepted by WRAMC. Accordingly, I find that Agency had cause to remove Employee from his position as a Psychiatric Nurse for violating the DPM §§ 1603.3 (c) and 1619.1(3).

[14] Employee lists his Employer's name as Dewitt Army Hospital in Fort Belvoir, Virginia. Dewitt Army Hospital is a work site of WRAMC.

Whether the penalty of removal was appropriate under the circumstances

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the undersigned.[15] This Office may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.[16] 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.[17]

Under the Table of Appropriate Penalties, set forth in Chapter 16 § 1619.1(3), of the District Personnel Manual, the appropriate penalty for a first time offense for any knowing or negligent misrepresentation on an employment application is removal. Here, Employee was removed from his position with Agency for misrepresenting his previous work history; specifically, with WRAMC and the circumstances in which that employment ended. I do not find that Agency exceeded the limits of reasonableness with the penalty imposed against Employee. Accordingly, I find that Agency's penalty of removal was appropriate.

ORDER

Based on the foregoing, it is hereby ORDERED that Agency's decision to terminate Employee is upheld.

FOR THE OFFICE:

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Arien P. Cannon, Esq.
Administrative Judge

[15] *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).
[16] *See Id.*
[17] *See Id.*