THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
ERIC T. BUCKNER,	)	
Employee	)	OEA Matter No. 1601-0057-09
	)	OEA Matter No. 1601-0078-09
v.	)	Date of Issuance: October 22, 2010
	)	
D.C. DEPARTMENT OF TRANSPORTATION,	)	
Agency	)	ROHULAMIN QUANDER, Esq.
	)	Senior Administrative Judge
	)	

Clifford Lowery, Employee Representative
James Fisher, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Eric T. Buckner ("the Employee") filed Petition for Appeal OEA Matter No. 1601-0057-08, on December 3, 2008. Anxious about the status of his case, he filed Petition for Appeal Matter No. 1601-0078-09, on February 5, 2009. OEA staff did not discover the duplicative filing until after both cases were in process. Both cases are exactly the same in every respect, and, pursuant to OEA Rule 612, Consolidation and Joinder, have been consolidated for disposition.

Employee was employed by the District of Columbia Department of Transportation ("Agency" or "DDOT") as a Civil Engineering Technician, CS-802-09, and had worked for the Agency for approximately 20 years. His termination was based upon Agency allegations of the Employee's unauthorized absences without official leave (AWOL) and making a threat of bodily harm to his immediate supervisor, when the latter engaged the Employee in a telephone conversation regarding his pattern of continued absences.

Employee was terminated effective July 25, 2008, but did not file his Petition for Appeal with the Office of Employee Appeals (the "Office" or "OEA") until December 3, 2008. When notified of Employee's appeal, Agency filed a motion, challenging the Office's jurisdiction to still consider the matter, noting that Employee did not file his

appeal within the statutorily mandated 30 calendar days of the effective date of his termination. On July 1, 2009, this administrative judge (the "AJ") issued an Order directing the Employee to address Agency's issues regarding the question of jurisdiction. On July 17, 2009, the Employee, through his designated representative, filed a responsive brief, wherein he set forth several reasons why his petition for appeal was not filed more timely. On August 5, 2009, I issued an Order to the Agency, directing it to respond to Employee's contentions. As well, I convened a Jurisdictional Status Conference, and received oral arguments from both parties. At the conclusion of the conference, I determined that Agency's termination notification to Employee was flawed, as the notice of termination letter failed to include OEA's Rules, as mandated by the DPM regulations. Further, I determined that Employee's sworn testimony that he filed a change of address with Agency was credible, but found that Agency mailed the termination documents to a former address. Employee, who had been in a residential treatment program from June to November 2008, only discovered that he had been terminated when he contacted his union representative in late November 2008, several months after the July 25, 2008, effective date of his termination.

I further decided that there were outstanding factual issues that needed to be determined, and on September 11, 2009, I issued an Order scheduling an evidentiary hearing for November 10, 2009. The hearing was convened as scheduled, and this *Initial Decision* is based in significant measure upon the results of that proceeding. Agency called Stephanie E. Dunbar, Operations Manager, and Samuel Olatunji, Employee's immediate supervisor, as its witnesses. The Employee testified on his own behalf during said evidentiary hearing. On December 15, 2009, I issued an Order, which closed the record.

SPECIFICATIONS

Specification 1:

> Between February 20, 2008 and April 10, 2008, you were absent from your scheduled tour of duty without approved leave for thirty-five (35) days. You failed to inform your supervisor of your absences and secure approval for your absences. Hence, your repeated absences between February 20, 2008 and April 10, 2008, constitute AWOL.

Specification 2:

> On April 7, 2008, you contacted Samuel Olatunji, Project Manager via telephone to inquire about your time and attendance record for the pay period ending March 29, 2008. Mr. Olatunji stated that your time and attendance was based on information available when the time and attendance record was processed. Mr. Olatunji advised you that any inaccuracies discovered after the time and attendance report was generated would be addressed. You were not satisfied with Mr. Olatunji's response. You raised your voice and stated, "When I come in, I am going to fuck

> you up." You then ended the conversation by hanging up the telephone. You should had [sic] known, or should reasonably have known, that issuing a threat to do bodily harm is a violation of law. Hence, your action subjects you to adverse action.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) 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 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUES

1. Whether Agency's adverse action was taken for cause.
2. If so, whether the penalty was appropriate under the circumstances.

SUMMARY OF RELEVANT TESTIMONY

Agency's Case

Stephanie E. Dunbar, Transcript ("Tr") pp 52 - 82

Stephanie E. Dunbar ("Dunbar") is the Agency Operations Manager, charged with the overall responsibilities for human resources, facilities and fleet management, and budgeting. She knows the Employee, sees him in the office, and routinely speaks to him. Through conversations with Samuel Olatunji, the Employee's immediate supervisor, she

became aware of the particular difficulty that Employee was creating, particularly his excessive absences from his work site without official leave authority.

Dunbar reviewed Employee Exhibit #1[1], and noting Specification 1, testified that, based upon the content of the document, Employee has been cited for being absent from his scheduled tour of duty without approval between February 20, 2008, and April 10, 2008, a total of 35 working days, which allegation would also include a failure to notify your immediate supervisor with regard to your continued absence status. The pattern of Employee's absences was considered "excessive" and would be subjected to counseling if this were his first offense on this same allegation. However, this was not his first offense for this identical charge.

Although Dunbar did not personally witness the conversation between Olatunji and Employee, whereby the latter issued a threat, Olatunji reported to her that he had received a profanity-laced threat from the Employee, which behavior is neither appropriate nor tolerated. She consulted the Table of Penalties contained in the District Personnel Manual, to determine the appropriate punishment for such conduct, and determined that in this particular case, termination was the penalty that was appropriate to impose. As well, the DPM provides that ten days of absence without leave can warrant a job abandonment determination, which likewise leads to termination. In the matter at hand, the absence was far in excess of that, and justified termination. Employee had the opportunity to inspect the records and documents in support of the proposal to terminate him from employment, and likewise had an opportunity to file a response and to meet with the designated administrative officer.[2]

On cross examination, the witness denied prior knowledge that Employee was allegedly seeking a leave of absence to attend a drug rehabilitation program, and that he likewise had applied for the advancement of donated annual leave. Further, Dunbar was asked how it was possible for the Employee to be listed as AWOL on certain dates, yet apparently also present at the office, as certain of Olatunji's chronology notes reflect that work assignments were given to the Employee on alleged AWOL days. Therefore, he obviously must have been present. In reply, Dunbar noted that, although she did not have any supportive documents in her possession at the time of this testimony, to reflect the exact dates and times of alleged AWOL, the allegation concerning Employee's alleged AWOL status may not reflect being absent for the entire day, but rather that Employee may have been absent during certain hours when he was supposed to be present at a work site.

Dunbar was unaware of whether, pursuant to the Collective Bargaining Agreement (the "CBA"): a) Agency had sought to assist Employee with his drug problem by referring him to the Employee Assistance Program (the "EAP"), pursuant to § 37 (a);

[1] At the outset of the hearing, Employee presented a series of documents, identified as Employee Exhibits # 1 through # 11, that are referenced in this *Initial Decision.*

[2] The witness's statement does not reflect an awareness that this AJ has determined that Agency's notification was partly flawed, due to his finding that Agency neglected to send the documents to Employee's then current address.

b) was unaware of whether management made a written referral of the Employee to EAP, where there is a suspected drug problem, pursuant to the CBA, § 37 (b); or c) management advised union shop stewards of Employee's excessive and continual absences, as directed by § 21 (q) of the CBA.

However, as the Operations Manager for the Agency, any EAP communication to refer the Employee to obtain counseling and assistance would have been directed to her, as this type of action involves a request for leave, which she monitors as a component of her job-related duties. Nothing was sent to her incidental to this Employee's alleged drug-related or other personal problems. Had a request been received, and proper documentation provided, it would have been processed and referred to a treatment program.

Recognizing that Employee entered a residential drug rehabilitation program, which began in mid to late June 2008, and lasted for several months thereafter[3], Dunbar was unaware of whether anyone at the Agency played any role in referring the Employee to this program. Although Dunbar could not recall the dates of her e mail communication and her subsequent conversations with Lowery, she testified that she definitely communicated with him on at least one of two occasions concerning the Employee's behavior. However, there was no face to face meeting, and she could not recall Lowery's response to her contacting him, although her past working experiences with him were positive, as he consistently responds whenever she contacts him.

Testimony of Samuel Olatunji, Tr. 84-177

Samuel Olatunji ("Olatunji"), a supervisory civil engineer, served at the Employee's immediate supervisor for about two years, including the time of the termination. His tenure as Employee's supervisor was characterized by the latter's pattern of insubordination, a lack of attention to assignments, and disappearance from work sites, although he was sometimes signed in as allegedly working. As well, Olatunji rated Employee's most recent performance evaluation, covering the period of April 1, 2007, through March 31, 2008, as "Unsatisfactory."

He characterized the Employee's general behavior as a refusal to cooperate on a number of aspects of their work-related relationship. His efforts to get the Employee to meet with him to discuss his poor performance, including attendance and work habits, were rebuffed. For example, on a number of occasions, Employee would sign in at 5:30 a.m., but could not be located or contacted for some or much of that particular work day. As well, when he and the Employee had a telephone conversation concerning Employee's claim that his paycheck was short, Olatunji informed Employee that the pay issue was related to the latter's erratic attendance. This conversation created some conflict in what his work hours actually were, and whether he was present on certain dates and at certain times. In reply, the Employee, who was upset, used profane language,

[3] Employee was incarcerated during some portion of this time frame, and was released in November 2008, which is when he learned that he had been terminated from his job, and then promptly filed his appeal, through his union representative.

and told Olatunji, "If I come back, I'm going to fuck you up." When reminded that his words constituted a threat to commit bodily harm, Olatunji testified that the Employee said that he did not care, and that all he wanted was his [missing] money. This was not the first time that the Employee had used the "F word" in the work place, or in public, but this time it was different, as it constituted a threat to commit bodily harm against his supervisor.

Prior to this encounter, there had been several attempts to counsel the Employee, including service of a Letter of Warning prior to, or contemporaneously with the issuance of an Unsatisfactory performance rating, and efforts by Olatungi and Sylvester Okpala, Olatunji's supervisor, to engage the Employee. Accompanied by a union representative at the estimated two to three meetings, the Employee was always agitated. The efforts were rebuffed. Beyond these more formal meetings, Olatunji interacted with the Employee on three or four other occasions, seeking to help the Employee improve his job performance. At no time during any of these interactions was Olatunji suspicious that the Employee's behavior might have been related to a substance abuse problem. As such, he had no basis to refer the Employee to the EAP.

Each employee was mandated to complete a sign-in sheet in the office. Employee's designated work hours were 7:30 a.m. to 3:30 p.m., although he would generally sign in by 5:30 a.m. Olatunji monitored the sheet and noticed a time and attendance problem with regard to the Employee. He created a written chronology of the Employee's attendance, reflecting the period between Monday, March 17, 2008, and Friday, March 29, 2008. The document contained several comments reflecting that the Employee did not sign in or out on at least four occasions, potentially falsified his sign out times, was insubordinate on more than one occasion, refused to perform certain standard job related duties, and referencing the Employee's frequent disappearance. *Em-ee Exhib. #4.*

Further, on the many occasions when the Employee was absent from work, he made no telephone calls to Olatunji to request sick or annual leave, despite having the general office telephone number, as well as the witness's personal office telephone and cellular numbers. On occasion, the Employee would mask his AWOL delinquency by calling another person, p.e., Ali Shakri, another supervisor, regarding his non reporting to work. This effort was rebuffed by Mr. Shakri, who directed the Employee to contact Olatunji, his direct supervisor, which the Employee did not. Olatunji considered Employee's action to be "hiding" to intentionally avoid having to communicate with him, as Employee's immediate supervisor. As well, when the Employee's whereabouts could not be determined, repeated efforts to reach him at the assigned cellular telephone number were unsuccessful.

On cross examination, Olatunji separated the nature of the disciplinary action taken as having three components of cause, which he identified as the Employee's: 1) Poor performance evaluation (which included insubordination for refusing to meet with Olatunji as requested, on more than one occasion, and not completing, or refusing to accept certain job assignments, which were standard job-related duties of the position); 2)

Poor attendance (which also included signing in as "present" on certain days, failing to sign out at the end of the work day as mandated, and often simply disappearing after having signed in, not to be seen or able to be reached by cellular telephone for the rest of the day); and 3) Making a threat to commit bodily harm when Olatunji attempted to confront the Employee by telephone concerning his overall job performance and his short pay check.

The standard procedure when an employee is excessively absent is to serve them with what is generically called the "AWOL form," which officially notifies them of their having been absent without official leave permission, and which warms them of possible additional disciplinary action if no corrective action is taken. Olatunji testified that, to the best of his knowledge, Dunbar's office served this notification by "registered mail[4]" to the Employee's address of record, on at least two occasions. Personal service of the documents was not possible, due to Employee's continued absence from the work place. *(Em-ee. Exhib. #8, # 9, #10, and # 11).*

Testimony of Eric T. Buckner, the Employee, Tr. Pp. 20 – 50; 178 - 215

Employee testified that he did not receive the AWOL forms that Agency claimed it issued. Further, between the period of February 20, 2008, and April 10, 2008, when he desired to be off from work, he called the office time keeper, and likewise left messages on Sam [Olatunji] and "Mr. Sylvester" [Okpala's] telephones. Further, during at least a portion of this same time frame, he was in a residential treatment program for his substance abuse. His absence was covered in significant part by having solicited the donation of almost 200 hours of leave[5] from his fellow co-workers. As a result, he drew a portion of his salary during his absence, despite his supervisors listing him as AWOL. Subsequently, there was an adjustment made by the payroll office, to compensate the Employee for the missed wages, due to having received donated leave.

As a result of having completed the residential treatment program, Employee received three certificates of completion, each representing a program that he had participated in and completed. None of the documents suggested or gave any indication that they related back to the February 20, 2008, to April 10, 2008, AWOL period in question.

Employee testified that, while he did not necessarily notify Olatunji of his immediate actions related to his seeking help with his substance abuse problems, he notified Olatunji indirectly through a notice to the "Department of Health"[6] informing them that "this is what I was getting ready to do." Noting that he would try to reach Olatunji on his cell phone, he testified that Olatunji seeing that it was he (the Employee calling), would sometimes not answer his cell phone. As well, Employee, citing that his 22-year career was at issue, denied that he ever made any threat of bodily harm to

[4] It is more likely that the notice was sent by Certified Mail, Return Receipt Requested.
[5] Employee was uncertain whether the leave donated was annual leave or some other type of leave.
[6] Employee did not elaborate of who or what "the Department of Health" constituted. Nor did he indicate any specific office or person for assistance or contact when he was seeking to enroll in the program(s).

Olatunji, adding that if he had made such a threat, there should likewise be a police report to reflect Olatunji's filing of a formal threat complaint.

Employee refuted Olatunji's earlier testimony that he neglected to complete the report to duty/exit signing sheets, would not cooperate with scheduled counseling sessions, and would not receive counseling regarding his poor job performance. Specifically, the Employee testified that Olatunji never told him that he needed to sign out, despite having many opportunities accorded in which to do so; that he never was uncooperative with counseling attempts; that he never declined or made himself unavailable to review his Performance Evaluation of the period April 1, 2007, to March 31, 2008; that he was never served any interim deficiency performance letter, the contents of which he would not agree with, had he received such a document.

On cross examination, it was noted that the residential treatment program covered the period of June 26, to November 6, 2008, outside of the 35-day AWOL period that is the subject of this matter. Employee, noting the time frame distinction, testified that during the earlier time frame, he was trying to get himself together voluntarily, but was not yet enrolled in a program. He admitted that the almost 200 hours of donated leave was for partial compensation for the anticipated residential program period, which began in June 2008, before he was terminated, but did not cover the entire period through November 2008, when he completed the program.

Further, testifying that he presented copies of the enrollment paperwork to Olatunji, the Employee did not address the former's assertion that any paperwork presented was belatedly received for informational purposes only, as the AWOL and threats-related disciplinary actions were already in process by the date the Employee informed his supervisors that he was seeking to be enrolled in a residential program, and presented some documents indicative of his efforts.

FINDINGS OF FACT, 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 the Employee's appeal process with this Office.

Absence Without Official Leave

The Agency has the burden of proof as to material issues of fact. The key fact that is at issue relative to the instant charge is whether the Employee was AWOL from his position of record for 35 days between February 20, 2008, and April 10, 2008, as charged. The Agency has presented first hand testimony from Dunbar and Olatunji, whom I have determined, after observing their respective demeanor, as credible witnesses. Each attested to the Employee's sustained absence for all or at least part of his assigned work day. Conversely, the Employee testified in a generic manner, with a general denial that he was AWOL, claiming that the problem was essentially an inability to communicate with Olatunji. The Employee did not present any corroborating

witness(es) or documentation which could refute the Agency's allegations.

Employee's testimony revealed that on occasion he was uncertain regarding the dates and times of his presence at work or at a job site. When he was unable to report to work, he claims to have called supervisor personnel, but provided no dates or specific times. Although he asserted that he was seeking to avoid the supposed "communication problem" between Olatunji and himself, his procedures were suspect, and did not adhere to Agency's established personnel regulations with regard to making the appropriate contact whenever an employee needed to request leave.

Although the nature of the Employee's job required him to go off site in order to evaluate the quality of the contract work that was being performed on behalf of the Agency, Olatunji credibly testified that the Employee would disappear, and not answer his assigned cell telephone. Therefore, his whereabouts could not be determined and verified.

Agency then determined that, between days when the Employee neglected to report to work, and those when he signed in and then promptly disappeared, a consistent pattern of absence without official leave (AWOL) was evident. The Employee maintained that he was in need of help, and that the Agency neglected to provide the referral available for troubled employees. However, it is obvious that the Employee's actions, including providing the relevant referral forms to the Agency and obtaining the donation and advancement of leave from his co-workers, was a belated reaction, hurriedly culled together well after the February-April 2008, AWOL period. This time frame was likewise after the determination had already been made to initiate his termination.

While Employee claims that the Agency "messed up his time" and had to make some payroll adjustments to compensate him for his services, the credibility of his testimony is very low. By his own admission, his substance abuse problem was a matter that he did not initially disclose. Therefore, I find that he would likewise not have been seeking the donation of leave at that earlier time. Only when he was anticipating entering the residential treatment program, which started in June 2008, did he solicit the leave. He admitted that the almost 200 hours did help him get paid, but that it was not enough to sustain him through completion of the program, which ended in November. Clearly, the donated leave and all of Employee's action seeking to address the AWOL issue were untimely, as the Agency had already made the decision that he was to be terminated.

He did not respond to the warning letter about his poor job performance, including excessive absences; did not respond to the letter proposing his termination; did not sit with his supervisor to discuss his Unsatisfactory Performance Evaluation; and did not respond to the Administrative Officer's notification relating to a proposed termination and the directive to respond within a certain time frame. The Employee admitted that, close to the time when he was to begin his residential treatment cycle, he gave up his residence at 500 70th Street, Seat Pleasant, Maryland 20743, electing to relocate to his mother's residence, 5044 Sheriff Road, N.E., Washington, D.C. 20019, and to use her

address as his own. Although the date he moved remains elusive, and likewise the issue of whether his mail was forwarded by the United States Postal Service, the Employee was the beneficiary of this AJ's ruling that the Office still had jurisdiction to entertain the Employee's belated appeal because the Agency had neglected to send his final termination notice to the then correct address.

But he sealed his fate by waiting too late to address his AWOL, and the alleged substance abuse that contributed to it. Agency has an obligation to assist its troubled employees. But an Agency's obligation does not begin until properly notified. By his own admission, the Employee did not wish the Agency to know about his problems, and by concealing them, he likewise put himself into a posture where his problems and need for help did not become known until the Agency had already moved forward to terminate. Therefore, what ever the Employee presented in June 2008, was too late to curb the already initiated termination process, which began officially on May 12, 2008, based upon AWOL conduct which occurred between February 20, 2008, and April 10, 2008, and an alleged threat that was made on April 7, 2008.

I find that between the period of February 20, 2008, and April 10, 2008, the Agency has proven that the Employee committed an AWOL offense of 35 days, in violation of D.C. Personnel Regulations, Chapter 16, § 1619.1(6)(b), Absence Without Official Leave. The assigned penalty for the commission of this action as a first offense is from Reprimand to Removal.

Threats of Bodily Harm

The evidence presented by both parties relative to this charge was very sparse, i.e., the diametrically opposite sworn testimony of two people who were not able to communicate. Still, I credit Olatunji's testimony on the issue of the Employee making a threat as truthful, consistent with the pattern of his testimony in general. Employee was quick to deny essentially every component of this matter, which flies in the face of several of his own exhibits, which demonstrated Agency's efforts to communicate with him. He claims not to have received most of these documents, or not to recall. He mixed the two AWOL periods together, and when given the opportunity to separate and clarify them, he did not do so. I find the testimony of Dunbar and Olatunji both credible and persuasive. Accordingly, I further find that on April 7, 2008, when Olatunji confronted the Employee during a telephone conversation regarding his AWOL status, the Employee responded in anger over his shorted pay check, and delivered a telephonic threat to inflict bodily harm upon Olatunji, his supervisor. I conclude that the Agency has met its burden of proof relative to the charge.

Prior Disciplinary Action

The record also reflects that the Employee has had disciplinary problems in the past. On May 23, 2008, in *Eric Buckner v. D.C. Department of Transportation*, OEA Matter No. 1601-0153-06, this Office upheld the Agency's imposition of a 30-day suspension, occasioned by a finding that the Employee had: a) committed an inexcusable

neglect of duty; b) been insubordinate to his supervisors; and c) committed an act(s) of willful disobedience.

The DPM provides at § 1601.6, as follows:

> [T] he final decision notice on a corrective or adverse action shall remain in the employee's Official Personnel Folder (OPF) for not more than three (3) years from the effective date of the action. The official personnel action document effecting the corrective or adverse action is a permanent record and shall remain in the employee's OPF.

Therefore, the pattern of the Employee's behavior, including the imposition of prior disciplinary action, can be taken into consideration if said disciplinary action was imposed within the prior three years of the matter at hand. I note that several components of the AWOL allegations now before me, reflect a continuity of the Employee's conduct that was found in the prior case. Underlying the current AWOL allegations is the problem of continued absence and unaccountability, neglect of duty, insubordination, and willful disobedience. This AJ took into consideration the Employee's prior employment history and records reflected, that within the prior three years ago, Agency imposed a disciplinary action, that resulted in a 30-day suspension for cause. See In the *Matter of Eric Bucker v. D.C. Department of Transportation,* OEA Matter No. 1601-0153-06.

Other Considerations

Agency made a proper determination that cause existed for disciplinary action, and was fully justified to take adverse action that resulted in the Employee's termination. The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. *See, Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ ( ); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ ( ). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

When an Agency's charge is upheld, this Office has held that it will leave the Agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgment. *See Stokes, supra*; *Hutchinson, supra*; *Link v. Department of Corrections,* OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ ( ); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ ( ).

I CONCLUDE that, given the totality of the circumstances as enunciated in the instant decision, the Agency's action of terminating the Employee for cause should be

upheld.

ORDER

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

FOR THE OFFICE:

_____/ S /_____
ROHULAMIN QUANDER, Esq.
Senior Administrative Judge