

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
LaTisha Porter)	OEA Matter No. 1601-0115-07R12
Employee)	
)	Date of Issuance: February 7, 2013
v.)	
)	Joseph E. Lim, Esq.
District of Columbia Fire and)	Senior Administrative Judge
Emergency Medical Services Department)	
Agency)	

Ross Buchholz, Esq., Agency representative
Frederick Schwartz, Jr., Esq., Employee representative

INITIAL DECISION ON REMAND

INTRODUCTION AND STATEMENT OF FACTS

Employee filed a Petition for Appeal with the Office of Employee Appeals (OEA) on September 4, 2007, appealing Agency’s final decision to remove her from her position of Advanced Emergency Medical Technician, effective August 3, 2007. At the time of the adverse action, Employee was in permanent career status.

This matter was assigned to me on or about November 19, 2007. After several postponements requested by the parties, I held a prehearing conference on December 14, 2007. The parties then entered into discussions on a stipulation of facts. The matter proceeded to a hearing on April 7, 2010. At the hearing, the parties were given full opportunity to, and did in fact, present testimonial and documentary evidence. On May 28, 2010, I issued an Initial Decision (I.D.) upholding Agency’s removal of Employee.

Thereafter, Employee filed an appeal with the D.C. Superior Court on July 28, 2010. On January 24, 2012, the Superior Court remanded this matter for further findings on the three issues discussed below. As per the Superior Court’s order, I held another hearing on April 25, 2012. The record is closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code §1-606.3 (2001).

ISSUES

1. Did Employee ask OUC to take her off the run.

2. Does OUC have the power to reassign Employee to another run notwithstanding Lt. Farley's instructions to the contrary?
3. Did OUC give such an order to reassign Employee to another run despite Lt. Farley's instructions to Employee?

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS

Undisputed Facts

In addition to fighting fires, Agency provides ambulance services to District residents. Agency personnel who provide emergency medical assistance are trained Emergency Medical Technicians (EMT) and Paramedics. Its ambulance units are composed of Advance Life Support Units (ALSU) and Basic Life Support Units (BLSU). ALSU providers have more extensive medical training than BLSU providers and can thus provide services such as delivery of drugs intravenously that BLSU cannot. Further, a basic ambulance is not equipped with a cardiac monitor.

Calls for ambulance service come into the Office of Unified Communications (OUC) from the public and Agency personnel. Depending on the description of the patient's medical condition, the OUC operator makes an initial decision on sending either a ALSU or BLSU. The OUC uses the Automatic Vehicle Locating (AVL) system to dispatch the ambulance unit closest to the patient. The role of the OUC is to take calls and then determine which units to assign to a particular emergency, depending on the type of emergency, and the distance of the available units to the scene, and then dispatch these units or unit to the scene.

Only the OUC can make decisions as to which units to dispatch on pre-arrival assignments. But once they arrive on the scene, the ambulance crew member in charge of a unit or the highest ranking trained medical personnel can evaluate the patient and decide whether the unit can provide the medical assistance needed or whether they should notify OUC that the patient should be reassigned to another unit. Employee Exhibit #5, General Patient Care Protocols: Patient Care, deals with employees assessing patients at the scene.

Employee LaTisha Porter is an Emergency Medical Technician (EMT) who joined the D.C. Fire and Emergency Medical Services Department on March 26, 2001. On November 27, 2006, Employee and EMT LaDonnya Stroman were staffing Ambulance 25, a BLSU. Both Employee and Stroman were advanced EMT trained. At 14:56 hours, they received a dispatch from the Communications Operator to respond to the quarters of Engine Company 26 for a walk-in patient.

The patient had walked into Engine Company 26 approximately 10 minutes earlier having been referred by a local medical clinic after complaining of dizziness and asking that his blood pressure be taken. He stated that he had not had any medical problems during the past year, but that he had not taken his medication for a few days. Firefighter Stanley Hicks (Hicks), an EMT, took the patient's vital signs noting that his blood pressure was 200/110 with a radial pulse rate of 80 and that he was otherwise asymptomatic. Hicks informed the patient that his blood pressure was abnormal and they agreed to transport the patient to the closest medical facility by

ambulance.

After receiving the dispatch order, Employee telephoned Engine Company 26 to inquire about the patient's condition. During the telephone conversation with Hicks, Employee repeatedly insisted that the patient needed an advanced transport unit. Hicks transferred Employee's call to Lieutenant Gerald Fraley (Fraley) at which time Employee stated that if the patient's blood pressure is 200/110, then the patient needs a medic unit, and they are not able to start an IV line because they are not advanced trained. Fraley disagreed with the evaluation of Employee and told her that the patient was in no distress and that he would discuss the situation with her when she arrived at the station.

Following the telephone conversation with Fraley, Employee called the OUC and reported she was still en route, but recommended that they dispatch the next available paramedic engine company or medic unit to respond ahead of Ambulance 25. EMS Dispatch Policy Changes (Employee Exhibit #3) mandates that the closest transport unit be dispatched. Employee then requested to be placed in service to take another call after being advised that OUC dispatched Medic 4 to Engine Company 26.

Medic 4 arrived at Engine Company 26 while Employee and her Ambulance 25 did not report to Engine 26. Medic 4 personnel evaluated the patient and transported the patient to Howard University Hospital for further evaluation due to an elevated blood pressure.

Article 17, Section 29 of the DC Fire & EMS Order Book states that as to Medical Local Responses, EMS units may be canceled by Firefighter/EMT's only under the following circumstances: [1] There is no patient (unable to locate, gone on arrival, false alarm); [2] No EMS service is required (no illness or injury, PDOA); [3] Patient refuses all services - units may be canceled only after a complete physical assessment and counseling of the patient and /or responsible person. It states further that BLS units, ALS units, and /or EMS supervisors on the scene may cancel other responding units when, after complete physical assessment and review of all circumstances, (mechanism of injury) there is no apparent need for further intervention.

Section 29-2 Medical Local Responses states: BLS units, ALS units and/or EMS Supervisors on the scene may cancel other responding units when, after a complete physical assessment and review of all circumstances, (mechanism of injury), there is no apparent need for further intervention. (Employee Exhibit #8).

On March 12, 2007, Agency served Employee with an Advanced Notice of Proposed Removal for the cause of "[f]ailure to respond on an assigned medical dispatched [sic] after requesting a medic unit." Specifically, the notice charged Employee with failing to respond on a medical dispatch and improperly canceling her dispatch to Engine No. 26. The other EMT in Ambulance 4, LaDonnya Stroman, was not charged in the incident.

Employee filed a response and had an administrative review by a Hearing Officer (HO). The HO's written decision was issued on July 2007, finding, *inter alia*, that Agency's penalty complies with Chapter 16 of the District personnel manual and the "Douglas Factors" have been properly weighed. The HO noted that Employee had three previous disciplinary infractions

within the past three years. The HO reasoned that given Employee's 10 day suspension in September 2006 for failure to perform assigned duties and failure to follow orders, the instant offense constituted a second like offense within two months. On June 24, 2005, the Employee was reprimanded for "discourteous treatment and unprofessional treatment towards your co-worker." On January 26, 2006, the Employee was suspended for three days without pay for "failure to carry in your possession the required employee identification card while on duty." On August 21, 2006, the Employee was suspended for 10 days without pay for "failure to perform your assigned duties" and for "failure to follow orders." On September 11, 2006, the Employee was suspended for 5 days without pay for discourteous treatment and unprofessional treatment towards your co-worker."

On July 16, 2007, Agency issued its Final Agency Decision finding that the cause cited in the Notice was supported by a preponderance of the evidence and warranted removal, effective August 3, 2007.

Positions of the Parties

Agency's position is that Employee was insubordinate when she failed to follow a direct dispatch order from OUC and from her supervisor Lt. Fraley to report to Engine 26 quarters. Employee asserts that: 1) Lt. Fraley was not her supervisor and thus had no authority to command her; 2) she correctly assessed that an ALSU was better suited to assist the patient; 3) the other unit was closer to the patient than her unit was; and 4) she did not disobey the dispatch order since OUC had reassigned her to another run.

Recap of Summary of Evidence presented at the 4/7/2010 hearing

Then Fire Chief Dennis Rubin, a former fire chief of three other jurisdictions, testified (4/7/2010 Tr. Pages 9- 62) that in determining the proper penalty for Employee, he looked at the Douglas factors and determined that termination was the best choice based on Employee's serious offense of not responding to an ambulance call and her four prior offenses. He stressed the importance of Agency employees obeying immediately a dispatch order without question. Rubin said that this is the rule for all fire departments in the country and that no one, not even the fire chief, has the authority to cancel a dispatcher's order except the dispatcher himself. He also testified that under the National Incident Management (NIMS 100) model which has been in use for the past 50 years, Lieutenant Fraley in his role as incident commander, is Employee's direct supervisor in that situation. Rubin stressed over and over that Employee had no authority to avoid going on an ambulance even if she thought another unit should take the dispatch instead.

Battalion Fire Chief Jerome Stack of EMS Operations (4/7/2010 Tr. Pages 62-88) testified that he was the investigating official in this matter. He stated that the incident commander, not Employee, had the authority to cancel a run. He thought that the non-appearance of Employee's basic ambulance unit seriously jeopardized Agency's mission of providing on-site emergency care to District residents. He emphasized that Employee could only accurately assess the needs of a patient if she was on the scene and that it was inappropriate for Employee to diagnose the patient's medical needs away from the scene.

Lieutenant Gerald Fraley, (4/7/2010 Tr. Pages 88-108) the ranking supervisor in charge of all Agency personnel at Engine 26, Truck Company 15, testified that on November 27, 2006, a patient came into the station asking to have his blood pressure checked. When they found his blood pressure to be high, the patient asked to be transported by ambulance to the nearest hospital. Fraley ordered OUC to dispatch a BLSU to Engine 26 Quarters. He then received a cell phone call from Employee who began asking about the patient's condition. Fraley said that protocol dictated that Employee use the radio from OUC to communicate with him. In addition, it is not protocol for Employee to be attempting to get more details about the patient's condition without being on the scene. His impression was that Employee was trying to avoid taking the run. Fraley ordered Employee to report to the scene, regardless of whether her unit was a basic or advanced unit.

Assistant Fire Chief of Operations Lawrence Schultz, a 25-year veteran firefighter, (Tr. Pages 108-160) testified that he was the proposing official in terminating Employee. After listening to the audio tapes recorded of the incident, and reading all the other reports, he determined that termination was the appropriate penalty. In emphasizing the importance of prompt obedience to dispatch orders, he explains that they are a paramilitary unit in that they constantly deal with emergencies and prompt obedience to dispatch orders is essential.

La Donnaya Stroman (4/7/2010 Tr. Pages 168-182) testified that she was the driver in Employee's ambulance. She recalled Employee's cell phone calls to Lt. Fraley and the OUC dispatcher. Initially, Stroman said the Communications placed them back in service; but when an audio recording of the conversation was replayed, she agreed that it was Employee who declared their unit to be back in service.

Jasper Sterling, an EMT-paramedic with the advanced life support unit and a union official, (4/7/2010 Tr. Pages 183-235) elaborated on the medical complications that could occur in a patient with high blood pressure. Paramedics sometimes used their cell phones when the ambulance radio hit a dead zone and thus cannot get a radio signal. After much hedging, Sterling admitted that a dispatch by the OUC was an order that must be followed by a paramedic or EMT.

Employee, an EMT basic with Agency, (4/7/2010 Tr. Pages 235-281) testified that on November 27, 2006, her unit was dispatched by OUC to report to Engine 26 quarters. Using her cell phone, Employee called Engine 26 to ascertain the patient's condition. After speaking with Sandy Hicks about the patient's condition, Employee determined that a medic unit should be sent instead. Hicks put Lt. Fraley on the line. Fraley instructed Employee to report, saying of her concerns, "We'll discuss it when you get here." (Tr. Page 240) Employee called OUC to suggest sending a medic unit.

Later, after hearing a dispatch of Medic 4, Employee called OUC again and claimed that they were placed back in service and thus did not have to report to Engine 26. OUC subsequently sent them on another run. Employee asserts that Fraley's request for her to show up at Engine 26 to discuss the matter was not an order.

Summary of Evidence presented at the 4/25/2012 hearing

1. Did Employee ask OUC to take her off the run.

Testimony of Demetrius Vlassopoulos (4/25/2012 Transcript pgs.10-115):

Vlassopoulos testified in his capacity as Deputy Fire Chief of Operations employed by DC Fire and Emergency Medical Services (“D.C. FEMS”). At the time of the incident, he was employed as the Battalion Fire Chief and was a liaison to the OUC. On or about January 2007, he was asked to prepare a memorandum regarding the incident. He was responsible for obtaining wave files from OUC and transcribing the information regarding the incident. Based on the recording of the incident, Vlassopoulos stated that Employee did not ask OUC to take her off the ambulance run. However, they did make themselves available for service, meaning that they placed themselves off the run.

Testimony of Ingrid Bucksell (4/25/2012 Transcript pgs. 117-170):

At the time of the incident, Bucksell was the Section Supervisor at OUC. She testified that OUC is responsible for managing their D.C. FEMS resources, which is the apparatus that they have - fire trucks, ambulances and Medic Units – to respond to calls for medical assistance from both the firefighters and the police. All calls that come into OUC are recorded and these records are kept for three years so that they can be used for any needed legal or administrative proceedings. Based on the audio recording of November 27, 2006, Bucksell testified that Ambulance 25 was responding to the Engine 26 firehouse when they requested a Medic Unit to go ahead of them on that call. The OUC lead dispatcher did not question why they needed a Medic Unit; the dispatcher simply asked what Ambulance 25 needed. Ambulance 25 said they needed a Medic Unit ahead of them but that they were still responding to the scene. And then I heard Ambulance 25 put itself in service. They advised communication that they were available after Medic Unit was dispatched. Bucksell responded that Employee did not ask OUC to be taken off the run. Employee simply told them that Ambulance 25 was ready for service and the dispatcher put her in service.

Testimony of Clark Allen Higgs (4/25/2012 Transcript pgs. 171-205):

Higgs testified in his capacity as Watch Commander for the OUC. He explained that calls from a firehouse are considered calls for service. He notes that it is a common occurrence for incidents to be re-assigned from one ambulance to another. The object of dispatching is to send the closest unit available at the time. If by some chance a dispatcher is watching their monitors and another unit comes in that is closer, OUC will send the closest unit in regard for the citizen. This is because there is a limited number of units out there and lots of citizens in the city.

An EMT cannot cancel a dispatch. EMT cannot order that he be reassigned to a different call. Based on transcript of radio transmissions involving Ambulance 25 on November 27, 2006, (Agency Exhibit 26), Employee put Ambulance 25 in service. According to Agency Exhibit 26, he did not see where anyone from OUC told them to go in service. It just says Ambulance 25 is advising OUC that they are ready for service.

Testimony of Jasper Williams Sterling (4/25/2012 Transcript pgs. 205-235):

Sterling testified in his capacity as a paramedic with D.C. FEMS, and also as the Executive Vice President of Union. Sterling said he has accepted reassignment of a run. Not then (at the time of the incident) nor is it now unusual to return a unit to service, if another unit was reassigned to the run. They would be placed back in service and made available for another call. For example, when they leave the hospital, they place themselves out of service until they get back to their area. There is a certain point where they go in service and there's times when they will send a unit from Northwest because they are out of service. And if they are going east out of Anacostia, and he is closer, he will call OUC and tell them he is in route, and to place him on that call and they (OUC) will place the other unit back in service. Employee did not ask permission to be taken off the run. When she said, "A25 ready for service," she placed herself in service.

Testimony of Bryan Lee, (4/25/2012 Transcript pgs. 262- 361):

Chief Lee testified in the capacity of the active professional standards officer with D.C. FEMS. Employee was given an order to respond to the firehouse. OUC serves to amplify the orders given by FEMS. So literally they dispatch based on Agency's orders. Employee did not ask OUC to take her off the run. She did cause OUC to take her off the run.

Testimony of Employee Latisha Porter (4/25/2012 Transcript pgs. 364-389):

Employee testified that she did not ask the dispatcher to take her off the run but that OUC did take her off the run. When she asked was she still responding or in service, the dispatcher said, "Ambulance 25, per the lead, you are in service." Once the dispatcher places you in service, then you are available.

Employee reiterates that she did not ask to be taken off the run and that the dispatcher placed her in service prior to her hitting the deck system. Employee admitted that she cannot tell or request the dispatcher to take her off a run.

Testimony of Ladonna Stroman (4/25/2012 Transcript pgs. 391-400):

Stroman testified in the capacity of an Emergency Medical Technician for D.C. FEMS. At the time of the incident, she was the Employee's partner and confirmed that at some point they were taken off the run. Her memory of the incident is hazy and thus she could not confirm anything other than that Employee did make a call to OUC on her cell phone inquiring about the patient's blood pressure.

Finding of Fact on Whether Employee asked OUC to take her off the run.

On this issue, I based my finding of fact on my own listening to the recording of the relevant OUC radio transmission augmented by the interpretation of the witnesses who have an intimate workman's knowledge and understanding of all the terminology and terms used by OUC dispatchers and EMTs in their communications. All the witnesses, including Employee, were unanimous in stating that Employee did not explicitly ask OUC to take Ambulance 25 off the run. I therefore find that Employee did not ask OUC to take her off the run.

2. Does OUC have the power to reassign Employee to another run notwithstanding Lt. Farley's instructions to the contrary?

Testimony of Demetrius Vlassopoulos (4/25/2012 Transcript pgs.10-115):

Vlassopoulos stated that OUC does not have the power to reassign an employee to another run, because the resource was already dedicated to that incident. OUC would have had to clear it with the incident commander, Lieutenant Fraley, before they randomly reassigned any unit. Further, OUC did not give the order.

Testimony of Ingrid Bucksell (4/25/2012 Transcript pgs. 117-170):

OUC receives orders for medical assistance and dispatches resources accordingly. With regards to the request from Lt. Fraley, Bucksell said OUC is only responsible for dispatching resources. If the officer in charge told the person to come in, then they are supposed to come according to their chain of command. And if the officer on the scene is in charge, OUC does whatever the officer in charge at the scene tell them to do.

Testimony of Clark Allen Higgs (4/25/2012 Transcript pgs. 171-205):

Higgs testified that depending on the circumstances, OUC has the discretion to assign and reassign apparatus. The incident commander (in this case, Lt. Fraley) is in charge of the incident. Fraley would be the officer in charge at the firehouse. So if Fraley orders an ambulance to come to the firehouse, they would have to obey that order. Now if Fraley called and said, "Have Ambulance 25 come to the firehouse." Then OUC would have complied. OUC would have asked if Fraley was placing them out of service. Then we would have placed Ambulance 25 out of service per Lt. Fraley, and told them to report to Truck 15. However, they would not be on the run, because Medic 4 has the run.

The dispatcher has the authority to tell the EMT not to go on that run and to reassign them to a different run. The FEMS orders have nothing to do with OUC communications. He would have placed Employee out of service and told her that the officer has ordered her to come to Engine 26. If that was the case then Employee would be directed by her superior.

A dispatcher is not Employee's supervisor. What Lt. Fraley may or may not have said does not really have any bearing on how we dispatch. As far as OUC is concerned, we could have placed an ambulance unit in service to take the next run because our concern is the citizen, not anything that is going on within the firehouse.

Testimony of Jasper Williams Sterling (4/25/2012 Transcript pgs. 205-235):

There are times when the Paramedic Engine Company is dispatched with an ambulance. In his firehouse, there is an ambulance and a Medic Unit. The engine officer will see the Medic Unit and tell communications he wants the Medic Unit to be placed on a call with him, and sometimes it happens and sometimes it does not happen. OUC will tell them no, take the basic life support unit. So ultimately who says who goes where, falls under OUC. He has witnessed

OUC both usurp and validate the chain of command. If a call is requesting advanced life support because the Paramedic Engine Company has a paramedic on it, the engine officer will sometimes tell OUC to put the Medic Unit on call. Sometimes they do and sometimes they do not. He has witnessed both where the OUC has denied the order request from the incident commander to place the advanced life support on a call. Even if both units are sitting in the same firehouse and are equal distance, but the original dispatch has a basic life support unit, they send the basic life support unit. He is not sure if there is authority, but it does happen.

*Testimony of Brian Lee,*¹ (4/25/2012 Transcript pgs. 262- 361):

Chief Lee testified that based upon FEMS' policies, rules, and regulations. OUC did not have the authority to change Lt. Fraley's order. He referred to several general orders, chain of command and supervisory control, operational guidelines for EMS and what is supposed to occur. (See Agency exhibits 22, 23, 25). OUC cannot place an ambulance in service without contacting the EMS supervisor company commander or an incident commander. OUC is an extension of an arm dispatching, per the FEMS protocols because they are not the operational experts. It is coordinated with FEMS chain of command. OUC does not have the authority to reassign the employee to another run due to the chain of command. An EMS supervisor can reassign units that have been dispatched.

Testimony of Employee Latisha Porter (4/25/2012 Transcript pgs. 364-389):

Employee testified that on the EMS side of the Fire Department (FD), when an officer gives you an order or for it to be an order he has to place the unit out of service, or if he wanted me to continue into the firehouse, he would have had to call OUC. They would have then notified Employee to report to Engine 26 and at that time she would have reported to Engine 26. That's normally how it goes. Dispatchers have the authority to assign units. It is her understanding that she is to follow whatever OUC tells her to do. And if there's a discrepancy, the FD interns take that up with communications. OUC has the authority to place you back on a run. It is common practice.

Finding of Fact on Whether OUC has the power to reassign Employee to another run notwithstanding Lt. Farley's instructions to the contrary.

Apart from Employee, all the witnesses are unanimous in stating that OUC does not have authority to reassign an EMT in direct contravention to the orders of an officer in charge at the scene, which in this case was Lt. Fraley. What is more compelling is that, this assertion is in line with the general orders and operational manuals submitted by Agency as exhibits. Sterling testified that these orders are not always followed; but that does not negate the validity or legality of the orders. I find these witnesses to be more credible than Employee and Sterling, as they are backed up by Agency's written policies. The OUC witnesses are unanimous in stating that had they been made aware of Lt. Fraley's order, Employee would not have been reassigned to another

¹ The transcript spelled his first name as Bryan. However, his resume (Agency Exhibit 33) spells his name correctly as Brian.

run. I therefore find that OUC has no authority to reassign Employee in defiance of an officer in charge's order.

3. Did OUC give such an order to reassign Employee to another run despite Lt. Farley's instructions to Employee?

Testimony of Demetrius Vlassopoulos (4/25/2012 Transcript pgs.10-115):

Vlassopoulos asserted that based on the recorded transcript of the relevant transmission that day, OUC did not give such an order. Deputy Chief asserted that it appears unequivocally that Ambulance 25 (A25), Employee's vehicle, placed themselves in service. Vlassopoulos further testified that it is quite common and authorized for ambulances to say, "We're ready for service."

Vlassopoulos maintained that OUC complied with the request of A25, which was to dispatch a Medic Unit to the call while they were still in route. He believes it was improper because A25 was committed to a response and they usurped the chain of command by requesting an additional resource without the approval of the incident commander. Vlassopoulos acknowledged that the lead approved the Medic Unit because the lead dispatched it.

Testimony of Ingrid Bucksell (4/25/2012 Transcript pgs. 117-170):

Bucksell also said that there is no basis for her to answer regarding OUC reassigning Employee, notwithstanding Lt. Farley's order because we did not know that she had an order. If there was an order then Employee would still have to respond. A request from a member of the Fire Department (FD) that our office receives is an order. We just use whatever they tell us and code it correctly and we send what they need based on the information they give us.

Testimony of Clark Allen Higgs (4/25/2012 Transcript pgs. 171-205):

Higgs testified that if he was aware of an officer's contravening order, he would have placed Employee out of service and told her that the officer has ordered you to come to Engine 26. He stressed that Employee would be directed by her superior.

Testimony of Employee Latisha Porter (4/25/2012 Transcript pgs. 364-389):

Employee insisted that OUC reassigned her unit to another run and that it is a common practice. She stated that she had a cell phone conversation with OUC where she inquired from OUC if she was still on the run. Employee insisted that Lt. Fraley is not her commander and she insisted that Lt. Fraley did not order her to report to Engine 26. She also said she had more medical training than Lt. Fraley and that OUC has the authority to place her back on a run. Employee admits that she cannot tell or request the dispatcher to take her off a run.

Finding of Fact on Whether OUC give such an order to reassign Employee to another run despite Lt. Farley's instructions to Employee

OUC did reassign Employee to another run but what is also expressly clear from all the testimony presented in this matter is that Employee never informed OUC that she was under orders from Lt. Fraley to report to Engine 26. Employee simply stated to OUC that her unit was back in service. It is clear from the evidence presented that OUC then assumed that Employee's unit had been cleared to go on another run and thus they did just that. I also find these witnesses to be much more credible than Employee. I therefore find that Employee misled the OUC dispatchers into reassigning her on another run, thereby allowing her to disobey Lt. Fraley's direct order.

Analysis, Findings and Conclusions

This Office has jurisdiction to hear this matter pursuant to Section 101(d) of the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124. D.C. Official Code § 1-616.51 (2001) (Code herein) provides that the Mayor "issue rules and regulations to establish a disciplinary system that includes...1) a provision that disciplinary actions may be taken for cause... [and]... 2) A definition of the causes for which a disciplinary action may be taken" for those employees of agencies for whom the Mayor is the personnel authority. Agency is under the Mayor's personnel authority. In this instance, Employee is charged with insubordination or failure to follow a direct dispatch order. Insubordination is included as "cause" for which an employee can be disciplined. *See*, Section 1603.3, 46 D.C. Reg. 7096.

Employee does not deny that she did not report to Engine 26 as per the OUC dispatch order and Lt. Fraley's expressed order. Employee's contention that Lt. Fraley is not her direct supervisor is incorrect. According to the credible and repeated testimony of Agency's witnesses, Lt. Fraley in his role as incident commander, is Employee's direct supervisor and thus, I find that Lt. Fraley has the authority to command Employee to report to Engine 26 quarters. This is also borne out by Agency's general orders and procedure manual. (*See* Agency exhibits 22, 23, 25). Employee's assertion that Lt. Fraley's request for her to show up at Engine 26 to discuss the matter was not an order but a mere request that she can blithely ignore strains credulity. Agency's medical emergency unit has an organizational structure that enables its employees to respond promptly to medical emergencies. As witnesses have testified, its command structure is paramilitary whereby employees are expected to obey a superior's command without question or procrastination. Based on the evidence presented, I find that Employee deliberately ignored Lt. Fraley's command.

Employee's second defense, that she correctly assessed that the patient needed an ALSU, not her BLSU, is also erroneous and irrelevant to the charge of insubordination against her. She has to be on the scene to assess the patient and make this determination. Section 29-2 Medical Local Responses states: "BLS units, ALS units and/or EMS Supervisors *on the scene* may cancel other responding units when, after a complete physical assessment and review of all circumstances, (mechanism of injury), there is no apparent need for further intervention." (Employee exhibit 8) (Emphasis placed.) Employee is not free to disobey a superior's order simply because she believes her medical judgment is superior to his.

Employee's third defense, that she correctly assessed that her BLSU was not the right unit to assist the patient or that another unit is closer to the patient, is again irrelevant to the charge of insubordination. She was disciplined for disobeying a dispatch order, not for assessing the

patient's medical condition off-site. I also find credible Agency witnesses's testimony that Agency is a paramilitary organization where prompt and unquestioned obedience to orders is essential to its mission.

Employee's last defense, that it was OUC who reassigned her to another run and therefore she was not insubordinate, is also unavailing. Employee admits that she has no authority to ask OUC to take her off the run to Engine 26. Indeed, none of Agency's orders and regulations permit an ambulance crewmember to ask to be taken off a run. What Employee neglects to say is that she never informed OUC that she had an outstanding order from Lt. Fraley to report to Engine 26. Instead, she simply informed the OUC dispatcher that her unit was available for service. I find that the OUC dispatcher, busy with fielding calls all day, simply assumed that Employee was indeed free for service, and thus, dispatched her on another run.

The Code does not provide a definition of insubordination, therefore the common law meaning applies. *See, Davis v. District of Columbia Fire Department, MPA 94-0015* (D.C. Super. Ct. September 26, 1995). Black's Law Dictionary (5th Ed., 1979) defines insubordination, in pertinent part, as the "[r]efusal to obey some order which a superior officer is entitled to give and have obeyed. The term imports a *willful or intentional disregard* of the lawful and reasonable instructions of the employer". (emphasis added).

The undersigned concludes that Employee refused to obey a lawful and reasonable dispatch order from supervisory staff and the OUC to respond to a patient. Her actions were intentional and willful. The Administrative Judge concludes that Agency met its burden of proof that Employee's conduct constituted insubordination.

Agency has the primary responsibility for managing its employees. Part of that responsibility is determining the appropriate discipline to impose. *See, e.g., Huntley v. Metropolitan Police Department, OEA Matter No. 1601-0111-91, Opinion and Order on Petition for Review* (March 18, 1994). This Office will not substitute its judgment for that of an agency when determining if a penalty should be sustained. Rather this Office limits its review to determining if "managerial discretion has been legitimately invoked and properly exercised." *Stokes v. District of Columbia, 502 A.2d 1006, 1009* (D.C. 1985). A penalty will not be disturbed if it comes "within the range allowed by law, regulation, or guidelines and is clearly not an error of judgment". *Employee v. Agency, OEA Matter No. 1601-0158-81, Opinion and Order on Petition for Review, 32 D.C.Reg. 2915* (1985). Agency established that it considered relevant factors in determining the penalty and that the penalty was within the range of appropriate penalties under the circumstances presented. In addition, Employee's many prior disciplinary actions show that Agency has used progressive discipline in its attempt to reform Employee's actions.

Based on a careful review of the testimonial and documentary evidence and on the findings and conclusions as discussed herein, the undersigned concludes that Agency met its burden of proof in this matter and that Agency's action of removing Employee should be upheld.

ORDER

It is hereby

ORDERED: Agency's action of removing Employee from service is UPHeld.

FOR THE OFFICE:

Joseph E. Lim, Esq.
Senior Administrative Judge