

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
Melonee Bryant)	OEA Matter No. 1601-0087-07
Employee)	
)	Date of Issuance: January 18, 2008
v .)	
)	Joseph E. Lim, Esq.
Metropolitan Police Department)	Senior Administrative Judge
Agency)	
_____)	

Melonee Bryant, Employee *pro se*
Kevin Turner, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION

On June 20, 2007, Employee, a civilian crossing guard, appealed from Agency's final decision removing her for a criminal conviction for distribution of cocaine. This matter was assigned to the undersigned judge on September 7, 2007. I held a prehearing conference on September 28, 2007, and an evidentiary hearing on October 29, 2007. The record is closed.

JURISDICTION

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

ISSUES

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

CONTENTIONS OF THE PARTIES

The agency contends that on January 12, 2006, Employee was placed under arrest and charged with "Distribution of Crack Cocaine," in violation of D.C. Official Code § 48-904.01, wherein she purchased illicit drugs from the co-defendant for an undercover Officer during a "buy/bust" operation. Employee was subsequently convicted by a jury in D.C. Superior Court.

Employee denies all allegations.

Evidence on Disputed Issues

a. Special Agent Theresa Ostazeski testified (Transcript Pg. 8-41) as follows.

As an investigator with the Metropolitan Police Internal Affairs Division, Agent Ostazeski conducted the administrative investigation. Her investigation revealed that Employee acted as a broker in a drug deal with an undercover officer and a drug dealer and was subsequently arrested and convicted with distribution of crack cocaine. Ostazeski monitored Employee's criminal trial in D.C. Superior Court where evidence was produced to show that Employee's urine tested positive for crack cocaine.

In her interview of Employee after the trial, Employee admitted to her that she had a substance abuse problem involving crack cocaine. Employee indicated that she used to be a daily user since the 1990's but had now cut her use down to the weekends.

b. Employee testified (Transcript Pg. 46-85) as follows.

As a crossing guard, Employee's duties included insuring that children get across the street safely during busy peak hours, settling fights among the children, and protecting them from harm or harassment.

Employee complained about her superiors' lack of professionalism and their unresponsiveness to her complaints. She was suspended for five days for smoking on the job, leaving her post, and raising her voice at her superiors. Employee filed an appeal with this Office but her appeal was dismissed for lack of jurisdiction.

Employee also complained that the cop who testified in her trial ruined her life and that all the evidence against her was circumstantial. Lastly, she alleged that she did not get a fair trial at the D.C. Superior Court because the jury was tampered with. However, she did not present any evidence to support her allegations.

After Employee's criminal conviction for distribution of crack cocaine, her attorney filed a motion for summary reversal. Employee's attorney argued against the court's admitting the Drug Enforcement Administration's chemical analysis of the cocaine seized from Employee into evidence without testimony from the chemist who performed the analysis. Employee's Exhibit #3 is the prosecutor's brief arguing that even if the conviction for distribution of cocaine is thrown out for constitutional error, there still remains enough evidence for a conviction of the lesser charge of attempted distribution of cocaine. The prosecutor argues that the proper remedy is not a retrial but a re-sentencing.

Employee states that her criminal case is still under appeal and that she is waiting for the Court's ruling on her motion. She also rehashed the facts underlying her conviction and maintained

that she was innocent. She states that her jury was 90 % African-American and 10% Caucasian.

As to the statement that she gave to Agency's investigator, she admitted making several corrections to it and signing it.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

1. Whether Agency's action was taken for cause.

Agency charged Employee with violation of DPM Chapter 16, § 1603.3, which provides:

[A] conviction (including a plea of *nolo contendere*) of a felony at any time following submission of an employee's job application; a conviction (including a plea of *nolo contendere*) of another crime (regardless of punishment) at any time following submission of an employee's job application when the crime is relevant to the employee's position, job duties, or job activities; any knowing or negligent material misrepresentation on an employment application or other document given to a government agency; any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law; any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations; and any other on-duty or employment-related reason for corrective or adverse action that is not arbitrary or capricious. This definition includes, without limitation, unauthorized absence, negligence, incompetence, insubordination, misfeasance, malfeasance, the unreasonable failure to assist a fellow government employee in performing his or her official duties, or the unreasonable failure to give assistance to a member of the public seeking services or information from the government.

In her representations to this Judge, Employee alleges that her removal was unfair, that she did not receive a fair criminal trial, and that management harassed her. However, when presented with ample opportunity to present evidence to support her allegations, Employee failed to do so. Instead, she railed about a separate appeal that she filed with this Office that was subsequently dismissed for lack of jurisdiction.

Employee does not deny that her criminal record showed a felony conviction. Although her conviction is currently under appeal, it is undisputed that Agency had cause at the time Employee was removed. Therefore I conclude that Agency had met its burden of establishing cause and that it acted appropriately in taking adverse action against Employee for conviction of a felony.

2. Whether Agency's penalty was appropriate under the circumstances.

When assessing the appropriateness of a penalty, this Office will leave Agency's penalty undisturbed when it is satisfied, on the basis of the charges sustained, that the penalty is appropriate to the severity of the employee's actions and is clearly not an error of judgment.

Here, Employee's felony conviction on illegal drug distribution charges illustrates a callous attitude towards the public welfare. This is all the more disturbing in light of the fact that she is entrusted with the safety and welfare of children. The seriousness of her action points to the appropriateness of Agency's penalty of removal. Accordingly, I conclude that Agency's action should be upheld.

ORDER

It is hereby ORDERED that Agency's action is upheld.

FOR THE OFFICE:

JOSEPH E. LIM, Esq.
Senior Administrative Judge