Agenda

D.C. OFFICE OF EMPLOYEE APPEALS ("OEA") BOARD MEETING
Tuesday, March 29, 2016 at 11:00 a.m.
Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

I. Call to Order

II. Ascertainment of Quorum

III. Adoption of Agenda

IV. Minutes Reviewed from Previous Meeting

V. New Business

A. Public Comments on Motion to Expedite

B. Summary of Case

1. Samuel Murray v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0032-14 – Employee requests that his case be expedited because he has been out of work for a very long time and needs a steady income to survive. He asserts that the Administrative Judge ("AJ") rendered a favorable ruling to him. Therefore, an expedited ruling is warranted.

C. Public Comments on Petitions for Review

D. Summary of Cases

1. Heather Straker v. Metropolitan Police Department, OEA Matter No. 1601-0125-12 – Employee worked as a Police Officer with Agency. On May 18, 2012, Agency issued a final notice of indefinite suspension without pay to Employee. Employee filed a Petition for Appeal with OEA on June 29, 2012. She argued that the suspension action should be reversed because Agency failed to specify the conduct charged; it failed to offer the authority upon which it relied to conclude that an indictment constituted cause; and it committed harmful error by failing to follow the enforced leave requirements. Therefore, Employee requested that the indefinite suspension without pay be mitigated to suspension with pay. Alternatively, she reasoned that if the indefinite suspension action is upheld, then Agency should be barred from removing her from her position for the same offense.

On August 3, 2012, Agency filed its response to Employee's Petition for Appeal. It denied all of the allegations raised by Employee. Agency provided a copy of the Grand Jury Indictment against Employee for first degree fraud and second degree theft. Furthermore, it submitted a copy of a Community Service Deferred Prosecution Agreement. The terms of the agreement provided that Employee perform thirty-two hours of community services and resign from Agency in exchange for having the charges against her dismissed with prejudice. Employee signed the agreement on June 20, 2012.

The AJ issued her Initial Decision on July 2, 2014. She held that in accordance with *District of Columbia Metropolitan Police Department v. D.C. Office of Employee Appeals and O'Boyle*, 88 A3d. 724 (D.C. 2014), Agency could impose an interim, administrative suspension without pay pending an investigation or while it determined what disciplinary action could be taken against an employee. The AJ applied the Court's reasoning and found that Agency had cause to impose Employee's indefinite suspension pending the resolution of her criminal case. However, she provided that Agency did not use the correct statute or regulation to suspend Employee. She ruled that Agency did not place Employee on administrative leave for five days; Employee was not informed of her right to a written decision within five days of the administrative leave; and Agency's proposal for indefinite suspension did not comply with the requirements outlined in D.C. Official Code § 1-616.54. The AJ considered these violations harmful error and ordered that the enforced leave action be reversed.

Agency filed a Petition for Review with the OEA Board on August 1, 2014. It concedes that Employee was not placed on enforced leave pursuant to the regulations; however, it contends that it afforded her due process beyond the regulatory requirements. Agency asserts that Employee was allowed to respond and remained in full pay status beyond the five days provided for in D.C. Official Code § 1-616.54. Moreover, it claims that Employee was not denied due process because she had two opportunities to appeal the proposed indefinite suspension. Finally, Agency explains that its procedural error did not harm Employee because the error would not have resulted in it reaching a different conclusion from the one it would have reached if the error was cured.

2. Beverly Day v. Department of Public Works, OEA Matter No. 1601-0035-12 –Employee worked as a Staff Assistant with Agency. Agency issued a notice of final decision to Employee on October 25, 2011. The notice provided that Employee was being removed from her position for "any on-duty or employment-related act or omission that an employee knew or should reasonably have known is a violation of law: assault or fighting on duty."

Employee filed a Petition for Appeal with OEA on November 25, 2011. She asserted that she engaged in a heated argument with a co-worker, but she did not assault her or any other co-workers. Employee argued that given the mitigating circumstances – her past disciplinary record; length of employment; her ability to perform her job with her supervisor's confidence; the lack of notoriety of the incident; her potential for rehabilitation; alternative sanctions; and learning of her mother's cancer diagnosis the week of the incident – she should have received a lesser penalty than removal. Therefore, she requested reinstatement to her position with back pay and benefits.

Agency filed its response to Employee's appeal and explained that Agency Director, William O. Howland, issued a directive prohibiting bad conduct which included fighting, threatening, or inflicting bodily harm while on duty. It contended that on July 28, 2011, Employee verbally and physically attacked, Ms. Green, a co-worker. Agency claimed that Employee swung, and while attempting to hit Ms. Green, she hit Ms. Chance instead. It provided that under the Table of Penalties, removal was an appropriate penalty for a first offense of fighting. Therefore, Agency requested that OEA sustain its removal action.

Before issuing his Initial Decision, the AJ held an evidentiary hearing. After reviewing the record and considering the testimonies of both Agency and Employee's witnesses, the AJ determined that an assault did not occur. He ruled that Employee did not swing to hit Ms. Green or Ms. Chance. He reasoned that the swinging motion by Employee was her attempt to resist being pulled away from Ms. Green. Additionally, the AJ held that Employee may have hit Ms. Chance in the shoulder, but the punch was not powerful. Hence, he opined that the punch was not intended for Ms. Chance or Ms. Green. As a result, he ruled that Agency did not have cause to remove Employee and ordered that she be reinstated with back pay and benefits.

Agency disagreed with the AJ's Initial Decision and filed a Petition for Review on August 11, 2014. It argues that even though it provided the definitions of assault used in the adverse action, the AJ decided to utilize another definition of assault all together. Agency provides that the AJ's failure to apply the proper assault definition to the facts of this case amounts to an erroneous interpretation of statute, regulation, or policy. Agency posits that Employee did assault Ms. Green when she approached her in a fighting stance. It explains that the stance would have presented itself as a danger to any reasonable person, and it showed that Employee displayed the apparent present ability to injure Ms. Green. Agency also contends that Employee approaching Ms. Green in a fighting stance was a menacing threat. Finally, Agency provides that the AJ's logic is flawed in that Employee's punching motion was an attempt to regain balance, and his decision is not based on substantial evidence. Therefore, it requests that this Board reverse the Initial Decision or remand the matter to the AJ for further conclusions which flow rationally from the facts of this case.

On July 29, 2015, Employee filed a Motion for Injunctive Relief. She requested that she be reinstated to her position immediately due to financial hardship. Alternatively, Employee requested that the OEA Board expedite her case.

3. Ella Cuff v. Department of General Services, OEA Matter No. 1601-0009-12 – Employee worked as a Police Officer with Agency. Agency issued a final notice of removal on September 30, 2011. The notice provided that Employee was terminated from her position for neglect of duty and incompetence which interferes with the efficiency and integrity of government operations. The effective date of Employee's removal was October 4, 2011.

Employee filed a Petition for Appeal with OEA on October 14, 2011. She conceded that she failed the low light portion of her firearms' qualifying exam, but she claimed that she did not point her weapon at another officer. Employee explained that she had not had weapon's training in nine years and requested that OEA investigate the matter.

Before the AJ issued an Initial Decision on this matter, Agency filed a Motion to Dismiss the case for lack of jurisdiction. Agency claimed that Employee elected to retire in lieu of being terminated. It explained that Employee's retirement was effective on October 4, 2011. Therefore, OEA lacked jurisdiction to consider the merits of her appeal. As a result of these allegations, the AJ requested that both parties submit briefs addressing whether the case should be dismissed because Employee elected to retire in lieu of being terminated.

Employee filed her brief on March 28, 2014. She asserted that the effective date of her termination action was October 4, 2011. However, in early 2012, she received a package from Agency which included retirement documents. Employee explained that "with the help of the D.C. Human Resources[']] Office, she completed the paperwork and retired, effective retroactive[ly] to the date of her termination." Employee claimed that soon after, she started to

receive retirement payments. However, she continued to assert that she was terminated by adverse action; she did not voluntarily retire; and her retirement served as mitigation to the damages which resulted from her termination action. Accordingly, she argued that OEA had jurisdiction to consider her case.

The AJ issued her Initial Decision on June 30, 2014. She held that Employee voluntarily retired, and there was no evidence of deception or coercion by Agency which would have rendered Employee's retirement as involuntary. The AJ reasoned that Employee's Standard Form 50 ("SF-50") provided that the action taken was a retirement in lieu of involuntary action. Moreover, the AJ opined that Employee's decision to retire after the effective date of her termination action did not render the retirement involuntary. Additionally, she explained that being faced with financial difficulties did not make Employee's retirement involuntary. Therefore, she dismissed Employee's appeal for lack of jurisdiction.

Employee disagreed with the AJ and filed a Petition for Review with the OEA Board. She alleges that her employment record reflects that she was terminated from her position, not that she retired. Thus, in her opinion, the effect of the retroactive retirement was only to preclude her from establishing that OEA had jurisdiction to consider the merits of her case. Additionally, Employee claims that the SF-50 provides contradictory language. She argues that the form provides that she retired in lieu of an involuntary action, and the retirement was based on discontinued service due to separation/termination. Therefore, she believes that the Initial Decision should be reversed.

On September 8, 2014, Agency filed its response to Employee's Petition for Review. It submits that Employee's Official Personnel File provides her work status as retired, not terminated. Moreover, Agency contends that OEA has consistently held that it lacks jurisdiction over matters where an employee opts to voluntarily retire even when a termination action is pending. It further asserts that Employee's SF-50 denotes that she ". . . elected to retire on Discontinued Service Retirement." It is Agency's position that the word "elected" demonstrates that Employee's actions were voluntary. Therefore, Agency requests that Employee's petition be denied.

4. Geraldine Talley Hobby v. D.C. Public Schools, OEA Matter No. J-0100-14 – Employee worked as an Art Teacher with Agency. Employee filed a Petition for Appeal with OEA on July 21, 2014. In her petition, she provided that she was involved in a car accident on September 30, 1986, while en route to a Parent-Teacher Association meeting. Thereafter, on February 22, 1990, she sustained two slip and fall accidents that were determined to be work-related injuries. Employee returned to work on April 4, 1990, but she used her leave until the last day of school, which was June 25, 1990. According to Employee, she was subsequently terminated on May 15, 1995. However, the termination was retroactive to May 4, 1990. Employee requested that OEA reinstate her to her position with restoration of her federal civil service benefits.

The AJ issued an order requesting jurisdictional briefs from both parties. On August 22, 2014, Agency filed its response to Employee's Petition for Appeal. It provided that Employee did sustain on the job injuries on the dates she provided in her petition. Agency contended that, as a result of the injuries, Employee applied for and received Worker's Compensation benefits until 1997. Agency explained that in 1997 Employee also applied for and received a refund of her retirement contributions. Agency asserted that after being on Worker's Compensation for more than two years, Employee was terminated from her position. It reasoned that because Employee was terminated in the 1990s, Employee's Petition for Appeal was untimely. Thus, Agency requested that Employee's case be dismissed for lack of jurisdiction.

The AJ issued her Initial Decision on August 26, 2014. She held that Employee's Petition for Appeal was not filed within thirty days from the effective date of the appealed action. The AJ found that Employee was terminated on May 4, 1992; however, she did not file her appeal until more than twenty years later. Additionally, she opined that Employee failed to provide a copy of Agency's final decision. Accordingly, the AJ dismissed Employee's appeal due to lack of jurisdiction.

On September 30, 2014, Employee filed a Petition for Review. She contends that she was terminated from Agency because she sustained a work-related injury. She explains that she did not file an appeal with OEA because no appeal documents were attached to her "fraudulent termination of employment." Moreover, Employee believes that her Worker's Compensation Disability benefits were wrongfully terminated. Her petition went on to raise several questions regarding her Worker's Compensation and retirement benefits.

On April 24, 2015, Agency filed its response to Employee's Petition for Review. It argues that Employee's petition failed to address OEA's jurisdiction and her untimely appeal. Therefore, it requests that the Initial Decision be upheld.

5. Carmen Faulkner v. D.C. Public Schools, OEA Matter No. 1601-0135-15 - Employee was a Teacher with Agency. Agency issued a notice to Employee that she would be terminated from her position because she received a

score of "minimally effective" under IMPACT, its performance assessment system. The effective date of Employee's termination action was August 7, 2015.

Employee filed a Petition for Appeal with OEA on September 4, 2015. In her petition, she alleged that her principal provided inaccurate information on her evaluation. Additionally, she asserted that she was not provided with the requisite meetings and that the meeting dates that were offered were during a period that she was on Family Medical Leave. Therefore, she requested that she be reinstated with back pay and attorney's fees.

On October 7, 2015, Agency filed its response to Employee's Petition for Appeal. It contended that Employee was assessed over the course of three cycles with five separate observations. Agency provided that at the conclusion of each evaluation, Employee had a conference with her evaluator. Moreover, it claimed that when Employee was unable to meet with the evaluator, several attempts were made via email to schedule conferences within the required fifteen-day period.

Before issuing her Initial Decision, the AJ issued an Order Scheduling Pre-hearing Conference on January 19, 2016. Neither Employee, nor her attorney, attended the Pre-hearing Conference. Consequently, the AJ issued an Order for Statement of Good Cause to Employee because she failed to attend the conference. Employee had until February 3, 2016, to respond.

The AJ issued her Initial Decision on February 17, 2016. She ruled that in accordance with OEA Rule 621, Employee's case was dismissed for failure to prosecute due to her failure to attend the scheduled Pre-hearing Conference and her failure to submit a Good Cause Statement. Therefore, Employee's case was dismissed.

On February 24, 2016, Employee's attorney filed a Petition for Review with the OEA Board. Employee's counsel provides that she was out of the office because her mother passed away on January 17, 2016, after suffering a massive stroke. She notified all parties and her staff via email that she was out of the office. Funeral services were held on January 27, 2016, but due to a blizzard, the burial did not occur until February 2, 2016. Employee's counsel explained that a new law clerk attempted to mail a Statement of Good Cause to OEA on February 3, 2016, but she did not list the complete address for OEA. As a result, Employee requests that the matter be remanded to the AJ and scheduled for a hearing.

6. Johnny Lee Guy v. Department of Youth and Rehabilitation Services, OEA Matter No. J-0084-14 – Employee worked as a Pre-Commitment Case Manager with Agency. On September 6, 2013, Agency issued written notice to Employee informing him that he was being separated from his position pursuant to a Reduction-in-Force ("RIF"). The effective date of the termination was October 11, 2013.

Employee filed a Petition for Appeal with OEA on June 10, 2014. In his appeal, Employee argued that Agency failed to properly consider him for priority re-employment because of his age. He also contended that Agency retaliated against him because he previously filed a complaint with the Equal Employment Opportunity Commission. Employee also stated that he should have been given priority placement based on his status as a Veteran.

Agency filed an Answer to Employee's Petition for Appeal on July 25, 2014. It argued that OEA lacked jurisdiction over Employee's appeal because it was filed more than thirty days after the effective date of the RIF. In addition, Agency stated that Employee's arguments constituted grievances that were outside of OEA's jurisdiction.

The matter was assigned to an AJ for adjudication on June 13, 2014. On August 4, 2014, the AJ issued an Order, directing Employee to submit a written brief that addressed the jurisdictional issue. In his August 18, 2014 brief, Employee argued that OEA has jurisdiction over his appeal pursuant to D.C. Official Code § 1-606.03. Employee stated that he was not challenging the RIF action itself, but instead submitted that Agency failed to afford him priority placement as required under Chapter 24 of the District Personnel Manal ("DPM"). According to Employee, Agency was still in communication with him about possible employment opportunities as of June 3, 2014. In the alternative, he requested that the AJ place this matter in abeyance, pending the receipt of Agency's final decision on the issue of his priority re-employment eligibility.

An Initial Decision ("ID") was issued on August 25, 2014. The AJ held that Employee failed to meet his burden of proof in establishing jurisdiction before this Office. Specifically, the AJ cited to OEA Rule 604.2, which requires that a Petition for Appeal be filed within thirty days after the effective date of the appealed agency action. According to the AJ, Employee's appeal was filed approximately eight months after the effective date of the RIF. As a result, Employee's Petition for Appeal was dismissed for lack of jurisdiction.

Employee subsequently filed a Petition for Review with OEA's Board on October 9, 2014. In his petition, Employee reiterates the same arguments presented in his August 18, 2014 Brief on Jurisdiction. He further argues that the AJ's decision to dismiss his Petition for Appeal was based on an erroneous interpretation of statute and that the ID was not

based on substantial evidence. Employee; therefore, requests that this Board reverse the AJ's decision and find that OEA has jurisdiction over his appeal.

7. Michael Jackson v. Department of General Services, OEA Matter No. 1601-0034-11 – Employee worked as a Project Manager with Agency. On August 27, 2010, Agency issued an Advance Written Notice of Proposed Removal to Employee, charging him with "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: neglect of duty, insubordination, incompetence, and misfeasance." The notice provided that Employee's proposed removal was based on the following: 1) a four (4) day suspension for failure to adhere to the Construction Division's procedures for entering projects into Agency's Project Management Information System ("PMIS") and failing to submit invoices for payment in a timely manner; 2) the receipt of a Marginal Performer rating during his mid-year performance review on April 21, 2010; and 3) failing to improve his performance after being placed on a Performance Improvement Plan ("PIP") on May 24, 2010. Agency issued Employee a Notice of Final Decision on Proposed Removal on November 1, 2010, sustaining the charges against him. The effective date of Employee's termination was November 5, 2010.

Employee filed a Petition for Appeal with OEA on December 3, 2010. In his appeal, Employee argued that Agency utilized a subjective and impartial application of the Douglas Factors in rendering its decision to terminate him. Employee requested that this Office reinstate him with back pay. Agency filed an answer to the Petition for Appeal on January 25, 2011, arguing that it established, by a preponderance of the evidence, that Employee was terminated for cause. According to Agency, Employee's failure to pay invoices in a timely manner and update the PMIS had an adverse effect on its ability to operate efficiently. Agency further contended that it applied the Douglas Factors in a manner consistent with the applicable District laws and regulations.

The matter was assigned to an AJ for adjudication on July 26, 2012. A Prehearing Conference was held on December 20, 2012 for the purpose of assessing the parties' arguments. An evidentiary hearing was subsequently held on April 25, 2013, wherein the parties were afforded the opportunity to present documentary and testimonial evidence in support of their positions.

The ID was issued on July 18, 2014. The AJ held that Agency met its burden of proof on the charge of inexcusable neglect of duty, incompetence, and misfeasance. He reasoned that Employee's poor performance and failure to complete assigned duties in a timely matter served as a basis for Agency's decision to take adverse action against him. With respect to the charge of insubordination, the AJ stated that there was insufficient evidence in the record to support a finding that Employee willfully refused to perform his job. Moreover, the AJ concluded that Agency attempted to afford Employee, through progressive discipline, several opportunities to improve his job performance within a reasonable amount of time. Employee's performance did not improve after the initial sixty-day PIP, or the subsequent thirty-day extension. The AJ, therefore, determined that removal was within the penalties allowed under the Table of Appropriate Penalties and upheld Employee's termination.

Employee disagreed with the AJ's decision and filed a Petition for Review with OEA's Board on August 22, 2014. In his petition, Employee argues that the AJ's decision was based on an erroneous interpretation of D.C. Municipal Regulation ("DCMR") § 1410 as it relates to the implementation of Employee's PIP. Employee further believes that the AJ's findings were not based on substantial evidence because it failed to meet its burden of proof in showing that Employee's job performance was at the Marginal Performer level. Employee also believes that his supervisor, Gerrick Smith, had a personal vendetta against him. In addition, Employee states that Agency failed to refute his contention that other individuals contributed to the invoicing problems at DRES. Lastly, Employee argues that his termination was arbitrary and capricious because Agency improperly applied the Douglas Factors as a basis for terminating him. He, therefore, asks this Board to grant his Petition for Review.

Agency filed a Brief in Opposition to Employee's Petition for Review on September 25, 2014. It believes that the Initial Decision is supported by substantial evidence in the record. Therefore, it requests that this Board uphold the AJ's decision to sustain Employee's termination.

8. David Stewart v. Department of Transportation, OEA Matter No. 1601-0084-12 – Employee worked as a Traffic Systems Operator with Agency. On November 4, 2011, Agency issued an Advance Written Notice of Proposed Removal, charging Employee with "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations: neglect of duty." The notice provided that Employee was officially banned from the District of Columbia Homeland Security Emergency Management Administration ("HSEMA") Unified Command Center ("UCC") for threatening behavior during an August 8, 2010 incident that was "deemed to have created an environment of intimidation and unease among [Employee's] coworkers. On March 14, 2012, Agency issued a Notice of Final Decision, sustaining Employee's proposed removal. The effective date of his termination was March 16, 2012.

Employee filed a Petition for Appeal with OEA on March 28, 2012. In his appeal, Employee denied the allegations against him and requested that Agency reinstate him to his position as a Traffic Systems Operator. Agency filed its Answer to the Petition for Appeal on May 21, 2012. It argued that Employee was terminated for cause as required under Chapter 6B of the DCMR § 1603.3. Therefore, Agency requested that Employee's termination be sustained.

The matter was assigned to an AJ for adjudication on September 19, 2013. On September 27, 2013, the AJ issued an Order Convening a Prehearing Conference for the purpose of assessing the parties' arguments. The parties were subsequently ordered to submit written briefs addressing whether Employee was removed from service based on a cause of action for which Agency had previously disciplined him. Both parties submitted responses to the AJ's order.

An ID was issued on September 8, 2014. The AJ held that Agency did not violate the principal of issue preclusion when it sought to remove Employee. According to the AJ, Agency met its burden of proof in establishing that the circumstances surrounding Employee's termination were not based on the August 8, 2010 incident; rather, his removal was based on the inability to obtain access to enter the JAHOC facility. After reviewing the parties' submissions, the AJ stated that the job functions of a Traffic Systems Operator could only be performed at the JAHOC facility. Thus, HSEMA's decision to revoke Employee's access to the UCC rendered him unable to satisfactorily perform the essential duties of his job. Therefore, the AJ determined that Employee's termination should be upheld.

Employee disagreed with the AJ's decision and filed a Petition for Review with OEA's Board on October 14, 2014. In his petition, Employee contends that the Initial Decision was based on an erroneous interpretation of the law and that the AJ's conclusions of law were not based on substantial evidence. Employee believes that the AJ should have conducted an evidentiary hearing to determine whether he was required to have a security clearance for the UCC as a Traffic Systems Operator and whether his security clearance was properly revoked as a basis for cause to terminate him. Agency did not submit a response to the petition.

9. Wilberto Flores v. Metropolitan Police Department, OEA Matter No. 1601-0131-11 – Employee worked as a Police Officer with Agency. On October 31, 2010, Agency issued Employee a Notice of Proposed Adverse Action based on charges of conviction of a criminal offense ("Charge No. 1") and conduct unbecoming of an officer ("Charge No. 2"). Employee elected to have an evidentiary hearing before Agency's Adverse Action Panel ("Panel") on March 8, 2011. The Panel found that Employee was guilty of Charge No. 1; however, the Panel's finding on Charge No. 2 was "Insufficient Facts." After reviewing the evidence, the Panel recommended that Employee's penalty be reduced from termination to a suspension of sixty days.

On May 18, 2011, Agency issued a Final Notice of Adverse Action to Employee. In the notice, Director of MPD's Department of Human Resources Management Division, Diana Haines-Walton, stated that she disagreed with the Panel's decision regarding Charge No. 2. She found that Employee was guilty of conduct unbecoming of an officer and concluded that he should be terminated, effective June 20, 2011.

Employee filed a Petition for Appeal with OEA on July 14, 2011. On August 18, 2011, Agency filed its answer to Employee's Petition for Appeal. On August 18, 2014, the AJ issued an ID. In her analysis, she held that there was substantial evidence in the record establish that Agency had cause to take adverse action against Employee. However, the AJ reversed Agency's action of terminating Employee from his position as a Police Officer. She ordered that the Adverse Action Panel's proposed penalty of a sixty-day suspension be re-instituted "with the recognition that Employee has served such suspension while appealing Agency's termination." She further ordered Agency to reimburse Employee all back-pay and benefits lost as a result of his termination, which included adjustments for the suspension. The AJ examined whether the provisions of 6A DCMR § 1001.5 applied to police officers hired after January 1, 1980. After reviewing the record, she determined that Director Haines-Walton lacked the statutory authority to impose the original proposed penalty of termination after the Panel determined that Employee was only guilty of Charge No. 1 and should only be subject to a sixty-day penalty.

Agency filed a Petition for Review with OEA's Board on September 22, 2014. It argues that the ID was based on an erroneous interpretation of the law because DCMR § 1001.5 cannot be applied to Police Officers hired after January 1, 1980. It is Agency's contention that the Director acted in accordance with General Order ("GO") 120.212, Part IV (K)(8), which allows the Director to impose the same penalty that was recommended in the proposed notice, notwithstanding the sixty-day penalty that was recommended by the Adverse Action Panel. Agency, therefore, requests that this Board grant its Petition for Review and reverse the Initial Decision.

Employee filed a Brief in Opposition to Agency's Petition for Review on October 27, 2014. He argues that the due process procedures provided for in 6A DCMR § 1001.5 apply to all police officers hired after January 1, 1980. Employee further contends that Agency's General Order 120.21 is inconsistent with DCMR § 1601 et seq. because § 1613 precludes a deciding official from increasing a Panel's recommended penalty. According to Employee, the AJ

provided a thorough and correct legal analysis in support of her decision to reverse Agency's termination action. As such, he asks that Agency's Petition for Review be denied and that the Initial Decision be upheld.

E. Deliberations – This portion of the meeting will be closed to the public for deliberations in accordance with D.C. Official Code § 2-575(b)(13).

F. Open Portion Resumes

G. Final Votes on Cases

H. Public Comments

VI. Adjournment