

Agenda

D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING

Tuesday, September 16, 2014 at 9:00 a.m.

Location: 1100 4th Street, SW, Room 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

B. Summary of Cases

1. **Jacqueline Hurst v. Department of Youth Rehabilitation Services, OEA Matter No. 1601-0302-10** – Employee worked as a Youth Development Representative with Agency. On April 23, 2010, Agency issued a Notice of Final Decision to Employee informing her that she was placed on enforced leave. The OEA Administrative Judge issued her Initial Decision on March 27, 2013. She concluded that Agency had cause to place Employee on enforced leave. However, the AJ held that Agency was required to render a final decision on enforced leave by November 30, 2009. The AJ opined that Agency failed to comply with the statutory requirement when it did not issue a final decision while Employee was on administrative leave. Accordingly, the AJ reversed Agency's action; ordered it to reimburse Employee all back-pay and benefits lost as a result of the enforced leave; and pay Employee's costs and attorney's fees. Agency filed a Petition for Review on May 1, 2013. It argues that the AJ erroneously concluded that the provisions of statute and regulation are mandatory. Moreover, Agency argues that its error was harmless. Therefore, it requests that the Board grant the Petition for Review and remand the matter for further proceedings. In response to the Petition for Review, Employee asserts that the general rule is that a statutory time period is not mandatory unless it requires an agency to act within a specified time period and provides specific consequences for its failure to comply with the statute. However, Employee provides that when a statute does not set forth the consequence for noncompliance with the time limit, the phraseology of the statute must be examined to determine whether the designation of time must be considered a limitation of the power of the officer. Employee also contends that the AJ erred in concluding that there was no disparate treatment. Therefore, she requests that the Board uphold the AJ's decision.
2. **Ella Carey v. Office of State Superintendent of Education, OEA Matter No. 1601-0063-11** – Employee worked as an Operations Assistant with Agency. On February 3, 2011, Agency issued a notice to Employee informing her that she was terminated from her position. Agency explained that on December 13, 2010, while substituting for a Bus Attendant, Employee failed to deliver a child to a responsible adult. Agency stated that Employee's negligence placed the child in a potentially dangerous situation by her failure to follow its procedure for drop offs. Following an evidentiary hearing and the submission of closing arguments, the AJ issued her Initial Decision on April 10, 2013. She ruled that Agency did not meet its burden of proof; that it did not have cause to remove Employee; that it abused its managerial discretion; and that its removal was an error of judgment. Therefore, Agency's action

was reversed, and it was ordered to reinstate Employee to her prior position of record or a comparable position with all back-pay and benefits lost as a result of the removal. Agency filed a Petition for Review with the OEA Board on May 15, 2013. It argues that the AJ's decision was based on an erroneous finding that its policy did not apply to Employee. Further, it provides that Employee was aware of its requirement that a child must be delivered to a responsible adult. Lastly, Agency provides that the AJ did not consider that Employee received progressive discipline during her tenure and that her previous demotion letter warned that another disciplinary action would result in removal. Thus, it argues that the termination action was warranted. Accordingly, Agency requests that the AJ's decision be overturned. Employee filed her Response to the Petition for Review on June 17, 2013. She argues that Agency's claims were not supported, and Agency failed to provide a preponderance of evidence for its allegations.

- 3. Richard Hairston v. Department of Corrections, OEA Matter No. 1601-0307-10** – Employee was a Correctional Officer with Agency. On December 8, 2009, Agency issued a notice to Employee informing him of its proposal to removal him from his position due to misfeasance. The AJ issued his Initial Decision on April 30, 2013, concluding that Employee was guilty of committing misfeasance. However, he found that Employee's misfeasance was considered a first offense, and the penalty should have been a suspension of fifteen days. Thus, the AJ reversed Agency's action and modified its removal to a fifteen day suspension. Agency filed a Petition for Review with the OEA Board on June 4, 2013. It argues that the Table of Appropriate Penalties used by the AJ is advisory, not mandatory. Thus, it believes that its penalty should not have been modified by the AJ. In his Opposition to the Petition for Review, Employee asserts that Agency did not meet its burden of proving that its penalty was appropriate. Additionally, he provides that removal was not within the range of penalties prescribed. Therefore, he believes that the AJ's decision was proper and requests that the Board uphold the decision.
 - 4. Gwendolyn Gilmore v. D.C. Public Schools, OEA Matter No. 1601-0377-10** – Employee worked as a Teacher with Agency. On July 23, 2010, Agency issued a notice to Employee informing her that due to her "Ineffective" performance rating under IMPACT, its performance assessment system, her position was terminated. The Initial Decision was issued on May 6, 2013. The AJ found that Agency acted in accordance with the IMPACT procedures and had cause to terminate Employee following her "Ineffective" rating. Accordingly, Employee's termination was upheld. On May 29, 2013, Employee filed a letter addressed to the AJ that is considered her Petition for Review. She provides a host of grievances arguing that her termination was unfair. Therefore, Employee requests that she be reinstated to her position.
- C. 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).
- D. Open Portion Resumes**
- E. Final Votes on Cases**
- F. Public Comments**
- VI. Adjournment**