

**DISTRICT OF COLUMBIA  
OFFICE OF EMPLOYEE APPEALS**

**NOTICE OF PUBLIC MEETING**

The District of Columbia Office of Employee Appeals will hold a meeting on August 25, 2022, at 9:00 a.m. The Board will meet remotely. Below is the agenda for the meeting.

Members of the public are welcome to observe the meeting. In order to attend the meeting, please visit: <https://dcnet.webex.com/dcnet/onstage/g.php?MTID=e68a3a5a1fdf81bbfe45c3ee19e3caeda>

Event password: board

We recommend logging in ten (10) minutes before the meeting starts. In order to access Webex, laptop or desktop computer users must use Google Chrome, Firefox, or Microsoft Edge Browsers.

Smartphone/Tablets or iPad user must first go to the App Store, download the Webex App (Cisco Webex Meetings), enter the Access Code, and enter your name, email address, and click Join. It is recommended that a laptop or desktop computer be utilized for this platform.

Your computer, tablet, or smartphone's built-in speaker and microphone will be used in the virtual meeting unless you use a headset. Headsets provide better sound quality and privacy.

If you do not have access to the internet, please call-in toll number (US/Canada) 1-650-479-3208, Access code: 2317 304 6494

Questions about the meeting may be directed to [wynter.clarke@dc.gov](mailto:wynter.clarke@dc.gov).

**Agenda**

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

Thursday, August 25, 2022, at 9:00 a.m.

Location: Virtual Meeting via Webex

**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 Decision on Motion for Reconsideration**

**B. Summary of Case**

- 1. Employee v. Agency, OEA Matter No. 1601-0036-19** – This matter was previously before the Board. On June 30, 2022, the OEA Board issued an Opinion and Order denying Agency's Petition for Review. The Board found that the Administrative Judge's ("AJ") remand was proper but held that OEA lacked the authority to grant Employee interim relief in the form of restoration of his Leave Without Pay ("LWOP") status. Specifically, the Order page provided that Agency's Petition for Review was denied; Employee's Absence Without Official Leave charge was reversed; and the matter was remanded to Agency to propose a penalty, if any, based on the remaining charge of Inability to Carry Out Assigned Duties. On August 2, 2022, Agency filed a Motion for Clarification. It argues that the language contained in the Order was ambiguous because the Board found that the AJ lacked the authority to issue part of the relief ordered throughout the Initial Decision, but also denied the Petition for Review in full.

As a result, it requests that the Board resolve the discrepancy and asks for clarification via its motion.

### **C. Public Comments on Petitions for Review**

### **D. Summary of Case**

**1. Employee v. Department of For Hire Vehicles, OEA Matter No. 1601-0010-21** – Employee worked as a Vehicle Inspection Officer with the District of Columbia Department of For Hire Vehicles (“Agency”). On September 2, 2020, Agency issued Employee a Proposed Notice of Separation, charging her with “failure/refusal to follow instructions” and “false statements – knowingly and willfully reporting false or misleading material information” in violation of Chapter 6B, §§ 1607.2(d)(2) and 1607.2(b)(4) of the D.C. Municipal Regulations (“DCMR”). Agency alleged that Employee failed to complete online trainings and knowingly provided false or misleading information to her superior regarding her scheduling accommodation for her son’s remote learning schedule. Agency issued its Final Notice of Separation on December 4, 2020. The effective date of her termination was December 4, 2020.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on January 4, 2021. In her appeal, Employee argued that Agency erred in initiating its termination action because it failed to meet with her regarding the alleged misconduct as required by the District Personnel Manual (“DPM”). She also contended that Agency based its termination action on conduct that was not specifically stated in the proposed notice. Since Employee believed that her termination was improper, she posited that Agency failed to meet its burden of proof in this matter. As a result, she requested to be reinstated to her position with back pay and benefits.

The AJ issued an Initial Decision on April 20, 2022. As it related to the charge of making false statements regarding her son’s remote learning schedule, the AJ held that this cause of action required an agency to prove that the employee knowingly and willfully reported false or misleading, material information, or purposefully omitted material facts, to any superior. The AJ noted that in a May 6, 2020, correspondence, Employee relayed that her son’s remote learning schedule required her presence with him from 9:00 a.m. until 3:30 p.m., because her son had an Individual Education Plan (“IEP”). Additionally, she explained that Agency provided Employee with the requested schedule accommodation by giving her an additional two hours to complete her daily trainings – no later than 7:00 p.m. However, Employee believed that she was treated differently in receiving training assignments as compared to her coworkers because they were able to attend live training sessions and she was not. The AJ further acknowledged that Employee notified Agency on May 14, 2020, that she no longer needed the accommodation.

Moreover, the AJ stated that Employee provided proof of her son’s schedule after Agency became skeptical of Employee’s request. Ultimately, the AJ disagreed with Agency’s position that Employee provided false or misleading information when requesting her schedule accommodation. According to the AJ, Agency did not ask Employee for proof of her child’s schedule until after she requested to revoke the accommodation. The AJ went on to explain that Employee provided a screenshot from her son’s teacher which reflected his schedule for a particular day. Employee also gave permission to Agency to contact the teacher directly to make additional inquiries into the son’s learning schedule, if needed. She concluded that Agency failed to contact the son’s teacher, but instead later relied on a general email correspondence from the child’s school administrator who stated that there was “no one schedule” and that having a Pre-K student at home during the COVID-19 Public Health Emergency (“COVID-19 PHE”) meant that many parents were precluded from being able to work as they normally would. Therefore, the AJ found it incongruous for Agency to conclude that Employee made false statements in light of evidence presented and the ongoing

challenges of remote learning during this time. Further, she surmised that Agency's position did not align with the testimony provided by Human Resources Supervisor, Shalonda Frazier ("Frazier"), who reiterated several times during her testimony that they were informed to be as flexible as possible during the unprecedented times. Consequently, the AJ held that absent more specific confirmation regarding Employee's son's schedule, Agency failed to meet its burden of proof in establishing the false statements charge.

Concerning Agency's Notice of Proposed Action, the AJ stated that DPM § 1618.4 requires that the notice be approved and signed by a proposing official, who must be a manager within the employee's chain of command, or a management official designated by the personnel authority. While Employee asserted that it was improper for Frazier to prepare the Proposing Official's Rational Worksheet because she did not serve in any managerial capacity, the AJ could not conclude whether Frazier's actions were impermissible. However, she did note that Agency's practices regarding the preparation of proposed notices raised genuine questions about the efficiency and accuracy of its processes related to the administration of the instant adverse action.

As for the failure to follow instructions, the AJ stated that this charge includes a deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions. She clarified that Agency charged Employee with failure to follow instructions as a result of email communications over the course of several days in May of 2020, including a May 12, 2020, correspondence wherein Employee informed Agency that she did not complete her training for that day because of her son's all-day remote learning schedule. However, after reviewing the record, the AJ determined that the evidence supported a different conclusion because Agency's witness, Amber Sigler ("Sigler"), and the Hearing Officer, both confirmed that Employee did in fact submit her May 12, 2020, training certificate on time. Thus, the AJ reasoned that notwithstanding Employee's initial representation, Agency provided no evidence to support its assertion that Employee failed to submit the training certificate in a timely manner.

The AJ agreed with Agency's argument that Employee failed to submit the May 13<sup>th</sup> training certificate in a timely manner. However, she opined that Agency failed to accord due weight and consideration to the *Douglas* factors, discussed *infra*, namely the mitigating factor of unusual job tensions given the challenges that the Covid-19 State of Emergency presented during 2020. Further, the AJ noted that Employee's direct supervisor did not oversee her daily activities and was detailed to another agency. Thus, Employee's supervisor responded to her emails after the official tour of duty hours. As a result, the AJ surmised that Employee's actions, along with Agency's responses to her inquiries regarding the completion of the pertinent training certificates, did not amount to a deliberate refusal to comply with supervisory instructions. Rather, she believed that the record simply reflected Employee's untimely completion of one training assignment on May 13, 2020. Accordingly, she opined that Agency lacked cause to initiate its termination action.

Regarding the selection of a penalty, the AJ explained that because Agency failed to meet its burden of proof in establishing that it had cause to initiate an adverse action against Employee, the penalty of termination was inappropriate. However, she noted that while it was determined that Agency's charges could not be sustained, assuming *arguendo* cause was properly established regarding Employee's failure/refusal to follow instructions on May 13, 2020, the penalty of termination exceeded the realm of reasonableness. Highlighting the *Douglas* factors, the AJ reiterated that the COVID-19 PHE created unusual job tensions; thus, serving as a mitigating factor that Agency failed to adequately consider. Also, she believed that Agency did not give proper deference to the fact that Employee's supervisor was detailed to a different agency during the relevant time period and did not supervise Employee's daily activities. As such, the AJ opined that Agency's termination action was excessive based on Employee's failure to submit one assignment in a timely manner.

Lastly, the AJ considered Employee's previous discipline and noted that the range of penalty for a subsequent offense of failure/refusal to follow instructions ranged from a fourteen-day suspension to removal. Thus, assuming Agency established cause to initiate a termination action based on this charge, the AJ stated that she would have reversed the penalty and invoked a fourteen-day suspension pursuant to the DPM. However, because Agency failed to meet its burden of proof in this matter, the AJ instead determined that the charges against Employee could not be sustained. Therefore, Agency's termination action was reversed, and it was ordered to reinstate Employee with backpay and benefits.

Agency disagreed and filed a Petition for Review with the OEA Board on May 25, 2022. It argues that Employee deliberately refused to comply with proper supervisory instructions by not submitting trainings assigned on May 13, 2020; therefore, it established cause to remove Employee. Additionally, it asserts that Employee knowingly and willfully reported false information to Agency by representing that she was not able to take assigned training classes at the time they were posted because of her remote learning session with her son. It also opines that the selected penalty of termination was reasonable under the circumstances. Thus, it asks that this Board reverse the Initial Decision and uphold its termination action.

- 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**

“This meeting is governed by the Open Meetings Act. Please address any questions or complaints arising under this meeting to the Office of Open Government at [opengovoffice@dc.gov](mailto:opengovoffice@dc.gov).”