

**DISTRICT OF COLUMBIA
OFFICE OF EMPLOYEE APPEALS**

NOTICE OF PUBLIC MEETING

The District of Columbia Office of Employee Appeals will hold a meeting on July 11, 2024, at 9:30 a.m. The Board will meet remotely. Below is the agenda for the meeting.

<https://dcnet.webex.com/dcnet/j.php?MTID=m8486e1c7f8cee31e9341c2c805b77d87>

Password: Board (26274 when dialing from a phone or video system)

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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.

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Questions about the meeting may be directed to wynter.clarke@dc.gov.

Agenda

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

Thursday, July 11, 2024, at 9:30 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 Petitions for Review

B. Summary of Cases

1. Employee v. University of the District of Columbia , OEA Matter No. 1601-0035-21

— Employee worked as a Police Officer with the University of the District of Columbia (“Agency”). On May 24, 2021, Agency issued a notice to Employee informing her “that [she was] being separated from employment . . . due to job abandonment.” The notice provided that Employee had been on unapproved leave since April 22, 2021; that she had exhausted her family medical leave; and that her request for leave without pay (“LWOP”) was denied because she was an essential employee. Agency noted that it would accept this as Employee’s resignation. As a result, the effective date of Employee’s separation

was May 31, 2021.

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on June 28, 2021. In her petition, she asserted that she was wrongfully terminated; she did not abandon her job; and she did not resign from her position. Employee explained that she applied for LWOP to cover a period from April 22, 2021, to September of 2021. She contended that Agency was aware that she was on extended leave until September 1, 2021. However, she claimed that she did not receive notification of an approval or denial of her LWOP request. Additionally, Employee contended that the medical information that Agency requested for the LWOP form was provided in previous submissions by Employees weeks before. Finally, she argued that pursuant to Article 27 of the Collective Bargaining Agreement (“CBA”), Agency should have provided her with notice of a proposed termination, and it should have conducted a post-termination meeting. Employee claimed that neither happened. As a result, she requested that she be reinstated with back pay and benefits and that the adverse action be removed from her personnel file.

On September 20, 2023, Agency filed its Answer to the Petition for Appeal. It asserted that Employee’s separation was warranted because she abandoned her job. Agency explained that on April 22, 2021, it informed Employee that she exhausted her Family and Medical Leave Act (“FMLA”) entitlement of 640 hours within a 12-month period and that she had not worked the requisite 1,250 hours within the past 12 months to qualify for additional FMLA. Subsequently, Agency requested that Employee apply for LWOP and submit a medical release form and a medical information request form by May 7, 2021. It provided that Employee failed to submit the requested documents by the prescribed deadline, and she did not return to work. As a result, Agency requested that Employee’s petition be dismissed.

After holding an evidentiary hearing and receiving written closing arguments, the OEA Administrative Judge (“AJ”) issued an Initial Decision on February 7, 2024. She held that the record supported Employee’s contention that she was on approved leave without pay after her FMLA was exhausted. Additionally, she found that Agency could not charge Employee with job abandonment because: (1) it was aware of Employee’s efforts and intention to secure additional leave; (2) it was in receipt of Employee’s leave without pay application when her FMLA leave was exhausted; (3) it did not provide its denial of leave without pay to Employee prior to it issuing its termination letter; and (4) it did not provide Employee with a return-to-work date for which she could comply. Additionally, the AJ ruled that Agency did not provide any credible evidence to support its assertion that Employee voluntarily resigned. She reasoned that Employee was working with Agency to seek additional leave to continue her employment and at no time did she inform Agency that she intended to leave District government employment. Moreover, the AJ found that Agency failed to provide an advance notice of proposed discipline as required by Article 27, Section 5 of the CBA. Accordingly, she ruled that Agency lacked cause to take the adverse action against Employee. Therefore, she ordered that the penalty of termination be reversed, and that Employee be reinstated to the same or comparable position with reimbursement for back pay and benefits.

Agency filed a Petition for Review with the OEA Board on March 13, 2024. It argues that the Initial Decision is based on an erroneous interpretation of statute, regulation, or policy and that the AJ’s findings were not based on substantial evidence. It is Agency’s position that the AJ erroneously determined that an employee must be absent for ten consecutive days in order to have been deemed to have abandoned their job. Specifically, it argues that its regulations do not specify the length of time which an employee should

be disciplined for an unauthorized absence. Additionally, Agency contends that the AJ incorrectly relied on 6-B DCMR § 1607, as that regulation is not applicable to Agency's policies. Agency opines that there is substantial evidence to support that Employee abandoned her position because she failed to submit the requested medical documentation. Moreover, Agency argues that Employee's PeopleSoft records and witness testimony are not substantial evidence that Employee was on approved leave without pay. Finally, Agency provides that Employee did not assert in her Petition for Appeal that Agency violated Article 27, Section 5 of the CBA. Accordingly, it requests that the Initial Decision be reversed.

On April 17, 2024, Employee filed her Response to Agency's Petition for Review. She asserts that the AJ's decision is based on substantial evidence. Employee argues that she was never served with a notice proposing discipline. Additionally, she maintains that she did not abandon her position, nor did she voluntarily resign. Employee contends that she never tendered a resignation letter to Agency. She further asserts that Agency failed to provide her with notice of its decision to deny her LWOP; it also failed to provide a return-to-work date, which violated her due process rights. Employee argues that Agency did not provide her with an opportunity to respond to the action or to present her position. Further, Employee explains that she raised in her Petition for Appeal that Agency violated of Article 27, Section 7 of the CBA, which requires that Advance Notice be given pursuant to Article 27, Section 5. Therefore, she requests that the Initial Decision be denied.

- 2. Employee v. D.C. Public Schools, OEA Matter No. 1601-0054-23** – Employee worked as a Teacher with D.C. Public Schools at Takoma Elementary School ("Agency"). On July 1, 2023, Agency issued a notice to Employee that she would be terminated from her position under IMPACT, its performance effectiveness system. The notice informed Employee that she was being separated after receiving a final IMPACT score of "Developing" for the 2021-2022 school year and final score of "Minimally Effective" for the 2022-2023 school year. Since employees whose final IMPACT scores declined between subsequent school years were subject to removal, Agency notified Employee that she would be terminated effective August 4, 2023.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on August 4, 2023. She argued that she never received thorough feedback from the school's principal regarding the sufficiency of her lesson plans, but when she did, the feedback was contradictory. As a result, Employee requested mediation to clarify why her evaluation was used as a basis for her termination. She further asked that her reputation be restored and that school administrators demonstrate a higher level of efficiency, good judgment, and accountability.

In response, Agency asserted that it properly followed the IMPACT process. It explained that Employee received a rating of "Developing" for the 2021-2022 school year and a rating of "Minimally Effective" for the 2022-2023 school year. Thus, according to Agency, Employee was subject to removal since she received a declining IMPACT rating for two consecutive years. As a result, it requested that the termination action be upheld.

The AJ issued an Initial Decision on January 16, 2024. He explained that according to the IMPACT process, Employee had three assessment cycles: an informal first assessment, a second assessment cycle ("Cycle 1"), and a third assessment cycle ("Cycle 2"). The AJ noted that each assessment was required to be followed by a post-observation conference with the evaluator within fifteen days of the assessment. As it related to the 2021-2022 school year, the AJ determined that: (1) Employee's informal observation

occurred on February 2, 2022; (2) the Cycle 1 observation and post-evaluation conference occurred on February 2, 2022, and February 11, 2022, respectively; and (3) the Cycle 2 observation and post-evaluation conference occurred on March 29, 2022, and April 6, 2022, respectively. Based on the IMPACT scoring rubric, Employee received a final rating of “Developing.”

Regarding the 2022-2023 school year, the AJ concluded that Employee’s informal observation occurred on November 2, 2022. Employee’s Cycle 1 observation was conducted on January 6, 2022, and the post-evaluation conference occurred on January 18, 2022. Likewise, she noted that the Cycle 2 evaluation occurred on March 31, 2023, with the post-assessment meeting being held on April 13, 2023. Since Employee’s performance under IMPACT declined from “Developing” to “Minimally Effective” between consecutive school years, the AJ ruled that Employee was subject to termination.

The AJ disagreed with Employee’s argument that the IMPACT report that she reviewed in April of 2022 was significantly different from the assessment submitted by the school principal. He noted that the documents referenced by Employee were identical to those produced in Agency’s Answer to the Petition for Appeal. Further, the AJ held that Employee failed to present a compelling argument that the school principal was not permitted to conduct her IMPACT assessments. Concerning Employee’s contentions related to the incident at Whittier Elementary, the AJ concluded that those interactions had no bearing on the outcome of her 2022-2023 IMPACT score. Citing the holding in *Shaibu v. District of Columbia Public Schools*, Case No. 2012 CA 003606 P(MPA)(D.C. Super. Ct. June 29, 2013), the AJ held that despite her stark disagreements with her IMPACT scores and evaluation notes, Employee failed to refute the factual observations made by her evaluators. He also noted that principals retain broad discretion in ranking their teachers. Thus, the AJ ruled that Agency followed all regulations related to the IMPACT process for both the 2021-2022 and 2022-2023 school years. Consequently, Agency’s termination action was upheld.

Employee filed a Petition for Review with the OEA Board on February 22, 2023. She argues that the Initial Decision is not based on substantial evidence and asserts that the AJ failed to address all issues of law and fact properly raised in her appeal. First, Employee claims that an email was sent to administration at her school regarding a meeting she attended at Whittier Elementary involving her son which led to her IMPACT scores being negatively altered. Employee explains that she was unjustly harassed at work and was accused of defamation of character when she observed a class at the direction of her IMPACT assessor. She believes that the school’s principal unfairly used his power, which created a conflict of interest at work. According to Employee, the use of different evaluators over the years resulted in her IMPACT assessments containing inconsistencies. As a result, she requests that a thorough review of her appeal be conducted.

In response, Agency asserts that the Initial Decision is based on substantial evidence. It highlights that the allegations outlined in Employee’s Petition for Review were already presented to and decided by the AJ. Agency reiterates its position that all IMPACT guidelines were followed in Employee’s case. It also submits that there is no basis for finding that Employee was retaliated against. Therefore, it asks the Board to deny the Petition for Review.

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

D. Open Portion Resumes

E. Final Votes on Cases

F. 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.”