

Minutes
D.C. OFFICE OF EMPLOYEE APPEALS (OEA) BOARD MEETING
Tuesday, January 5, 2016
Location: 1100 4th Street, SW, Suite 380E
Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Daniels (OEA Paralegal), Sommer Murphy (OEA Acting Deputy General Counsel) Sheree Price (OEA Board Vice Chair), A. Gilbert Douglass (OEA Board Member), Patricia Hobson Wilson (OEA Board Member), Vera Abbott (OEA Board Member), and Donald Frazier (Member of the Public).

- I. Call to Order** – Sheree Price called the meeting to order at 11:08 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Vera Abbott moved to adopt the Agenda. Patricia Hobson Wilson seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The October 20, 2015 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. New Business**

A. Staffing Changes

- 1. Sheila Barfield announced that Sommer Murphy is the new Acting Deputy General Counsel for the General Counsel's Office. She also announced that India Daniels will be leaving OEA and that this is her last Board Meeting.

B. Motions to Expedite

- 1. **Beverly Day v. Department of Public Works, OEA Matter No. 1601-0035-12** – Employee seeks to have the OEA Board expedite her case because she is experiencing financial hardship and is unable to secure proper employment. She believes that the Board will affirm the Initial Decision and reinstate her.
- 2. **Brendan Cassidy v. D.C. Public Schools, OEA Matter No. 2401-0253-10R13** – Employee seeks to have the OEA Board expedite his case because he was terminated on October 2, 2009.

C. Public Comments on Petitions for Review

- 1. Donald Frazier provided comments pertaining to *Donald Frazier v. D.C. Public Schools*, OEA Matter No. 1601-0161-12. He submitted that he was recommended to be hired with DCPS in 2009 and comes from a long line of teachers. He provided that he was informed that there would be no issue with getting hired. Mr. Frazier

stated that he passed the Praxis II exam and filled out the paperwork for a Licensure II application.

He explained that after being employed for some time, DCPS informed him that there was something wrong with his license. He provided that he should have been submitting a Licensure I application. Mr. Frazier was subsequently terminated. He informed the Board that since then, he has been working as a substitute teacher. Two of Mr. Frazier's kids had to leave college because he lacked the funds after exhausting his retirement. Mr. Frazier requests that the Board reinstate his position.

D. Summary of the Cases

- 1. Bryan Shankle v. Department of Public Works, OEA Matter No. 1601-0214-12** – Employee worked as an Engineering Equipment Operator for the Department of Public Works (“Agency”). On August 2, 2012, Agency issued a Notice of Final Decision to Employee, notifying him that he would be terminated from his position. Employee was charged with making a false statement or representation knowing it to be false or to increase unemployment insurance benefits. The effective date of the termination was August 10, 2012.

On August 21, 2012, Employee challenged Agency's action by filing a Petition for Appeal with OEA. He explained that he was offered a plan to repay the unemployment insurance benefits, but Agency terminated him prior to the issue being resolved. Therefore, Employee requested that the termination be rescinded and that he be reinstated while continuing to make the scheduled payments toward the balance of the unemployment insurance benefits.

Agency filed its Answer to the Petition for Appeal on September 24, 2012. It asserted that in 2012, the Department of Employment Services (“DOES”) issued Employee a Notice of Overpayment after an investigation revealed that he received unemployment insurance benefits to which he was not entitled. Agency learned that from May 31, 2008 to October 25, 2008, Employee repeatedly submitted fraudulent unemployment claim forms and owed \$7,898.00 to the District. Ultimately, Agency's Director terminated Employee, concluding that “. . . Employee's actions were so serious that they outweighed any mitigating factors” Thus, Agency requested that Employee's removal be sustained.

The matter was assigned to an OEA Administrative Judge (“AJ”), who scheduled a Status Conference and subsequently issued a Post Status Conference Order. In the Post Status Conference Order, the AJ directed the parties to submit briefs addressing whether Agency's action was taken for cause in accordance with the District's laws; whether Agency engaged in disparate treatment; and whether the penalty of termination was appropriate. Agency's brief provided that Employee violated D.C. Official Code § 51-119(a) when he failed to disclose information in order to receive unemployment insurance benefits. It also provided that Employee's conduct was consistent with District Personnel Manual (“DPM”) §

1603.3(h) and the Table of Penalties. Moreover, Agency argued that Employee did not satisfy his burden of proof to establish that there was disparate treatment.

In his brief, Employee claimed that he was subjected to disparate treatment. He provided that there were other employees who committed the same offense but were not terminated. Employee explained that after DOES notified him that he was in violation of the law, he immediately made arrangements to repay the money owed. He believed that the penalty was unreasonable because Agency did not adhere to its policies and because he had an excellent record with no past disciplinary actions.

On March 20, 2014, the AJ issued her Initial Decision. She found that in order to prove that Employee violated D.C. Official Code § 51-119(a), Agency needed to show that Employee made a false statement of a material fact or failed to disclose a material fact; that Employee knew the statement was false; and that Employee made the statement with the intent to obtain or increase benefit. After reviewing the party's submissions, the AJ held that Employee knowingly submitted unemployment claim forms that did not include his employment status in order to collect unemployment insurance benefits. Thus, the AJ ruled that Agency had cause to discipline Employee.

With regard to the appropriateness of the penalty, the AJ found that Agency violated DPM § 1613.2 when its Deciding Official increased the Hearing Officer's recommended penalty. She explained that the Hearing Officer recommended that Employee's proposed termination be reduced to a thirty-day suspension, but the Deciding Official proceeded with the termination. Thus, the AJ found that Agency abused its discretion. Accordingly, Agency's action was reversed, and it was ordered to reinstate Employee with back pay and benefits. The AJ ordered that Employee be suspended for thirty days, as recommended by the Hearing Officer.

Agency filed a Petition for Review with the OEA Board on April 24, 2014. It argues that the Initial Decision was based on an erroneous interpretation of the DPM. It explains that pursuant to DPM § 1613.2, it could not impose a greater penalty than the proposed penalty. Agency argues that its Director followed this regulation – the proposed penalty was sustained, and the Hearing Officer's recommended penalty was rejected. Therefore, it requests that the Initial Decision be vacated and that its termination action be affirmed.

2. **Michael Roberts v. Metropolitan Police Department, OEA Matter No. 1601-0093-12** – Employee worked as a Police Officer with Agency. On April 2, 2012, Agency notified Employee that he would be suspended for ten days, with five days held in abeyance. Employee was charged with insubordination and conduct unbecoming of a Police Officer. Employee challenged his termination by filing a Petition for Appeal with OEA on May 1, 2012. He provided that his actions were proper and requested that OEA dismiss Agency's action.

In response to the Petition for Appeal, Agency simply admitted to suspending Employee and requested a hearing. The matter was assigned to an AJ, who

scheduled an evidentiary hearing. Following the hearing, Agency submitted a Motion for Summary Disposition. It argued that OEA did not have jurisdiction over the matter because Employee only served a five-day suspension. In response, Employee asserted that he served all ten days of the suspension.

The AJ ordered both parties to submit closing arguments. In Employee's submission, he argued that he was ". . . the sole focus of a flawed investigation built on fabricated evidence to cover up other errors made by high ranking officials. . . ." He explained that Agency relied on false information provided by another member in order to bring the adverse action against him. Therefore, Employee requested that his record be cleared and that he be reimbursed for lost wages and benefits.

In Agency's Closing Argument, it explained that Employee ignored a direct order by an official and remained at an undesignated location for over six hours. Agency explained that the error that Employee referenced regarding false information did not contaminate its investigation, nor did it negate the fact that he failed to follow a direct order. Additionally, Agency provided that Employee's failure to monitor the barricade, police activity, and his radio adversely affected its operations. Thus, it submitted that its actions were proper, and the penalty was appropriate.

The AJ issued her Initial Decision on April 18, 2014. She found that Agency met its burden of proof for the charge of insubordination. She reasoned that Employee should have followed the direct order of his sergeant instead of going to an irrelevant traffic post. As for the charge of conduct unbecoming of an officer, the AJ held that Agency did not meet its burden of proof. She reasoned that Employee could not be held accountable for a radio transmission that he did not receive. Accordingly, the AJ concluded that Agency had cause to suspend Employee and upheld its adverse action.

Employee filed a Petition for Review on May 5, 2014. He argues that the Initial Decision was not based on the evidence provided. Employee reiterates that the insubordination charge cannot stand because he responded to 16th and Ogden Street, N.W., D.C. as ordered by Sergeant Maradiaga. Therefore, his traffic post was not irrelevant. Furthermore, Employee alleges that the information in Agency's investigation was falsified in an effort to justify the adverse action against him. Accordingly, he requests that the Board dismiss the insubordination charge

- 3. Barbara Hall v. D.C. Public Schools, OEA Matter No.1601-0243-12–** Employee worked as a Social Worker with Agency. At the close of the 2010-2011 school year, Employee was classified as an excessed employee with an effective rating under IMPACT. As a result, she was informed that she had to secure placement for the 2011-2012 school year. Employee did not secure employment, and she was, therefore, given the choice to accept a buyout, take an early retirement, or take an additional year to secure a new placement. Employee chose to take an additional year to secure a new placement for the 2012-2013 school year. In accordance with the Washington Teacher's Union

("WTU") agreement, Agency had the right to separate any excessed teachers who were unable to secure a new placement. Thus, on July 26, 2012, Agency issued a notice to Employee informing her that effective August 10, 2012, she would be terminated due to her failure to secure a new position.

Employee challenged the termination by filing a Petition for Appeal with OEA on September 10, 2012. In it, she argued that she was on medical leave for the majority of the 2011-2012 school year. Hence, Agency did not give her any time to complete her job search. She also provided that she was denied interviews because many principals had budgetary concerns. Lastly, Employee asserted that she participated in hiring fairs, but there were no vacancies available. Therefore, she believed that her position should not have been abolished.

In its Answer to the Petition for Appeal, Agency asserted that Employee was terminated because she failed to secure another position within the required timeframe pursuant to the WTU agreement. It explained that Employee "... had a duty to obtain a position by mutual consent by June 20, 2012, in accordance with Article 4.5.5.3.3.5 of the Collective Bargaining Agreement ("CBA")." Moreover, Agency provided that Employee was granted interviews with at least six principals. In response to Employee's assertion that she was on medical leave for the majority of the school year, Agency provided that she was on medical leave for twenty-five days of the 2012-2013 school year. Therefore, it believed that its action was proper.

The AJ subsequently scheduled a Status Conference for January 29, 2014. Agency's representative was present for the Status Conference, but Employee did not appear. As a result, the AJ issued an Order for Statement of Good Cause to Employee. Employee subsequently submitted an email notifying OEA of her new home address.

Thereafter, the AJ issued an Order Rescheduling the Status Conference based on Employee's assertion that the previous orders went to her former address. On the date of the rescheduled Status Conference, both parties failed to appear. Consequently, the AJ issued another Order for Statement for Good Cause on February 25, 2014. On March 5, 2014, Employee submitted a letter to the AJ which provided that due to a medical emergency, she was not able to attend the rescheduled Status Conference. Therefore, Employee requested that the Status Conference be rescheduled again. In addition to its failure to attend the rescheduled Status Conference, Agency also failed to respond to the AJ's Good Cause order.

The Initial Decision was issued on March 18, 2014. The AJ found that Agency failed to defend its termination action. She held that Agency failed to appear at the February 24, 2014 Status Conference and failed to respond to her February 25, 2014 Order. Thus, the AJ ruled that Agency violated OEA Rule 621. Accordingly, Agency's termination action was reversed, and it was ordered to reinstate Employee with back pay and benefits.

On April 23, 2014, Agency filed a Petition for Review with the OEA Board. It argues that it did not fail to defend its action. Agency's representative admits that she did not place the February 24, 2014 Status Conference on her calendar and provides that she "... takes full responsibility for that mistake." However, Agency's representative claims that she was unaware of the AJ's February 25, 2014 order. Agency argues that Employee actually failed to prosecute her action by not attending two status conferences and failing to submit Statements of Good Cause. Therefore, Agency requests that the Board grant its Petition for Review, overturn the Initial Decision, and remand the matter so that the case can be decided on the merits. In response to the Petition for Review, Employee argues that the AJ's decision was proper. She asserts that Agency failed to submit new and material evidence prior to the case being closed. Therefore, she requests that she be reinstated with back pay and benefits.

- 4. Donald Frazier v. D.C. Public Schools, OEA Matter No. 1601-0161-12** – Employee worked as a Teacher with Agency. On June 14, 2012, Agency issued a notice to Employee informing him that he would be terminated from his position for failure to comply with the licensure requirements for teaching in the District of Columbia. The effective date of Employee's termination was July 14, 2012.

Employee challenged the termination by filing a Petition for Appeal with OEA on July 23, 2012. He argued that he should not have been separated because he received conflicting information regarding his teaching license. Therefore, he requested that OEA allow him to continue to work.

Agency provided that during the 2011-2012 school year, Employee was informed that his employment was contingent upon him completing and maintaining a license to teach in the District of Columbia. It advised Employee that he needed to submit documentation establishing that he was in compliance with the licensing requirements by June 1, 2012. Employee failed to submit the required documentation. Therefore, Agency believed that its action was proper.

The matter was assigned to an AJ, who issued an order requiring the parties to submit briefs on whether Agency's action was in accordance with laws, rules, and regulations. Employee's brief provided that during the interview process, Agency informed him that he could only be hired if he met all of the qualifications for a D.C. teaching license. He explained that because he was subsequently hired, he believed that he was qualified for his position. Additionally, Employee claimed that he was not compensated for his summer pay credit.

In Agency's brief, it reiterated that Employee failed to obtain a license to teach. Employee argued that he did not obtain a license because Agency provided misleading information and false statements during the hiring process. Therefore, he requested that he be reinstated to his position; that he have all of the options available to excess teachers with Licensure I; and that he receive back pay and benefits.

The AJ issued her Initial Decision on March 31, 2014. She found that Employee failed to obtain the necessary teaching credentials in Health and Physical Education. Consequently, the AJ held that Employee failed to meet the performance standards for his position and did not comply with Chapter 5, § 1601 of the D.C. Municipal Regulations. She also ruled that OEA lacked jurisdiction to consider Employee's argument regarding payment after he was terminated. Accordingly, Agency's action was upheld.

Employee subsequently filed a Petition for Review with the OEA Board on May 5, 2014. He argues, inter alia, that the Initial Decision did not address all issues of law and fact raised in the Petition for Appeal and that new and material evidence is available. Employee asserts that Agency provided him misinformation regarding the licensure requirements. He submitted a contract that he signed in 2009 and explains that he followed the licensure instructions given to him by D.C. Public Schools. As a result, Employee requests that the Board reverse the Initial Decision and reinstate him with back pay and benefits.

E. Deliberations - After the summaries were provided, Patricia Hobson Wilson moved that the meeting be closed for deliberations. Vera Abbott seconded the motion. All Board members voted in favor of closing the meeting. Sheree Price stated that in accordance with D.C. Official Code § 2-575(b)(13), the meeting was closed for deliberations.

F. Open Portion of Meeting Resumed

G. Final Votes –Sheree Price provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Beverly Day v. Department of Public Works

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Motion to Expedite. Accordingly, the motion was denied.

2. Brendan Cassidy v. D.C. Public Schools

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Motion to Expedite. Accordingly, the motion was denied.

3. **Bryan Shankle v. Department of Public Works**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price	X			
Vera Abbott	X			
A. Gilbert Douglass	X			
Patricia Hobson Wilson	X			

Four Board Members voted in favor of granting Agency's Petition for Review. Accordingly, the Initial Decision was reversed, and Employee's Removal was upheld.

4. **Michael Roberts v. Metropolitan Police Department**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

Four Members voted in favor of denying Employee's Petition for Review. Accordingly, the Petition for Review was denied.

5. **Barbara Hall v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of dismissing Agency's Petition for Review. Accordingly, the Petition for Review was dismissed.

6. **Donald Frazier v. D.C. Public Schools**

MEMBER	GRANTED	DENIED	REMANDED	DEFERRED
Sheree Price		X		
Vera Abbott		X		
A. Gilbert Douglass		X		
Patricia Hobson Wilson		X		

Four Board Members voted in favor of denying Employee's Petition for Review. Accordingly, the Petition for Review was denied.

VI. **Adjournment** – Vera Abbott moved that the meeting be adjourned; A. Gilbert Douglass seconded the motion. All members voted affirmatively to adjourn the meeting. Sheree Price adjourned the meeting at 12:20 p.m.

Respectfully Submitted,

India Daniels
OEA Paralegal