

Minutes

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

Tuesday, April 15, 2014

Location: Suite 380E

1100 4th Street, SW

Washington, DC 20024

Persons Present: Lasheka Brown (OEA General Counsel), Sheila Barfield (OEA Executive Director), India Gray (OEA Paralegal), William (Bill) Persina (OEA Board Chair), Sheree Price (OEA Board Vice Chair), A. Gilbert Douglass (OEA Board Member), Vera Abbott (OEA Board Member), and Patricia Hobson Wilson (OEA Board Member).

- I. Call to Order** – Bill Persina called the meeting to order at 11:15 a.m.
- II. Ascertainment of Quorum** - There was a quorum of Board members present for the office to conduct business.
- III. Adoption of Agenda** – Gilbert Douglass motioned to adopt the Agenda. Sheree Price seconded the motion. The Agenda was adopted by the Board.
- IV. Minutes from Previous Meeting** – The March 4, 2014 meeting minutes were reviewed. There were no corrections. The minutes were accepted.
- V. New Business**
 - A. Public Comments** – No members of the public were present.
 - B. Summary of Cases** – Bill Persina read the following summaries of each case to be decided by the Board:
 - 1. Jessica Edmond v. D.C. Department of Consumer and Regulatory Affairs** – Employee was separated from her position as a Program Support Specialist pursuant to a reduction-in-force. She filed a Petition for Appeal with OEA on July 26, 2010. The Administrative Judge ruled to uphold Agency's action but ordered it to reimburse Employee for thirty days' pay and benefits for its failure to provide her with the required written notice. Agency filed a Motion for Reconsideration on December 3, 2012. It argued that the AJ's order to reimburse Employee thirty days' pay and benefits was duplicative and erroneous because Employee was compensated during the thirty-day period.
 - 2. Michael Dunn v. Department of Youth Rehabilitation Services** – Employee was removed from his position as a Lead Youth Development Specialist. He was charged with on-duty acts or omissions that interfere with the efficiency and integrity of government operations: neglect of duty and incompetence. Additionally, he was charged with any knowing or negligent

material misrepresentation on other document given to a government agency. Agency alleged that Employee violated its policies when he failed to file an unusual incident report and when he failed to report that handcuffs were used to restrain a resident. Additionally, it asserted that Employee falsified and back-dated a restraint form and incident report.

The Administrative Judge upheld Agency's charge of any knowing or negligent material misrepresentation on other document given to a government agency. However, the remaining charges were dismissed. Accordingly, the Administrative Judge ordered that Employee's termination be reversed, and she modified the penalty to a fifteen-day suspension. Additionally, she ordered Agency to reinstate Employee and reimburse him with back-pay and benefits lost as a result of his removal.

Agency filed a Petition for Review on November 9, 2012, and a Brief in Support of the Petition for Review on November 29, 2012. It argued that the Initial Decision was based on an erroneous interpretation of statute, regulation, or policy. It contended that the Table of Penalties relied on by the Administrative Judge was advisory in nature and not mandatory. Further, Agency submitted that the responsibility to determine the penalty imposed rests with it. In response, Employee provided that the Table of Penalties is not just a discretionary tool to be ignored by Agency. He explained that the Table of Penalties is mandatory in disciplinary actions.

3. **LaTonya Lewis v. D.C. Public Schools** – Employee alleged that she was involuntarily separated from her position. Agency opined that its action of separating Employee was lawful because she did not overcome her on-the-job injury within two years after the commencement of Worker's Compensation, and it could not find an alternative position in which to place her. The Administrative Judge dismissed the matter because Employee failed to state a claim for which she was entitled relief. He explained that the compensation Employee received for her injury constituted her exclusive remedy against Agency. Employee filed a Petition for Review on December 5, 2012. She asserted that the Administrative Judge's ruling was based on erroneous information.
4. **Theresa Aviles-Rodriguez v. D.C. Child and Family Services Agency** – Employee was terminated from her position based on a "Minimally Effective" rating, for two consecutive years, under Agency's IMPACT evaluation system. She filed a Petition for Appeal on September 17, 2012, alleging that her scores were low because her evaluation was performed by a Master Educator who spoke a different Spanish dialect; she was assigned to teach pre-k, for which she was not certified; she did not receive adequate training for the new curriculum; she had medical issues which hindered her from taking the stairs to the third floor classroom; and that she was targeted because of her age. The matter was dismissed for lack of jurisdiction because the

Administrative Judge found that Employee's Petition for Appeal was filed untimely. Employee filed a Petition for Review on January 18, 2013. She asserted that the appeal was timely filed and submitted a copy of a certified receipt as evidence that her appeal was mailed to OEA.

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

D. Open Portion of Meeting Resumed

E. Final Votes –Bill Persina provided that the Board considered all of the matters. The following represents the final votes for each case:

1. Jessica Edmond v. D.C. Department of Consumer and Regulatory Affairs

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

All Board Members voted in favor of denying Agency's Petition for Review. Accordingly, Agency was ordered to reimburse Employee thirty days back pay and benefits as a result of its failure to provide Employee proper notice of the RIF action.

2. Michael Dunn v. Department of Youth Rehabilitation Services

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

All Board Members voted in favor of denying Agency's Petition for Review. Accordingly, Agency was ordered to reinstate Employee to his last position of record or a comparable position, and substitute for the removal a fifteen-day suspension. Agency was further ordered to reimburse all back pay and benefits lost as a result of the adverse action, less fifteen days which constitutes a fifteen day suspension.

3. LaTonya Lewis v. D.C. Public Schools

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

All Board Members voted in favor of denying Employee's Petition for Review.

4. Theresa Aviles-Rodriguez v. D.C. Child and Family Services Agency

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

All Board Members voted in favor of denying Employee's Petition for Review.

F. Public Comments – There were no members of the public present.

G. Adjournment – Sheree Price moved that the meeting be adjourned; Patricia Hobson Wilson seconded the motion. All members voted affirmatively to adjourn the meeting. Bill Persina adjourned the meeting at 12:50 p.m.

Respectfully Submitted,

India Gray
OEA Paralegal