

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Administrative Assistant of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA  
BEFORE  
THE OFFICE OF EMPLOYEE APPEALS

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In the Matter of: )  
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DERIN L. ADEWETAN )  
Employee )  
 )  
 )  
v. )  
 )  
D.C. GENERAL HOSPITAL )  
Agency )  
\_\_\_\_\_ )

OEA Matter No. 1601-0021-93R98

Date of Issuance: November 19, 2002

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Agency removed Employee from his position as a Pharmacist for incompetency and inefficiency, after he made significant errors in filling prescriptions on nine occasions between December 20, 1990 and October 15, 1992. On appeal, Employee asserted that D.C. Code § 1-617.1(b-1)(1) barred Agency from initiating adverse action proceedings more than 45 days after the offense occurred. The only incident within the 45-day period was on October 15, 1992. The Administrative Judge rejected the argument and found Agency's actions, given the cumulative nature

of Employee's conduct, to be timely. Employee filed a Petition for Review with this Board. The Board granted the Petition, holding "the forty-five (45) day time limit applies unabated with equal force to each allegation of incompetent and inefficient work performance." *Adewetan. v. D.C. General Hospital*, OEA Matter No. 1601-0021-93, *Opinion and Order on Petition for Review* (October 10, 1997). The Board remanded the matter for further findings on the seriousness of the October 15, 1992 error and whether this error alone warranted Employee's removal.

After receiving expert medical testimony, the Administrative Judge found that Employee's incorrect dispensing of the drug placed the patient "at high risk for serious complications." However, on the question of whether the one error warranted Employee's removal, the Administrative Judge ruled that removing Employee for a single incident where no actual harm occurred "falls outside the boundaries of reasonable sanctions." He therefore modified the penalty from removal to a 120 day suspension.<sup>1</sup>

We are unable to agree with the Administrative Judge's interpretation and application of the law and, therefore, we are compelled to grant Agency's Petition for Review, thereby reversing the Initial Decision. This Office's review of an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's workforce is a matter entrusted to the agency, not this Office. When assessing the appropriateness of a penalty, this Office is not to

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<sup>1</sup> The Administrative Judge further ruled that he was unable to sustain a charge of "incompetency." His ruling relied on his interpretation of the standard of incompetency set by OEA in *Employee v. Agency*, OEA Matter No. 1601-0207-81 (June 7, 1985). In that case, incompetency is defined as the "inability to satisfactorily perform one or more major duties of a position." The Administrative Judge narrowly defined competency to refer exclusively to employee's power, capacity, and means to perform his duties correctly. This interpretation, however, incorrectly states the law in that it ignores the term "satisfactorily" in this Office's definition of incompetency. Our review of the record in this case demonstrates that Employee could not satisfactorily perform his duties and was thus incompetent to do so. This error alone would warrant a reversal of the Initial Decision.

substitute its judgment for that of the agency, but is simply to ensure that “managerial discretion has been legitimately invoked and properly exercised.” *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985). Indeed, this Office’s scope of review is limited to a determination of whether the penalty is within the range allowed by the table of penalties, whether the penalty is based on relevant *Douglas* factors, and whether there is a clear error of judgment *Taggart v. Metropolitan Police Department*, OEA Matter No. 2405-0113-92R94 (Jan. 9, 1998).

Agency’s action in removing Employee fell within the range of penalties permitted for the charge of inefficiency. Employee advances no convincing argument that the penalty should be mitigated by application of the *Douglas* factors. Employee’s mistake was extremely serious and followed on the heels of many other serious mistakes. Agency, without success, repeatedly attempted to counsel Employee about his careless performance, which did not improve after counseling, in-service training, a delay in receiving a step increase, and an unsatisfactory rating. Employee refused to take responsibility for his errors, saying “someone from the pharmacy may have tampered with the bottle.” At the hearing, it was testified to that Employee’s usual response when confronted with his errors was that “[i]n each situation . . . he blamed the system, individuals, the personnel, technicians, doctors, anybody. [He] never accepted any responsibility for any of the errors he made.”

Pharmacists are responsible for insuring the proper medication in the prescribed dose is correctly dispensed to patients. When careless or negligent mistakes are made, patients do not receive proper care. Patients given the wrong medication, wrong dose, or wrong instructions face dangerous, if not fatal, risks. Agency should not have to wait on a patient to suffer severe consequences or death before acting to protect the public from a negligent employee. Under such circumstances, we are

unable to conclude that Employee's penalty warrants mitigation under the *Douglas* factors.

Finally, under all the circumstances presented here, we conclude that Agency properly exercised its managerial discretion in removing Employee. Accordingly, we grant Agency's Petition for Review.


ORDER

Accordingly, it is hereby **ORDERED** that Agency Petition for Review is **GRANTED**, the Initial Decision is **REVERSED**, and Agency's removal of Employee is **UPHELD**.

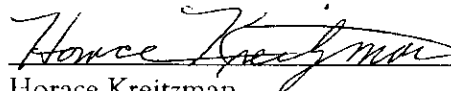
FOR THE BOARD:



Eris A. Hyman, Chair



Gwendolyn Hemphill



Horace Kreitzman



Brian Lederer

The initial decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.