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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
THERESA BUTTS)	
Employee)	
)	OEA Matter No.: 1601-0042-02
v.)	
)	Date of Issuance: January 26, 2007
DISTRICT OF COLUMBIA)	
METROPOLITAN POLICE)	
DEPARTMENT)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Theresa Butts (“Employee”) was a police officer with the D.C. Metropolitan Police Department (“Agency”). On March 12, 2000 at approximately 12:40 a.m. Employee, while off-duty and driving her personal vehicle, struck and killed a pedestrian. As a result of sobriety tests administered at the scene, it was determined that Employee was driving under the influence of alcohol at the time of the incident.

On March 28, 2001 a jury of the Superior Court of the District of Columbia found Employee guilty of negligent homicide. The guilty verdict was subsequently upheld by the District of Columbia Court of Appeals. Thereafter on May 31, 2001 Agency

proposed removing Employee for having violated several departmental General Orders including engaging in conduct unbecoming an officer, being under the influence of an alcoholic beverage when off duty, and being found guilty of a criminal offense. Following a two-day Police Trial Board Hearing, Agency issued its Final Notice of Adverse Action and removed Employee effective March 8, 2002.

On March 8, 2002 Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). Employee put forth two arguments as to why Agency’s action should be overturned. Her first argument was that Agency erred by not allowing her to introduce evidence of bias at the trial board hearing. Specifically Employee claimed that she had evidence to show that the lieutenant who investigated the accident and conducted the alcohol-related tests was biased against her. This alleged bias, according to Employee, would demonstrate that the results of the alcohol tests were unreliable. Secondly Employee argued that the penalty of removal was inappropriate.

The Administrative Judge determined that D.C. Personnel Regulation § 1603.10 was critical to the outcome of this appeal. That section provides the following:

In any disciplinary action, the government shall bear the burden of proving by a preponderance of the evidence that the corrective or adverse action may be taken or, in the case of summary action, was taken for cause as that term is defined in this section. *A criminal conviction shall estop the convicted party from denying the facts underlying the conviction.* (emphasis added).

A review of the record showed that no evidence of bias was proven in the criminal court trial. The Administrative Judge stated that it was proven in the Superior Court trial “that Employee’s blood alcohol level was .17 percent of alcohol by body weight, which was more than twice the legal limit of .08 percent established by D.C. Official Code § 50-

2201.05(b)(1). This established fact led to Employee's conviction for negligent homicide. Accordingly, D.C. Personnel Regulation § 1603.10, and the principles of collateral estoppel each prevent Employee from challenging this fact. . . ."¹ Therefore, according to the Administrative Judge, Agency acted properly when it prevented Employee from introducing evidence challenging the results of the alcohol-related tests.

With respect to the penalty, the Administrative Judge found that Agency's General Order Series 1202 Number 1, Part I-B-7 "prescribes removal from Agency when a member of MPD is convicted of a crime."² The Administrative Judge noted that although removal under these conditions was mandatory, "there is an escape clause, provided it is determined that the mitigating considerations outweigh the aggravating conditions. This latter circumstance was determined by the Trial Board to not be applicable in this case."³ Thus the Administrative Judge concluded that Agency acted properly when it imposed the penalty of removal. For these reasons the Administrative Judge, in an Initial Decision issued March 5, 2004, upheld Agency's action.

On April 9, 2004, Employee filed a Petition for Review in which she puts forth the same arguments that she made before the Administrative Judge. Although Employee tries to convince us otherwise, we believe the Administrative Judge correctly held that D.C. Personnel Regulation § 1603.10 collaterally estopped Employee from relitigating any issues surrounding the results of the blood alcohol tests, including any evidence related to an alleged bias. Moreover, because General Order Series 1202 Number 1, Part I-B-7 provides for removal when an employee has been convicted of a criminal offense, we believe that Agency acted properly when it terminated Employee. Employee has not

¹ *Initial Decision* at 5.

² *Id.*

³ *Id.* at note 5.

convincingly demonstrated to us why these two provisions should not control the outcome of her appeal. It is for these reasons that we must deny Employee's Petition for Review and uphold the Initial Decision.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

Brian Lederer, Chair

Horace Kreitzman

Keith E. Washington

Barbara D. Morgan

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date 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.