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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

_____	)	
In the Matter of:	)	
	)	
Robin Driver,	)	
Employee	)	
	)	OEA Matter No. 1601-0121-05
v.	)	
	)	Date of Issuance: September 3, 2008
Office of Human Rights,	)	
Agency	)	
_____	)	

**OPINION AND ORDER**  
**ON**  
**PETITION FOR REVIEW**

Robin Driver (“Employee”) was employed as an Administrative Assistant to Farouk Hosein, the Deputy Director of the D.C. Office of Human Rights (“Agency”). Employee’s duties included performing general administrative work and entering data in the PASS system on Hosein’s computer using a password to gain entry. Employee would sometimes enter Hosein’s office without his permission if she knew there was a PASS transaction to be handled. In order to gain access to the PASS system, one would have to first access the email system. The password for the PASS system is not identical to the password that is used to access emails. Employee, however, had access to both the email and PASS system

passwords. Employee would often use a credit card to gain access to Hosein's locked office, as this was a regular "office practice."

On June 29, 2005, Hosein returned to his office after attending a ceremony and discovered Employee sitting at his computer. After viewing the computer screen, Hosein learned that Employee had been viewing an email message that he sent from his computer to Kenyatta Uzzel, in response to an employment advertisement as a CPO with another D.C. government agency. Hosein realized that Employee forwarded this particular message from his work computer to her own work computer. Hosein acknowledged that Employee was authorized to use his computer on a "case by case" basis to accomplish specific assigned tasks; however, she was not authorized to use his computer for this particular purpose. After being questioned by the Agency's Director, Employee admitted that she did in fact send the email from Hosein's computer to her own computer. Employee stated that she believed that when Hosein responded to the employment advertisement he violated District law by using his work computer for personal reasons. According to Employee, she then forwarded the email to her computer with the intent of reporting this alleged violation of District law.

As a result of Employee's actions, Agency charged Employee with committing an employment-related act that interfered with the efficiency or integrity of government-related operations. On August 22, 2005, Employee filed a Petition for Appeal with this Office. Agency terminated Employee effective Aug. 12, 2005. The Administrative Judge ("AJ") held a pre-hearing conference on January 23, 2006 and a hearing on April 5, 2006.

Agency contended that its actions were proper because Employee's misconduct interfered with the efficiency and integrity of government operations in violation of DPM

§1603.3. Moreover, Agency provided that there was substantial evidence in the record to support the conclusion that the Employee was fired for cause. Employee asserted that the AJ's Initial Decision is not supported by any evidence for the following reasons: 1) Employee's actions did not interfere with the efficiency and integrity of government operations, 2) Employee had access to her supervisor's computer and that Mr. Hosein had no privacy in his emails, and 3) the penalty of termination was inappropriate under the circumstances. The AJ upheld the Agency's decision to terminate Employee in an opinion issued on July 17, 2006.

Employee then filed a Petition for Review on August 18, 2006. She stated therein that the AJ's findings are not supported by substantial evidence. Specifically, she provided that there was not a "scintilla of evidence that the actions of Ms. Driver interfered with the efficiency or the integrity of government operations." *Employee's Petition for Review* at 5. Employee contended that the AJ's findings in the Initial Decision were misplaced. Employee, however, offered no statutes or case law in the *Petition for Review* to support these arguments. Instead, Employee relied on excerpts from the transcript to re-argue her original contentions. For example, Employee contends that the "essence of the AJ's Initial Decision is that if you catch your supervisor violating what you believe is D.C. Government regulations, do nothing." *Petition for Review* at 6. This excerpt, as well as others relied on by Employee, have no bearing on whether the Initial Decision is supported by substantial evidence.

The issue presented to this Office for determination was whether Employee's actions adversely and materially affected the efficiency of government operations or the employee's performance of her duties, not whether Hosein's email was strictly personal or official

business which warranted action by Employee. In the initial decision, however, the AJ noted that whether applying for a job within the D.C. government is strictly “personal” or “official” depends on who it benefits and that “the government benefits from having an important job vacancy filled and Hosein benefits from securing a job that he desires.” *OEA Initial Decision* at 10.

In this case, Employee did not deny that she opened and subsequently forwarded her supervisor’s email without his express permission. In his analysis, the AJ stated that the evidence was clear that the Employee was a trusted Agency aide until the incident at issue occurred and that Employee was afforded the privilege of holding the password to her supervisor’s computer to conduct financial PASS transactions on Hosein’s computer. *OEA Initial Decision* at 10. Furthermore, the AJ stated that the existence of the trusted relationship was not a blanket authorization for employee to peruse and copy her supervisor’s electronic files. *Id.*

As a Staff Assistant with OHR, Employee had access to Hosein’s computer and was required to access his office as part of her employment responsibilities. Hosein stated that he did not recall if he explicitly told Employee that the only actions she could perform on his computer were PASS system-related but assumed that it was understood by Employee. *OEA Hearing Transcript*, p. 75. Hosein also stated that he did have a reasonable expectation of privacy with respect to his emails and did not expect or allow Employee to use his computer to peruse his personal messages. *OEA Hearing Transcript*, p. 85.

Based on the aforementioned evidence, the AJ concluded that the unauthorized reading of Hosein’s email and Employee’s subsequent forwarding the email to her computer resulted in a “loss of trust in Employee.” *OEA Initial Decision* at 10. The AJ also

concluded that the smooth interpersonal working relationship between Employee and her immediate supervisors, Mr. Hosein and Mr. Saunders was irreparably disrupted due to Employee's act. *Id.* Furthermore, the AJ held that the act materially affected the efficiency of governmental operations. *Id.*

Employee contended in the Petition for Review that termination was not an appropriate penalty because it was not in accordance with law or applicable regulations and because the AJ's findings of fact were not supported by substantial evidence. In support of this contention, Employee cited *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

In *Stokes*, the court stated that in reviewing a final agency decision, "the Office of Employee appeals is not to substitute its judgment for that of the agency; its role is simply to ensure that managerial discretion has been legitimately invoked and properly exercised." *Stokes* at 1009. Furthermore, this Office's decision may be overturned if it is found to be "arbitrary, capricious, or an abuse of discretion." D.C. Code § 1-1510 (1981); *Barry v. Wilson*, 448 A.2d 244, 246 (D.C. 1982) (prohibiting substitution of a court's judgment in areas of expertise reserved for an agency under which their findings of fact and conclusions of law must be affirmed if supported by reliable, probative and substantive evidence). The AJ in this case was satisfied that Agency did not abuse its discretion, nor did it commit reversible error in terminating employee as a result of the unauthorized use of her supervisor's computer. Employee did not offer any supporting case law or statutory authority that contradicted Agency's decision or characterizes the decision to terminate Employee as an abuse of discretion.

There is substantial evidence in the record to support Agency's finding that Employee interfered with the integrity or government operations. For this reason, we deny Employee's Petition for Review and uphold the AJ's initial decision.

**ORDER**

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

FOR THE BOARD:

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Sherri Beatty- Arthur, Chair

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Barbara D. Morgan

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Richard F. Johns\*

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

\* *Respectfully Dissents*