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

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
DAVID J. HAWKINS Employee	
v.	OEA Matter No. 1601-0071-99
METROPOLITAN POLICE DEPT. Agency	Date of Issuance: January 4, 2001

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency terminated Employee for conviction of a criminal offense. Upon appeal to the Office of Employee Appeals, the Administrative Judge reversed Agency's action based on the fact that Agency commenced the adverse action more than 45 days after the date the "agency knew or should have known of the act or occurrence allegedly constituting cause. . ." under D.C. Code § 1-617(b-1)(1)(1992). Agency filed a Petition for Review arguing that the Administrative Judge's dismissal was incorrect as a matter of law.

On July 9, 1997, Employee got into an altercation with the manager of a Maryland retail store. The manager called the police, and Employee was arrested and charged with trespass and assault. On August 25, 1997, Agency served Employee with an advance notice of adverse action, charging "conducting unbecoming an officer." That charge did not encompass conviction of any crime. On October 8, 1997, the District Court of Maryland for Prince George's County gave Employee probation before judgment on the trespass charge. Later Employee was tried and acquitted of the assault charge.

On January 14, 1998, Agency served Employee with an addendum notice that added an entirely new charge: conviction of a criminal offense. Agency held an adverse action hearing and acquitted Employee of the conduct unbecoming an officer charge but found him guilty of the conviction of a criminal offense charge.

On appeal to this Office, Employee argued that the "conviction" charge was filed more than 45 days from the October 8, 1997 date that the Prince George's County District Court imposed the probation before judgment on Employee's guilty plea to trespassing. The Administrative Judge agreed and dismissed the action based on Agency's failure to comply with D.C. Code § 1-617(b-1)(1)(1992). In its petition for review, Agency argues[1] the 45-day rule was not violated if the Board interprets it so as to allow amendments to relate back to the

[1] Agency also argued that the Initial Decision should be overturned for mis-stating the exact terms of the charges against Employee. Our review of the record demonstrates that the mis-statements are immaterial to the Administrative Judge's resolution of the case.

date of the original filing of the adverse action, as would be permitted under Rule 15(c) of the Rules of Civil Procedure of the Superior Court.

The statute and the rules of the Office of Employee Appeals contain no explicit provision for the amendment of charges. Agency's approach would have this Board amend its rules of procedure by implication in resolving this case rather than through a formal rulemaking.

What is important here is that the charge for which Employee was found guilty by Agency was a new charge that arose on October 8th when Employee pled guilty to the trespass charge in Prince George's County District Court. This "occurrence" gave rise to a totally new charge -- "conviction" of a criminal offense. This was filed 75 days after the occurrence. D.C. Code §1-617 was enacted as a strict statute of limitations. During the consideration of the 45-day rule by the Council of the District of Columbia the following colloquy took place:

> MR. NATHANSON: The intent of this legislation is not to let the government sit forever on a potential adverse action against an employee. And the idea is to have a time limit.... If we maintain the 45 days across the board, the agencies are going to motivated to move quickly.
>
> MR. LIGHTFOOT: As I understand the purpose of this particular bill, it is to put some certainty in the employee's lives as well, not to have an employee faced with some great uncertainty as to when they may be charged with an offense. (Quoted in *Byron A. Scott v. Department of Housing and Community Development*, OEA Matter No. 1601-0078-91(August 21, 1992).

In view of this history and the narrow time limits set forth under the 45-day rule, it would not be appropriate for this Board to graft the relation-back doctrine on to its rules after the fact. In this case, after Employee pled guilty to trespass, Agency took 75 days to amend its advance notice of adverse action. The record herein is devoid of an explanation of why it took 75 days to notify Employee of the new charge. It was exactly this kind of action by the agencies, which left an employee under a continuing cloud of uncertainty, that gave rise to the 45-day rule. Agency's Petition for Review is therefore denied.

ORDER

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

FOR THE BOARD:

Keith E. Washington, Chair

Gwendolyn Hemphill

Mary N. Wilburn, Esq.

Michael Wolf, Esq.

The initial decision in this matter shall become a final decision of the Office five(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 with 30 days after formal notice of the decision or order sought to be reviewed.