

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

_____)	
In the Matter of:)	
)	
RASHID M. JONES)	
Employee)	
)	OEA Matter No. 1601-0193-98P01
)	
v.)	Date of Issuance: March 10, 2004
)	
DEPARTMENT OF HEALTH)	
Agency)	
_____)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency charged Employee with inexcusable neglect of duty and falsification of official records and, as a result, removed him from his position as an Autopsy Assistant effective July 17, 1998. Employee timely filed a Petition for Appeal with the Office of Employee Appeals.

The charges center around events that occurred the evening of March 18, 1998. On that date Employee signed in at 4:00 p.m. for his shift as an Autopsy Assistant in the Medical Examiner's Office. Employee's shift was scheduled to end at midnight. According to Agency,

at some point during Employee's shift, a detective with the Metropolitan Police Department contacted the Medical Examiner's Office seeking to have Employee pick-up a dead body and transport it to the proper place. When the detective could not reach Employee by either telephone or Employee's pager, the detective purportedly went to the Medical Examiner's Office where he found a note allegedly written by Employee. The typewritten note explained that "Rasheed" was attending a lifesaving class on March 18, 1998 from 5:00 p.m. until 8:00 p.m. and that if anyone needed to reach him, they should call the telephone number listed.¹ The telephone number given was to the recreation center where the swimming class was being held.

On the next day, March 19th, the detective reported to Agency officials the events that he said had occurred the night before and gave to them a copy of the note that he said he had found at the Medical Examiner's Office. One of Employee's supervisors then went to the recreation center to ask the swimming instructor if Employee had in fact been in the lifesaving class on March 18th between the hours of 5:00 p.m. and 8:00 p.m. According to Agency, the swimming instructor confirmed that Employee had attended the class during those hours on March 18th. As a result of these events, Agency proposed to remove Employee.

During the trial of this appeal, Agency called as one of its witnesses the detective who

¹ Employee spells his first name "R-a-s-h-i-d".

reported the events that allegedly occurred that evening.² The detective testified that he could not recall the events of that evening nor could he recall at what time he contacted the Medical Examiner's Office or how long it took for someone to pick up the body. Nonetheless, he was able to recall that he telephoned the Medical Examiner's Office, paged the technician, and then went to that office. The detective further testified, however, that he could not recall Employee not being in the office when he arrived.

The swimming instructor also testified on behalf of Agency. He testified that although Employee had come to the recreation center on March 18th, he had come only to check in and to inform the instructor that he would not be staying for the class. The instructor stated that Employee checked in at approximately 5:00 p.m. and then left. When asked why he had told Employee's supervisor that Employee had attended the class on that date, the instructor stated that what he told Employee's supervisor was that Employee had come to the class to check in but that Employee did not stay for the class.

Employee then testified on his own behalf. Employee admitted that shortly after he signed in for his shift on March 18, 1998, he left the work site to drive another employee to her home. On his way back, Employee stated that he stopped at the recreation center to tell the swimming instructor that he would not be able to attend the class that evening. He then

² Agency called as its first witness the Chief Medical Examiner whose tenure with Agency had not begun at the time of this incident. The Chief Medical Examiner testified that Employee was terminated because he abandoned the duty station, misused a government vehicle, and pursued personal interests on government time. The remainder of his testimony consisted of an explanation as to why Agency chose removal as the penalty.

returned to his work site, arriving between 5:30 p.m. and 5:45 p.m. Employee denied that he had written the note found by the detective.

Based on the testimony of these witnesses, the Administrative Judge held in an Initial Decision issued October 29, 2001, that Agency had not proven that Employee had inexcusably neglected his duty. In order to sustain a charge of inexcusable neglect of duty, Agency bore the burden of proving that Employee had a duty, that he neglected that duty, and that the neglect was inexcusable. According to the Administrative Judge, the "record [was] silent on whether Employee had an actual duty, his neglect of it, and whether it was inexcusable. There was no testimony regarding who was responsible for collecting dead bodies from the scene or what Employee's role was." Initial Decision at 7. The Administrative Judge found that Agency had not met its burden of proof in this regard and, therefore, dismissed the inexcusable neglect of duty charge.

With respect to the second charge, falsification of official records, the Administrative Judge found that by Employee's own admission, he signed in at the beginning of his shift on March 18th and then left the office on personal business. This action, according to the Administrative Judge, amounted to a false entry on the daily sign in/out sheet. Thus, Agency met its burden of proof for this charge. Having upheld only the second charge, the Administrative Judge determined that, based on the table of penalties then in effect, a 15-day

suspension was the appropriate penalty.³ As such, the Administrative Judge modified Agency's action removing Employee to a 15-day suspension and ordered Agency to reinstate Employee.

Agency has since timely filed a Petition for Review with this Board. In its Petition for Review, Agency claims that the Administrative Judge erred when she determined that the inexcusable neglect of duty charge was based upon Employee's failure to retrieve dead bodies. Rather, according to Agency, that charge was based upon Employee's "unavailability to receive and record telephone reports of deaths between [5:00 p.m. and 8:00 p.m.] . . . on March 18th because he was attending a life saving class. . . ." Petition for Review at 4.

By making this argument, we believe that Agency is now seeking at this point in the appeal to state what was Employee's duty on the day and at the time in question. During the trial of this appeal, Agency could have made this argument and could have sought to have entered into evidence any supporting documentation such as the position description for an Autopsy Assistant. Agency, however, failed to effectively prove its case in this regard. As such, we believe there is substantial evidence in the record to support the Administrative Judge's conclusion that the record was silent on this issue.

Agency's second claim of error is that the Administrative Judge erred by not making a finding as to whether or not Employee attended the lifesaving class on March 18th. The swimming instructor, who appeared on behalf of Agency, testified that Employee had not

³ The Table of Appropriate Penalties, 34 D.C. Reg. 1862 (1987), lists a penalty range of suspension from five to 15 days as the appropriate penalty for a first offense of falsification of official records. Employee had no prior disciplinary record at the time of his removal.

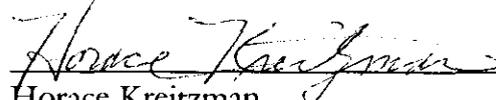
attended the lifesaving class on March 18th. Employee also testified that he had not attended the lifesaving class on March 18th. Agency failed to put forth any evidence to rebut the testimony of either of these witnesses. By finding that Agency had failed to prove the inexcusable neglect of duty charge, the Administrative Judge, in effect, credited the testimony of the swimming instructor and of Employee. Again, we believe there is substantial evidence in the record to uphold this finding. Finding no basis upon which to reverse the Initial Decision, Agency's Petition for Review is denied.

ORDER

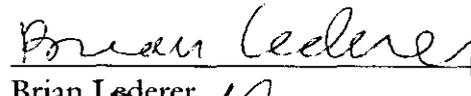
Accordingly, it is hereby **ORDERED** that Agency's Petition for
Review is **DENIED**.

FOR THE BOARD:

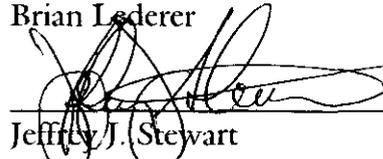
Erias A. Hyman, Chair



Horace Kreitzman



Brian Lederer



Jeffrey J. Stewart

Keith E. Washington

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.

Certificate of Service

I certify that the attached **OPINION AND ORDER** was sent by regular mail this day to:

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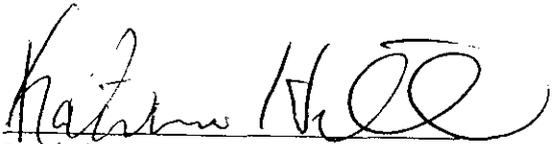
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Katrina Hill
Clerk

March 10, 2004
Date