

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:)
)
ROBERT L. JORDAN)
Employee)
)
v.)
)
METROPOLITAN POLICE)
DEPARTMENT)
Agency)
_____)

OEA Matter No. 1601-0289-97

Date of Issuance: June 1, 2001

OPINION AND ORDER
ON
PETITION FOR REVIEW

On September 3, 1996 Agency issued Employee a proposed notice to remove him from his position as a Supervisory Personnel Liaison Officer based on a charge of dishonesty involving the theft of government property. Specifically Agency found that Employee had fraudulently applied for, and received, unemployment compensation while serving a 30 day

suspension.¹

On appeal of the termination to this Office, the Administrative Judge determined that the threshold issue to be resolved was whether Agency had complied with the 45-day rule when it proposed removal of Employee. The 45-day rule refers to D.C. Code § 1-617.1(b) (1992 supp.) which requires an agency to commence adverse actions within 45 days after the date the agency knew or should have known of the act or occurrence allegedly constituting cause. If, however, the act or occurrence constituting cause is the subject of a criminal investigation, the 45-day limit is tolled until the investigation concludes.

Because Employee's misconduct gave rise to a criminal investigation, the Administrative Judge had to determine what event during the course of the investigation caused the 45 days to begin to run. In the Initial Decision the Administrative Judge set forth a time line detailing the sequence of events in this case. She found, *inter alia*, that the following events occurred:

- | | |
|---------|---|
| 6/8/94 | Employee filed for unemployment benefits with the Department of Employment Services ("DOES") for time spent serving a suspension. |
| 7/12/94 | DOES inquires of the Office of Personnel regarding Employee's eligibility for unemployment compensation. |
| 8/8/94 | Agency Report of Investigation regarding Employee's fraud. |

¹ Employee served a 30-day suspension for misuse of an agency vehicle.

- 8/94-11/94 Agency interviews people having personal knowledge of the events.
- 12/9/94 Agency requests Inspector General to perform an audit of DOES records with a specific reference to Employee's collection of unemployment compensation.
- 10/25/95 United State's Attorney's Office is contacted regarding a review of Employee's case.
- 5/22/96 Inspector General issues a report to Agency and several other officials regarding the investigation of Employee.
- 7/18/96 Agency official signs an affidavit seeking an arrest warrant for Employee.
- 8/8/96 Employee is arrested.
- 9/3/96 Agency issues Employee a proposed notice of removal.
- 12/24/96 Agency issues Employee an amended notice of adverse action.
- 7/5/97 Employee's termination becomes effective.

During the prehearing conference, Agency argued before the Administrative Judge that the 45 days did not begin to run until Employee was arrested on August 8, 1996. Agency contended that the criminal investigation concluded on that date. The Administrative Judge,

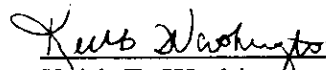
however, rejected this argument. According to statements made, and documents submitted, during the proceedings in this appeal, the Administrative Judge found that the 45-day time limit was triggered “by the Inspector General’s investigative report, which was submitted on May 22, 1996.” *Initial Decision* at 8. Further, the Administrative Judge went on to state that the “OIG investigation gave the Agency sufficient awareness of the matters underlying the charges against Employee to decide whether or not to commence adverse action.” *Id.* Thus, the Administrative Judge held that because the adverse action was not commenced until September 3, 1996, “which was well beyond the 45-day time limit from which the Agency know of Employee’s alleged misconduct. . . .Agency violated the 45-day rule. . . .” *Id.* Therefore, Agency’s action was reversed.

In its Petition for Review, Agency again argues that the 45 days did not begin to run until Employee was arrested. We reject this argument for the same reasons the Administrative Judge rejected it. As the Administrative Judge found, in the proposed notice to remove Employee, Agency states that it is relying, at least in part, on the May 22, 1996 report of the Inspector General. Agency requested that the Inspector General join the investigation surrounding Employee’s misconduct. As a result of that request, the Inspector General prepared a very comprehensive report on May 22, 1996 and made it available to Agency. We agree with the Administrative Judge that Agency knew Employee’s misconduct by May 22, 1996. Because the Administrative Judge correctly applied the law to the facts of this case, we deny Agency’s Petition for Review.

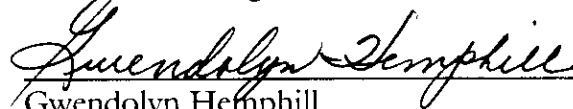
ORDER

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

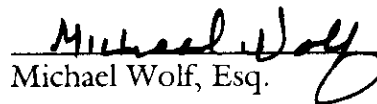
FOR THE BOARD:



Keith E. Washington, Chair



Gwendolyn Hemphill



Michael Wolf, Esq.

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.