

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:)
)
GREGORY MILLER)
Employee)
)
v.)
)
DEPARTMENT OF PUBLIC)
WORKS)
Agency)
_____)

OEA Matter No. 1601-0113-98

Date of Issuance: **November 22, 2002**

OPINION AND ORDER
ON
PETITION FOR REVIEW

Agency terminated Employee, a materials handler at Agency's warehouse, for inexcusable neglect of duty and two instances of insubordination. Earlier, Employee had received a fifteen day suspension for discourteous treatment of his supervisor. On appeal to this Office, the Administrative Judge, after hearing testimony and reviewing documentary evidence, sustained the charge of inexcusable neglect of duty and one of the insubordination charges. The Administrative Judge found

that the second charge of insubordination had not been supported by the evidence. In evaluating the reasonableness of the removal penalty, the Administrative Judge noted that the penalty fell within the permitted range under the table of penalties and noted that Agency had considered the relevant *Douglas* factors. Nevertheless, the Administrative Judge reduced the penalty from removal to a 30-day suspension based on his finding that the removal was an abuse of management discretion which he felt compelled to modify.

In our decision in *Taggart v. Metropolitan Police Department*, OEA Matter No. 2401-0113-92R94 (January 9, 1998), we stated:

Any review by OEA of an adverse action penalty must begin with the recognition that the primary responsibility for managing and disciplining an agency's workforce is a matter entrusted to the agency, not OEA. When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of the Agency, but simply to ensure that 'managerial discretion has been legitimately invoked and properly exercised.' *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985). Indeed, OEA's scope of review is limited to a determination of whether the penalty is within the range allowed by the table of penalties, whether the penalty is based on relevant *Douglas* factors, and whether there is a clear error of judgment.

Based on this standard, we must reverse that portion of the Initial Decision which modifies the penalty in this matter from removal to a 30-day suspension. It is plain that the Administrative Judge substituted his judgment of an appropriate penalty for that decided by Agency. Selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office. Our review of the record taken as a whole demonstrates that there is substantial evidence in the record to support the penalty of removal and Agency's decision to impose that penalty did not constitute an error of judgment. Accordingly, Agency's Petition for Review is granted and the penalty

of removal is reinstated.

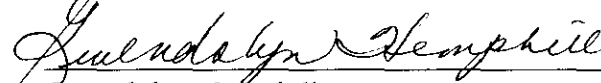
ORDER

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

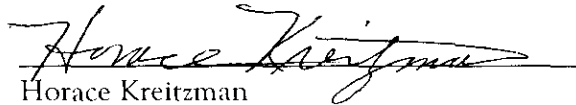
FOR THE BOARD:




Eriq A. Hyman, Chair



Gwendolyn Hemphill



Horace Kreitzman



Brian Lederer

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.