Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager 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:)
)
SELENA WALKER)
Employee)
) OEA Matter No.: 1601-0133-06
v.)
) Date of Issuance: October 5, 2007
D.C. FIRE AND EMERGENCY MEDICAL)
SERVICES DEPARTMENT)
Agency)
)

OPINION AND ORDER ON PETITION FOR REVIEW

Selena Walker ("Employee") began working for the D.C. Fire and Emergency Medical Services Department ("Agency") in 2001 as an Emergency Medical Technician ("EMT"). During the course of her tenure she received Advanced EMT training and, because of this certification, she was eventually placed in the position of Ambulance Crewmember in Charge.[1] Employee was assigned to Ambulance 18 which is housed at 414 8th Street, S.E.

[1] Employee occupied this position despite having a prior disciplinary history that included several suspensions and a reprimand.

On the night of January 6, 2006 Employee and her partner, Michael Deems, received a call to respond to a "man down" on Gramercy Street, N.W. At the time that the call came in Employee and her partner were at Providence Hospital. Employee was driving Ambulance 18 that night and they arrived at Gramercy Street approximately 23 minutes after receiving the call. When they arrived, other firefighter/EMT's and police officers were already on the scene attending to the patient, David Rosenbaum.

After Deems performed a basic examination of Rosenbaum, it was determined that he would receive a Priority 3 designation (low priority) and be transported to Howard University Hospital ("HUH").[2] Employee then drove the ambulance to HUH where Rosenbaum was eventually admitted. Unfortunately two days later, on January 8, 2006, Rosenbaum died as a result of the injuries he sustained on January 6, 2006.

As part of the agency's internal operating procedures, Employee was required to submit a memorandum that summarized this particular incident. Thus on January 6, 2006 Employee submitted a brief statement to Agency's Medical Director. The memo simply stated that after she and her partner arrived at Gramercy Street, they loaded Rosenbaum onto the ambulance and that based on her partner's assignment of the priority 3 designation, she drove the ambulance to HUH.

On January 10, 2006, Employee submitted another memorandum regarding this same incident. This memo was directed to Fire Chief Adrian Thompson. It too was very brief and simply stated that she never assessed Rosenbaum and that there was no particular reason for transporting him to HUH rather than to Sibley Hospital. The memo went on to state that her partner assessed Rosenbaum.

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[2] Sibley Hospital was the closest hospital to the scene of the incident.

The next day, January 11, 2006, Employee submitted another memorandum regarding this incident. This particular memo was directed to an Assistant Fire Chief and stated that because Rosenbaum was deemed a low priority, protocol dictated that he be transported to HUH. Employee concluded the memo by stating that her partner made no suggestions as to which hospital Rosenbaum was to be transported to.

On January 18, 2006 Agency convened a panel of several agency officials for the purpose of interviewing all of the agency employees who responded to the January 6, 2006 incident. A report memorializing the outcome of this interview was prepared on January 24, 2006. Of significance to this appeal are the interviews given by Employee and her partner.

With respect to Employee's partner, the report states that Employee told him prior to arriving on the scene that they would be transporting the patient to HUH because she needed to go to the ATM and to her house. Furthermore when Employee's partner told a police officer on the scene that they would be transporting Rosenbaum to Sibley Hospital, Employee spoke up and said that they were taking him to HUH. The report goes on to state that Employee's partner stated that it was Employee who made the final decision to assign the priority 3 designation and that after they left HUH, Employee drove the ambulance to an ATM and then to her house.

Concerning Employee the report states that she denied any involvement in assessing or caring for Rosenbaum and that it was her partner who assigned the priority 3 designation. The report goes on to state that Employee decided to transport Rosenbaum to HUH after "checking hospital status." According to the report, Employee also stated during the interview that she did not know and did not remember why she chose HUH,

that she could not remember what other hospitals were open and that she did know how to get to Sibley or Georgetown Hospital from upper northwest. Moreover, when asked during the interview whether she had told her partner prior to arriving on the scene that they would be transporting the patient to HUH, Employee replied that she did not recall that conversation. Lastly, according to the report, Employee admitted that she probably went to an ATM after leaving HUH but that she did not recall going to any other destinations.

Because of the media attention and public outcry resulting from this incident, then-Mayor Anthony Williams asked Agency and the D.C. Metropolitan Police Department ("MPD") to submit to an investigation to be conducted by the D.C. Office of the Inspector General ("OIG"). The OIG investigation was very comprehensive and included interviews of the resident who placed the emergency call on January 6, 2006, as well as interviews of the 911 call taker and dispatcher and all MPD and Agency employees who responded to the incident. As noted earlier, of significance to this appeal are the interviews given by Employee and her partner.

On June 15, 2006 the OIG released to Agency a report that detailed the information gathered from having interviewed Employee and her partner. The following is an excerpt from the OIG report:

> [Employee] did not assess the patient. . . .Before driving away, [Employee] waited for [her partner] to finish his assessment of the patient. [Her partner] told her the patient was a "[Level] 3." [Employee] radioed Communications that she had a "[Level] 3 to 5 [Howard]."
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> . . . .
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> The OIG team asked [Employee] why they did not take the patient to Sibley Hospital. [Employee] stated, "We can go

> where we want to go. [Howard] was available, and he was deemed a low priority." When asked if she wanted to go to Howard, [Employee] initially said "No," then changed her answer to "Yes" and said she knew the way to Howard from Gramercy Street.
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> . . . .
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> When asked what Ambulance 18 did after leaving Howard, [Employee] initially stated that they went back to the firehouse. [Employee] then stated that she thought that she drove the ambulance to her house to get money for dinner and then went to the firehouse on 8th Street, S.E.
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> OIG Report at 40.

In summarizing its findings, the OIG report went on to conclude the following:

> The decision to transport Mr. Rosenbaum to Howard rather than Sibley, however, was not based on his medical needs or an assessment that he was a trauma patient who required a trauma center such as Howard. Mr. Rosenbaum was transported to Howard based on personal reasons, which delayed the emergency hospital care that would have been available minutes earlier.
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> OIG Report at 48.

Based on the foregoing information, on June 16, 2006 Agency issued to Employee a Proposed Removal Notice. Agency charged Employee with any on-duty or government-related act or omission that interferes with the efficiency or integrity of government operations. The notice stated that this charge was based on the OIG report which found that Employee had decided to transport Rosenbaum to HUH for personal reasons so that she could retrieve something from her house. This decision, according to Agency, was "in violation of the emergency medical protocols which require that patients be transported to the nearest appropriate hospital" unless compelling circumstances

dictate that a patient be transported to a more distant emergency department.[3] Thereafter, on July 14, 2006 the removal action took effect.

On August 10, 2006 Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). The threshold issue on appeal was whether Agency commenced the removal action in a timely manner. According to D.C. Official Code §5-1031(a) Agency had 90 days from the date it knew or should have known of the act constituting cause within which to commence an adverse action against Employee. Specifically, that section provides the following:

> (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.

In an Initial Decision issued June 26, 2007 the Administrative Judge reversed Agency's action. He held that Agency had not complied with the 90-day time limitation. Specifically the Administrative Judge found that "all of the elements of the underlying cause of action came into existence on January 6, 2006, as the Employee responded to the medical call and allegedly violated Agency's rules regarding where to transport the patient under said circumstances."[4] He went on to find further that "at the very least, [Agency] *should have known* of the act or occurrence that supported its adverse action against the Employee on January 18, 2006, when the Interview Panel concluded its

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[3] Proposed Removal Notice.
[4] Initial Decision at 10.

interview of all Agency personnel who responded to the [scene of the incident]."[5] Using January 18, 2006 as the date on which Agency knew or should have known of the act or occurrence allegedly constituting cause, the Administrative Judge concluded that Agency should have initiated the adverse action no later than May 26, 2006. Because Agency waited until June 16, 2006 to commence the adverse action, the Administrative Judge ordered that its action must be reversed.

Agency filed a Petition for Review on August 6, 2007 and Employee responded on September 4, 2007. In its Petition for Review Agency essentially argues that it did not know, nor could it have known, of the act or occurrence allegedly constituting cause until the OIG concluded its investigation and issued its report. We disagree.

On January 6, 2006 Agency had available to it the information contained within the memorandum that Employee submitted to Agency's Medical Director. Furthermore at the conclusion of the January 18, 2006 interview, even though Employee's version of the events conflicted with her partner's version, Agency still had enough information upon which to commence an adverse action. The OIG report, while being very thorough, did not in any significant way change the substance of the information which Agency had previously elicited from Employee during the January 18, 2006 interview. We believe that it was at the conclusion of this interview that the 90 days began to run. Because Agency did not commence its action within the requisite time frame, we are compelled to deny its Petition for Review and uphold the Initial Decision.

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[5] *Id.*

ORDER

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

FOR THE BOARD:

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Brian Lederer, Chair

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Horace Kreitzman

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Keith E. Washington

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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 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.