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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
SYLVIA JARRETT, Employee	OEA Matter No. 1601-0021-18
v.	Date of Issuance: August 3, 2018
D.C. PUBLIC LIBRARY, Agency	Eric T. Robinson, Esq. Senior Administrative Judge

INITIAL DECISION

PROCEDURAL BACKGROUND

On January 10, 2018, Sylvia Jarrett ("Employee") filed a petition for appeal with the Office of Employee Appeals ("OEA" or the "Office") contesting the District of Columbia Public Library's ("DCPL" or the "Agency") action of removing her from service. This matter was assigned to the Undersigned on or around April 4, 2018. A Prehearing Conference was held on May 7, 2018. On May 8, 2018, the Undersigned issued an Order requiring the parties to provide written legal briefs regarding their perspective positions. Agency opted to rely on its Answer and Prehearing Statement to substantiate the instant adverse action. Employee did not timely submit her reply brief. As a result, the Undersigned issued an Order for Statement of Good Cause on June 19, 2018 ("Good Cause Order") to Employee. Pursuant to the Good Cause Order, Employee had to explain why she did not timely file her reply brief as required. Employee provided her missing reply brief, but I find that her response did not address, in any significant manner, her failure to timely file her brief. After reviewing the documents of record, I find that no further proceedings are warranted. The record is now closed.

JURISDICTION

The Office has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUES

1. Whether the Agency had cause to remove Employee from service. And,
2. If so, whether the penalty was appropriate given the circumstances.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

According to DCPL, Employee was Absent Without Official Leave ("AWOL") which is defined as "an absence from duty that was not authorized or approved, or for which a leave request has been denied". Agency contends that Employee's unauthorized absences and failure to notify her manager as prescribed are sufficient cause to warrant her removal.[1] D.C. Mun. Regs. Tit. 6-B, § 1607.2(f)(4) (2017) provides that the appropriate action for AWOLs of five workdays or more is removal for a first occurrence.

AWOL CHARGE DATES					
1	July 24, 2017	**5**	July 30, 2017	**9**	August 9, 2017
2	July 25, 2017	**6**	August 2, 2017	**10**	August 10, 2017
3	July 26, 2017	**7**	August 7, 2017	**11**	August 21, 2017
4	July 27, 2017	**8**	August 8, 2017	**12**	August 22, 2017

Agency further argues that Employee has failed to proffer a plausible explanation for her failure to appear at work for the dates in question. It notes that Employee has provided explanations for other irrelevant dates for which she did not appear at work. Employee counters that her niece tragically passed away during the surrounding July dates noticed *supra.* Accordingly, she requested leave in order to grieve. Agency responds by noting that Employee notified it of this circumstance more than two weeks after the fact and that in trying to get permission for this set of absences, Employee failed to follow established protocols for requesting leave including, *inter alia*, lodging her request for absence in PeopleSoft and notifying her supervisor using established procedures.. Agency further notes that prior to the absences in question, Employee was counseled verbally and was issued a letter of warning for prior instances where she failed to follow established protocols for requesting leave. More to the point, DCPL asserted as follows in its Prehearing Statement:

> Employee's attendance issues began around September 2016. Employee's manager repeatedly informed her of the DCPL Public Services Call In Procedure. Employee received the Call In Procedure for approximately the ninth time on January 4, 2017, when she was issued a Letter of Warning for accumulating approximately 55 hours of AWOLs between September 2016, and January 2017. *See* Tab 7 at Exhibit pp.6-11. Both the Letter of Warning and the Call In Procedure clearly state that failure to follow the Call In Procedure may result in disciplinary action. *See* Tab 7 at Exhibit pp.6-11. The Call In Procedure states that an employee must contact their manager within the first hour of their scheduled shift to request sick leave, or one hour in advance of the shift to request emergency annual leave. Employee failed to do so on twelve occasions. The Call In Procedure clearly states that "Failure to follow the procedure

[1] D.C. Mun. Regs. Tit. 6-B, § 1268.1 (2018).

above may result in disciplinary action up to and including termination. *See* Tab 7 at Exhibit pp.6-11.[2]

I note that Employee was adequately notified of the dates that she was required to prosecute in order to properly respond to Agency's removal action. I find that Employee was adequately instructed on the correct protocol for requesting leave as evidenced by prior counseling on the matter and the letter of warning that had been issued to Employee for previous infractions. The requirement that leave, whether sick or annual; be requested at least one hour prior to a scheduled shift absent exigent medical condition[3], is a reasonable requirement that should be relatively easy to follow. Here for some of the dates, Employee was coping with the passing of a family member. The Undersigned takes note that DPM § 1261 *et al_("funeral leave")* provides grieving employees up to three days to plan for and attend a funeral for a family member. Given the instant circumstances, I find that the death of Employee's niece herein, will suffice as proper justification for her to utilize funeral leave. Moreover, when the dates requested for funeral leave are not consecutive, employees may be required to explain why they need non-consecutive dates to grieve.[4] Here according to Employee's submission, her niece passed away on July 15, 2017 and her funeral was scheduled for Saturday July 29, 2017. There is no evidence in the record to show that Employee presented any reasonable justification to Agency management requesting (or being granted permission to use) non-consecutive funeral leave days. Employee was not charged AWOL on the date of the funeral. I further find that three business days prior to her niece's funeral includes two of the alleged AWOL dates (July 26 &27). Accordingly, I hereby strike the use of July 26 & 27, 2017, as acceptable dates to charge Employee for AWOL.

Employee's explanations for the 10 other AWOL dates is lacking in specificity and generally cannot be condoned by the OEA as this matter is reviewed. Employee's explanation indicates that she was unassigned for the remaining AWOL dates. DCPL counters by providing a work calendar showing that Employee was scheduled to be on duty for the AWOL dates in question.[5] I find that Employee was scheduled to be on duty for the 10 remaining AWOL dates. I further find that the documents of record prove that Employee failed to properly request and obtain permission to use leave for the 10 remaining AWOL dates in question. I CONCLUDE that Agency has met its burden for poof in this matter.[6]

Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the undersigned.[7] This Office may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.[8]

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[2] DCPL Prehearing Statement at 1 – 2 (February 12, 2018). Internal footnotes omitted.

[3] Some non-exhaustive examples of medical distress would include being unconscious, having a heart attack or a stroke.

[4] *See* DPM § 1261.3

[5] *See* Surreply Brief at Attachment A (July 18, 2018).

[6] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin,* 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater,* 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

[7] *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

[8] *See Id.*

When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.[9] Here, Employee failed to provide an adequate explanation to rebut Agency's removal action. DCPL only needed to prove five days to instigate a removal action. As noted *supra*, the Undersigned sustained 10 days of AWOL in this matter. Moreover, every indication in the record notes that several more days could have been included but Agency in an abundance of caution and in a failed attempt to rehabilitate Employee's conduct, opted to use only the more egregious instances of AWOL. I find that this is more than sufficient to sustain the instant removal action and is a reasonable exercise of Agency' discretion.

<u>Failure to Prosecute</u>

OEA Rule 621.3, *id.*, states as follows:

> If a party fails to take reasonable steps to prosecute or defend an appeal, the Administrative Judge, in the exercise of sound discretion, may dismiss the action or rule for the appellant. Failure of a party to prosecute or defend an appeal includes, but is not limited to, a failure to:
>
> (a) Appear at a scheduled proceeding after receiving notice;
>
> (b) Submit required documents after being provided with a deadline for such submission; or
>
> (c) Inform this Office of a change of address which results in correspondence being returned.

This Office has held that a matter may be dismissed for failure to prosecute when a party fails to submit required documents and when they fail to appear for scheduled proceedings after receiving notice. *See David Bailey Jr. v. Metropolitan Police Department*, OEA Matter No. 1601-0007-16 (April 14, 2016). I find that Employee did not file her Statement of Good Cause. She was required to file it pursuant to the Order for Statement of Good Cause. I find that Employee has not exercised the diligence expected of an appellant pursuing an appeal before this Office. I further find that Employee's failure to prosecute her appeal presents another salient ground for dismissing this matter.

<u>ORDER</u>

Based on the foregoing, it is hereby ORDERED that Employee's removal from service be UPHELD.

FOR THE OFFICE:

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ERIC T. ROBINSON, Esq.

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[9] *See Id.*

Senior Administrative Judge