

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:	)	
	)	
CHARLES WATTS	)	OEA Matter No. 1601-0035-03
Employee	)	
	)	Date of Issuance: November 30, 2005
v.	)	
	)	
DISTRICT OF COLUMBIA	)	
DEPARTMENT OF CORRECTIONS	)	
Agency	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Charles Watts (“Employee”) worked as a Correctional Treatment Specialist with the D.C. Department of Corrections (“Agency”). He was terminated on the basis of malfeasance and was accused of negligently causing the release of Inmate Khan, a prisoner at the D.C. Central Detention Facility. Agency alleged that Employee released the prisoner despite his admitted receipt of a faxed detainer from INS Agent Yang which prohibited the inmate’s release. As a result, on January 31, 2003, Employee was terminated from Agency.

On March 3, 2003, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) alleging that he was singled out for termination despite there being other staff members, namely Benjamin Ellis and Mark Sibert, who also contributed in the erroneous release of Inmate Khan. Employee argued that he was wrongfully accused of malfeasance based on failure to perform duties that were not outlined for the Correctional Program Officer position that he held.

The Administrative Law Judge (“ALJ”) issued an Initial Decision on November 5, 2004, providing that Employee failed in his duty to hand deliver Inmate Khan’s detainer to a legal instrument examiner (“LIE”). The Judge reasoned that Employee’s failure to deliver the detainer set the stage for Khan’s erroneous release from prison.<sup>1</sup> The ALJ based his decision on the fact that Agency’s written procedure clearly states that Employee had a duty to submit official documents like detainers to the appropriate personnel for processing. His failure to ensure processing of the detainer rendered him guilty of malfeasance and presented a valid ground for adverse action taken against him.<sup>2</sup> To determine if the Agency’s penalty was reasonable, the ALJ used the *Douglas* factors.<sup>3</sup> Based on his assessment, he determined that termination was appropriate, thereby upholding Agency’s decision.

In response to the Initial Decision, Employee filed a Petition for Review with OEA on December 10, 2004. In it he provides that his removal was grossly out of proportion with the severity of the offense.<sup>4</sup> Employee relies on the *Douglas* factors and

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<sup>1</sup> See Initial Decision, page 7 (November 5, 2004).

<sup>2</sup> *Id.* at 8.

<sup>3</sup> See *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

<sup>4</sup> See Employee’s Petition for Review, page 1 (December 10, 2004).

mitigating factors to establish why removal was too harsh of a penalty. The mitigating factors include that he was involuntarily assigned to the Records Office and that his official position was that of a Correctional Treatment Specialist not a Correctional Program Officer. Employee also provides that the fact that he was given only an hour of training for his new position coupled with the chaotic environment of the Record's Office mitigates his removal. Further, Employee contends that LIEs Ellis and Sibert made mistakes that mitigate his removal. Finally, Employee alleges that Article 11, Section 9 (D) of the Collective Bargaining Agreement between the D.C. Department of Corrections and Fraternal Order of Police Department of Corrections as well as *District of Columbia Metropolitan Police Department v. Pinkard*, 801 A.2d. 86 (D.C. 2002) prove that his removal was not warranted.<sup>5</sup>

On December 23, 2004, Agency filed its Opposition to Employee's Petition for Review. Agency argued that Employee did not raise any issues outlined in OEA Rule 634.3 as a basis for his appeal.<sup>6</sup> Agency then individually addressed each of the *Douglas* factors to show that all relevant factors were considered in its decision to remove Mr. Watts. Finally, Agency asserts that the collective bargaining issue raised by Employee

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<sup>5</sup> Article 11, Section 9(D) provides, "Deciding Official shall issue a final decision after reviewing the recommendation of the Disinterested Designee/Hearing Officer. The deciding official may sustain [or reduce] the penalty recommended by the Disinterested Designee, remand the matter for further consideration by the Hearing Officer, or dismiss the charge but may not increase the penalty recommended by the Disinterested Designee/Hearing Officer."

<sup>6</sup> Rule 634.3 provides that "the petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a petition for review when the petition establishes that:

- (a) new and material evidence is available that, despite due diligence, was not available when the record closed;
- (b) the decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
- (c) the findings of the Administrative Judge are not based on substantial evidence; or
- (d) the Initial decision did not address all material issues of law and fact properly raised in the appeal."

was not previously raised before the ALJ to consider the issue on its merits, therefore, it cannot be considered by the OEA Board.

In *Douglas*, the following factors are identified to determine the appropriateness of an agency's penalty against an employee:

- (1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- (3) the employee's past disciplinary record;
- (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- (7) consistency of the penalty with any applicable agency table of penalties;
- (8) the notoriety of the offense or its impact upon the reputation of the agency;
- (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- (10) potential for the employee's rehabilitation;
- (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

Applying the above-mentioned factors to the facts of this case, it is clear that the Agency and ALJ considered all relevant factors and their judgment did not exceed the limits of

reasonableness.<sup>7</sup> As the ALJ provided in his Initial Decision, Employee clearly failed in his duty to promptly turn over the faxed detainer to a LIE for processing, thereby setting the stage for Inmate Khan's erroneous release. If Employee gave the detainer to the proper party, the opportunity for Inmate Khan's premature release would have lessened, if not been completely eliminated. The wrongful release of a prisoner is a serious offense, but the potential for even more serious consequences could have been realized in the release of this particular prisoner in light of the heightened state of security that the country was under.<sup>8</sup>

It should be noted that Employee received very favorable performance ratings during his lengthy employment with the D.C. Department of Corrections, although he admits that prior disciplinary actions were taken against him during the course of his employment.<sup>9</sup> Notwithstanding his favorable reviews, he was admittedly on notice that the Agency was experiencing serious problems with premature and untimely prisoner releases.<sup>10</sup> Employee's negligent actions, therefore, contributed to the problem not the solution. His actions could have reasonably altered the Agency and his supervisor's

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<sup>7</sup> *Douglas* provides, "only if the Board finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the Board to then specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness," page 41.

<sup>8</sup> Inmate Khan, a Pakistani citizen, was incarcerated for threatening the life of President Bush just 9 days after the September 11, 2001 attacks on the United States. A mistake of this caliber could seriously affect Agency's reputation. See Agency's Opposition to Employee's Petition for Review, page 3 (December 23, 2004).

<sup>9</sup> See Employee's Petition for Review, page 9 (December 10, 2004).

<sup>10</sup> See Employee's Petition for Appeal, page 3 (March 3, 2003) and March 22, 2004 Transcript, Agency Exhibit # 10, page 1.

confidence in his ability to perform his job effectively. Additionally, because Employee was the only person privy to the conversation with Agent Yang regarding the detainer, there were no other employees similarly situated to him to determine if there were inconsistencies in the penalties Agency imposed. Based on the egregiousness of his offense, Employee's actions standing alone deemed him ripe for removal.

As for the collective bargaining agreement argument raised by Employee, the agreement provides one of two options to be taken by an employee who has an adverse action claim against them. They can either contest the adverse action through the negotiated grievance procedure or they can contest the action through the OEA.<sup>11</sup> Employee, therefore, cannot raise a collective bargaining claim with the OEA because this office is not governed by the rules and procedures of Employee's grievance body. Because Employee sought review of Agency's final decision through the OEA, then he can only raise claims specific to an appeal through our office.

Taking all *Douglas* and mitigating factors into account, it is the opinion of this Board that Employee was properly removed. Accordingly, we hereby deny Employee's Petition for Review.

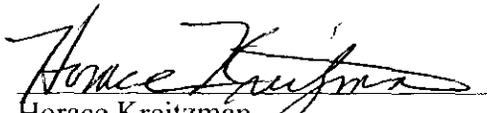
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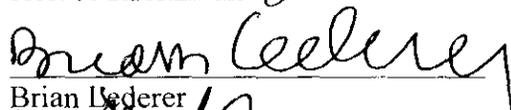
<sup>11</sup> See Employee's Petition for Review, attachment #1, page 19 (December 10, 2004) and March 22, 2004 Transcript, Agency Exhibit # 10, page 2.

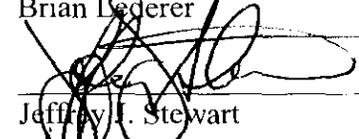
**ORDER**

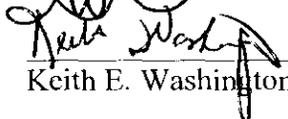
Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

  
\_\_\_\_\_  
Horace Kreitzman

  
\_\_\_\_\_  
Brian Lederer

  
\_\_\_\_\_  
Jeffrey J. Stewart

  
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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.