Notice: This decision may be formally revised before it is published in the District of Columbia Register and the Office of Employee Appeals' website. 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:	)	
	)	
WILLIAM REDDEN, JR.,	)	
Employee	)	OEA Matter No:. 1601-0021-17
	)	
v.	)	Date of Issuance: November 8, 2017
	)	
OFFICE OF THE INSPECTOR GENERAL,	)	Monica Dohnji, Esq.
Agency	)	Senior Administrative Judge
	)	

William Redden, Jr., Employee, *Pro Se*
Janea Hawkins, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On January 6, 2017, William Redden, Jr. ("Employee") filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Office of the Inspector General's ("OIG" or "Agency") decision to terminate him from his position as an Investigator effective December 30, 2016. Employee was charged with violating D.C. Official Code § 1-201.115a(b-1)[1] and 6B District of Columbia Municipal Regulations ("DCMR") §1607.2(a)(10).[2] On February 8, 2016, Agency submitted its Answer to Employee's Petition for Appeal.

This matter was assigned to the undersigned Administrative Judge ("AJ") on June 5, 2017. Thereafter, I issued an Order requiring the parties to attend a Status/Prehearing Conference on July 10, 2017. While Employee was present for the scheduled Status/Prehearing Conference, Agency's representative was absent. A Show-Cause Order was issued to Agency. On July 19, 2017, Agency timely submitted a response to the Show-Cause Order. Subsequently, this matter was rescheduled for August 23, 2017. Both parties were present for the scheduled Status/Prehearing Conference. On August 28, 2017, I issued a Post-Status Conference Order

[1] D.C. Official Code § 1-201.115a(b-1) provides that: The Inspector General shall not disclose the identity of any person who brings a complaint or provides information to the Inspector General, without the person's consent, unless the Inspector General determines that disclosure is unavoidable or necessary to further the ends of an investigation.
[2] DCMR § 1607.2(a)(10): Conduct Prejudicial to the District Government: Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information.

requiring the parties to submit written briefs addressing the issues in this matter. Both parties have submitted their respective briefs. After considering the parties' arguments as presented in their submissions to this Office, I have determined that there are no factual issues in dispute, and as such, an Evidentiary Hearing is not required. 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 Agency's action of terminating Employee was done for cause; and

2) Whether the penalty of removal is within the range allowed by law, rules, or regulations.

FINDINGS OF FACTS, ANALYSIS AND CONCLUSION

According to the record, Employee was an Investigator with Agency at the time of his termination. On August 29, 2016, Employee was assigned a complaint filed with OIG by an inmate alleging retaliation by Prison facility staff. On August 31, 2017, Employee faxed the inmate's complaint directly to the prison facility and then notified his supervisor, Ms. Cramer, of his actions. Thereafter, Ms. Cramer proposed that Employee be terminated. On November 8, 2016, Agency issued a Proposed Notice of Separation informing Employee of its decision to terminate him from his position of Investigation.[3] Following an administrative review, the Hearing Officer assigned to this matter concurred with Agency's decision to terminate Employee.[4] Subsequently, on December 21, 2016, Agency issued its Final Agency Decision, terminating Employee, effective December 30, 2016.[5]

Employee's Position

Employee does not deny that he faxed over the information of the inmate to the prison facility. He explains that Agency created a hostile work environment and Agency's actions against him constituted harassment. Employee further notes that Agency did not engage in any appropriate progressive discipline.

Additionally, Employee notes that he was demoted in duties. He explains that his duties were changed from an investigative nature to that of a data input clerical position for which he was ill-suited. He was given the job title of Program Analyst; however, there was no official reclassification by D.C. Department of Human Resources ("DCHR").

---

[3] Agency's Answer to Employee's Petition for Appeal, at Exhibit 14 (February 8, 2017).
[4] Agency's Answer at Exhibit 15.
[5] Agency's Answer at Exhibit 16.

Employee states that after he faxed the complaint to the prison facility, he immediately emailed Ms. Cramer to inform her about it. In response, Ms. Cramer immediately informed Employee that he had a mistake. Employee went to Ms. Cramer's office and he was verbally reprimanded. Employee asserts that instead of termination, a more appropriate course of action against him should have been an oral reprimand, written reprimand, suspension without pay, or being placed on a Performance Improvement Plan. Employee highlights that, for a first time violation of DCMR § 1607.2(a)(10), the suggested penalty ranges from counseling to removal. Employee also states that his termination was not appropriate because the OIG failed to determine the actual consequences of his actions. Employee notes that contrary to Agency's assertion, he needed clarification on the new procedure.

Furthermore, Employee argues that Agency did not candidly and accurately consider the Douglas Factors in instituting the adverse action against him. Employee explains that Douglas Factors should have been classified as mitigating or neutral, rather than aggravating. Employee maintains that, after almost fifteen (15) years of service to the District of Columbia, he was terminated for an isolated and unintentional error in which there were no real life adverse consequences to either the complainant or Agency.

Employee avers that he was discriminated upon because of the unauthorized and inaccurate dissemination of medical information regarding him. He notes that he has referred the discrimination case to the D.C. Office of Human Rights and it is currently an active case.[6]

Agency's Position

Agency submits that Employee's action of transmitting a confidential complaint to the prison where the complainant was housed constituted cause for removal, which is an appropriate penalty under the circumstance. Agency notes that Employee received training on February 18, 2016, as well as the Risk Assessments and Future Plans Unit ("RAFP") handbook on the General Guidelines and Procedures of his new assignment as an Investigator with the RAFP. Additionally, his supervisor, Ms. Cramer, provided all RAFP personnel, including Employee, with step-by-step instructions for processing complaints from federal prisoners. Ms. Cramer also sent Employee an updated version of the RAFP handbook on April 2016. Agency avers that Employee routinely demonstrated issues with his performance as a RAFP Investigator.

Additionally, Agency notes that it engaged in progressive discipline prior to its removal of Employee. Agency explains that on several occasions, it gave constant admonition and counseling, both verbally and written, in an attempt to correct Employee's performance deficiencies. Agency highlights that several times between April and August 2016, Ms. Cramer repeatedly admonished Employee to correctly and completely enter and process complaints in Agency's case tracking system.

Citing to the District Personnel Manual ("DPM") § 1601.6, Agency also contends that, the DPM recognizes that strict application of progressive steps may not be appropriate in every situation, thus, affording agency management the right to evaluate each situation on its own merits and skip any or all of the progressive steps. Agency explains that it was not Employee's

[6] Employee's Brief (October 4, 2017).

repeated performance, but rather, his failure to abide by Agency's policy regarding how to correctly process complaints sent by federal prisoners and his violation of D.C. law that led to his ultimate removal. Agency maintains that complaints made to the RAFP hotline are made with an expectation of confidentiality or anonymity, without fear of reprisal. Consequently, Agency had to exercise its managerial discretion to determine the most appropriate penalty when Employee failed to uphold its standard and rules.

Agency states that Employee's admitted misconduct undermined its integrity and the confidentiality and anonymity provided to complainants. Employee's disregard for Agency's instructions and processes resulted in an action that could have had negative ramifications for the individual submitting the confidential complaint to Agency.

Agency maintains that it considered the Douglas Factors in its decision to terminate Employee. It considered the mitigating and aggravating circumstances and determined that Employee's egregious misconduct warranted removal under the relevant Douglas Factors. Agency concludes that taking into account the relevant Douglas Factors and the Table of Illustrative Actions, Agency appropriately removed Employee for the unauthorized disclosure of confidential information protected by D.C. Official Code § 1301.115 a(b-1).[7]

Agency notes in its reply brief that Employee's argument that he was inappropriately classified as an Investigator to the RAFP is a grievance which is not within OEA's jurisdiction. Agency also provides that, Employee's discrimination claim is currently pending before the Office of Human Right and accordingly, Employee's discrimination claims before OEA are misplaced. Further, Agency highlights that the charge levied against Employee does not require intent. Additionally, Agency argues that it engaged in progressive discipline as it had engaged in a series of verbal and written reprimands and counseling to address Employee's performance deficiencies. Agency however notes that, even if it failed to engage in progressive discipline, which it did not, Employee's argument still fails. Agency explains that it imposed a penalty that was within the appropriate penalty range for the current offense. Agency highlights that the penalty range for a first offense for the current cause of action is counseling to removal. Accordingly, Employee's removal is legal and appropriate. Agency also notes that it dutifully considered the Douglas Factors in its removal or Employee.[8]

1) *Whether Employee's actions constituted cause for discipline*

Pursuant to OEA Rule 628.2, 59 DCR 2129 (March 16, 2012), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Further, according to DCMR § 1605.2, a corrective or adverse action against an employee is appropriate when the employee fails to or cannot meet identifiable conduct or performance standards, which adversely affects the efficiency or integrity of government service. Employee was charged with violating DCMR § 1607.2(a)(10), Conduct Prejudicial to the District Government: Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information.

[7] Agency's Brief (October 2, 2017).
[8] Agency's Reply Brief (October 27, 2017).

Employee's removal from his position at Agency was based upon a determination by Agency that Employee disclosed confidential information without authorization, when he faxed over a complaint filed by a prison inmate back to the prison facility. Agency contends that Employee's action is a violation of D.C. Official Code § 1-201.115a(b-1) which provides that: "The Inspector General shall not disclose the identity of any person who brings a complaint or provides information to the Inspector General, without the person's consent, unless the Inspector General determines that disclosure is unavoidable or necessary to further the ends of an investigation." Employee does not deny that he faxed over the complaint to the prison facility, thereby disclosing the inmate's identity without their consent. He simply explains that his action was unintentional and an isolated mistake.

While it may be true that Employee's action was unintentional and an isolated mistake, it does not negate the fact that by erroneously faxing over the complaint to the prison facility without authorization from Agency or the inmate, Employee disclosed the identity of the complainant, in violation of D.C. Official Code § 1-201.115a(b-1). Moreover, Employee does not dispute that he received the required training and information to perform his assigned duties. Employee simply notes that he was confused by the instructions he received. I find this argument unpersuasive. If Employee was indeed confused by the instruction, he could have sought clarification from his supervisor before carrying out the assigned task. Moreover, this cause of action does not require intent. As such, while Employee notes that his action of faxing over the complaint to the prison facility was unintentional and isolated error; this argument is irrelevant to this cause of action, because intent is not required to prove this cause of action. Consequently, I conclude that Agency had cause to institute this cause of action against Employee.

Discrimination

With regards to his discrimination claim, D.C. Code § 2-1411.02, specifically reserves complaints of unlawful discrimination to the Office of Human Rights ("OHR"). Per this statute, the purpose of the OHR is to "secure an end to unlawful discrimination in employment…for any reason other than that of individual merit." Complaints classified as unlawful discrimination are described in the District of Columbia Human Rights Act.[9] Additionally, District Personnel Manual § 1631.1(q) reserves allegations of unlawful discrimination to the Office of Human Rights. However, it should be noted that the Court in *El-Amin v. District of Columbia Dept. of Public Works,*[10] stated that OEA may have jurisdiction over an unlawful discrimination complaint if the employee is "contending that he was targeted for whistle blowing activities outside the scope of the equal opportunity laws, or that his complaint of a retaliatory RIF is different for jurisdictional purposes from an independent complaint of unlawful discrimination or retaliation…"[11] In the instant case, I find that Employee's claim as described in his submissions to this Office do not allege any whistle blowing activities as defined under the Whistleblower Protection Act nor does it appear to be retaliatory in nature. Moreover, Employee stated that he has filed a discrimination claim against Agency with OHR, and the matter is currently pending with that office. Accordingly, I find that Employee's discrimination claim falls outside the scope of OEA's jurisdiction.

---

[9] D.C. Code §§ 1-2501 *et seq.*
[10] 730 A.2d 164 (May 27, 1999).
[11] *El-Amin*; *citing Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 666 (D.C. 1994).

Grievances

Additionally, Employee asserts that he was demoted in duties. He explains that his duties were changed from an investigative nature to that of a data input clerical position for which he was ill-suited. He was given the job title of Program Analyst; however, there was no official reclassification by DCHR. Complaints of this nature are grievances, and do not fall within the purview of OEA's scope of review. Further, it is an established matter of public law that as of October 21, 1998, pursuant to the Omnibus Personnel Reform Amendment Act of 1998 (OPRAA), D.C. Law 12-124, OEA no longer has jurisdiction over grievance appeals. Employee's other ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear Employee's other claims.

2) ***Whether the penalty of removal is within the range allowed by law, rules, or regulations.***

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of* Columbia, 502 A.2d 1006 (D.C. 1985).[12] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalties; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by agency. In the instant case, I find that Agency has met its burden of proof for the charge of "[c]onduct [p]rejudicial to the District Government: Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information" and as such, Agency can rely on this charge in disciplining Employee.

In reviewing Agency's decision to terminate Employee, OEA may look to the Table of Illustrative Actions. DCMR § 1607.2 outlines the Penalties for various causes of adverse actions taken against District government employees. The penalty for "[c]onduct [p]rejudicial to the District Government: Unauthorized disclosure or use of (or failure to safeguard) information protected by statute or regulation or other official, sensitive or confidential information" is found in DCMR §1607.2(a)(10). The penalty for a first offense under DCMR §1607.2(a)(10) is reprimand to removal. The record shows that this was the first time Employee violated §1607.2(a)(10). Employee admits to unintentionally faxing over the confidential complaint made by a prison inmate to the prison facility without the inmate's consent. Employee's conduct constitutes an unauthorized disclosure or use of (or failure to safeguard) information protected by

---

[12] *See also Anthony Payne v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0054-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections,* OEA Matter No. 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009); *Ernest Taylor v. D.C. Emergency Medical Services,* OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections,* OEA Matter No. 1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

statute or regulation or other official, sensitive or confidential information and it is consistent with the language of DCMR §1607.2(a)(10).

Employee argued that Agency did not engage in progressive disciple. He noted that instead of termination, a more appropriate course of action against him should have been an oral reprimand, written reprimand, suspension without pay, or being placed on a Performance Improvement Plan. DCMR § 1601.5 provides the steps that are typically included in a progressive discipline system. These include verbal counseling; reprimand; corrective action; and adverse action. However; DCMR § 1601.6 further provides as follows: "[s]trict application of the progressive steps in §§ 1601.5 and 1610 may not be appropriate in every situation. Therefore, management retains the right to evaluate each situation on its own merits and may skip any or all of the progressive steps. However, deviation from the progressive disciplinary system is only appropriate when consistent with §§ 1606 and 1607."[13] Moreover, as provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.[14] When an Agency's charge is upheld, this Office has held that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors, and is clearly not an error of judgment. In the instant matter, while Agency argues that it engaged in progressive discipline as it had engaged in a series of verbal and written reprimands and counseling to address Employee's performance deficiencies, based on DCMR § 1601.6, I find that it is within its right to skip the progressive discipline steps altogether.

<u>Penalty Based on Consideration of Relevant Factors</u>

An Agency's decision will not be reversed unless it failed to consider relevant factors or the imposed penalty constitutes an abuse of discretion.[15] Employee argues that Agency did not candidly and accurately consider the Douglas Factors in instituting the adverse action against him. Employee explains that the Douglas Factors should have been classified as mitigating or neutral, rather than aggravating. Agency on the other hand maintained that it considered the Douglas Factors. It considered the mitigating and aggravating circumstances and determined that Employee's egregious misconduct warranted removal under the relevant Douglas Factors.

The evidence does not establish that the penalty of removal constituted an abuse of discretion. Agency presented evidence that it considered relevant factors as outlined in *Douglas*

---

[13] DCMR §§ 1606 and 1607 include establishing appropriate actions (Douglas factors) and the Table of Illustrative Actions, respectively.

[14] *Love* also provided that "[OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] 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 [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness." citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981).

[15] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C.Reg. 352 (1985).

v. Veterans Administration, 5 M.S.P.R. 313 (1981), as well as DCMR § 1606 in reaching the decision to remove Employee.[16] In this case, the penalty for a first time offense for this cause of action ranges from reprimand to removal. In *Douglas*, the court held that "certain misconduct may warrant removal in the first instance." In reaching the decision to remove Employee, Agency gave credence to the nature and seriousness of the offense; Employee's type of employment; notoriety of the offense on the reputation of the Agency; and mitigating circumstances. In accordance with DPM §1619.1(6)(a), I conclude that Agency had sufficient cause to remove Employee. Agency has properly exercised its managerial discretion and its chosen penalty of removal is reasonable. Accordingly, I further conclude that Agency's action should be upheld.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of removing Employee is **UPHELD.**

FOR THE OFFICE:

MONICA DOHNJI, Esq.
Senior Administrative Judge

---

[16] The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and it's 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.