

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
GERALDINE GREEN-REED,)	
Employee)	OEA Matter No. 2401-0109-05
)	
v.)	Date of Issuance: October 3, 2006
)	
DISTRICT OF COLUMBIA)	
PUBLIC SCHOOLS,)	
Agency)	ERIC T. ROBINSON, Esq.
)	Administrative Judge
)	

Lathal Ponder, Esq., Employee Representative
 Harriet Segar, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 5, 2005, Geraldine Green-Reed (hereinafter “the Employee”) filed a Petition for Appeal with the Office of Employee Appeals (hereinafter “the Office” or “OEA”) contesting the District of Columbia Public Schools’ (hereinafter “the Agency” or “DCPS”) action of abolishing her position through a Reduction in Force (hereinafter “RIF”). The Employee’s last position of record with the Agency prior to the RIF was an ET-10 Instructional Coordinator¹. I was assigned this matter on October 24, 2005. I held a Prehearing Conference on December 15, 2005, as well as numerous Status Conferences². During the course of these proceedings, I decided that an Evidentiary Hearing in this matter was required. Consequently, a Hearing was held on May 16 and 31, 2006. The record is now closed.

¹ Throughout the Employee’s appeal process, both parties have described Employee’s last position of record interchangeably as either “Instructional Facilitator” or “Instructional Coordinator”. After a thorough review of the record in this matter, I find that both designations are one and the same and pertain solely to the Employee’s last position of record with the Agency.

² One of the prevalent reasons surrounding the holding of these numerous conferences was the Agency’s inability to find and produce a copy of the Employee’s RIF Notice. Ultimately, the Agency did locate a copy of the RIF notice, however, the Employee disputes the authenticity of this document.

JURISDICTION

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

ISSUE

Whether Agency's action of separating the Employee pursuant to a RIF was done in accordance with applicable law, rule, or regulation.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

SUMMARY OF THE TESTIMONY

1. Dr. James H. Wilson (Tr. 15 – 105 & 148 – 155).

Dr. James H. Wilson testified in relevant part that: Since August 18, 2003, he has been the principal of Anacostia Senior High School. This position represents his first and only position within the Agency. Prior to his working for DCPS, Dr. Wilson was employed as a principal in three (3) other senior high schools in and around the Washington Metropolitan Region. In all, Dr. Wilson has been continually employed as a principal for approximately 22 years.

Dr. Wilson hired the Employee in or about November or December, 2005. The Employee was hired to perform the duties and functions of an Instructional Facilitator. Dr. Wilson understood the job responsibilities of an Instructional Facilitator to include the following: "organizing the testing or the assessment components... working with the teachers to make sure that students are prepared to take that particular test, the assessment... interpreting the data including test scores [and] the historical data." Tr. at 19 – 20.

Dr. Wilson explained that in making the recommendation on which positions should be RIF'd he had to take into account the teacher to pupil ratio. In explaining this ratio, Dr. Wilson went on to state that:

There are criteria, and actually I'm going to call it law, that is negotiated and agreed upon with the union representatives and the District of Columbia Public Schools. In scheduling students and classes we have a certain limit that we can't go over. I'll just say if it's 20 to 1, for instance, we cannot go over 20 students...

We look at the total enrollment and the total number of classes that we would need for each discipline, meaning English, Math, Science, and the especially the core curricular areas. We look at that and then we determine how [many] teachers we need. First of all, we determine how [many] sections we would need. Then from that we would determine how many teachers we would need... That is the formula...

Well, we naturally are required to assign students to the core areas. That means the English, the Math, the Science, and the Social students because these are the required courses, and in some instances physical education or in other instances an art class or something of that nature... We are required to assign students to those classes...

Tr. at 28 – 29.

Dr. Wilson went on to explain that one reason why he recommended the Employee's position be RIF'd was that it would have little to no effect on the teacher to pupil ratio that he was required to maintain as part of a properly functioning high school. Furthermore, Dr. Wilson testified that after the Employee was RIF'd, he delegated most of the Employee's job responsibilities to several other employees. To date, Dr. Wilson has not hired another person to fill the Employee's last position of record.

Agency's Exhibit Number 2 was admitted into evidence through the testimony of Dr. Wilson. It is a memorandum dated April 23, 2004, sent from the Divisional Assistant Superintendents to all principals working for Agency. This exhibit directed Dr. Wilson (among others) to prepare for the then forthcoming RIF and to start preparing a list of recommended positions to be RIF'd.

Agency Exhibit Number 3 was admitted into evidence through the testimony of Dr. Wilson. The title of this document is a Position Identification Tracking Form for Anacostia Senior High School. Dr. Wilson testified that when he received this form it was blank except in the section where it states a total for an amount of \$361,484.00. Dr. Wilson was instructed to fill out the form with the

requisite number of salaried positions (at Anacostia Senior High School) in order to meet or exceed a salary reduction of \$361,484.00. This form was used to list, *inter alia*, the positions recommended for abolishment in order to meet or exceed the aforementioned salary reduction amount. Further, this form lists the Employee's last position of record (Instructional Coordinator) for abolishment and it lists the Employee as the sole person encumbering this position.

2. *Valarie Sheppard (Tr. 162 – 187).*

Valarie Sheppard testified in relevant part that: she is the Director of Staffing and Employment Services with the Agency. She held this same position during the instant RIF. She explained that her office "is responsible for all actions related to employees from the time that they are selected for a position until they leave the system, in whichever regard they leave the system, for instance if they separate or as a result of a [RIF]." Tr. at 162 - 163.

Ms. Sheppard explained that she was directly involved with the instant RIF. She went on to state that "[o]ur office was responsible for working with the principals and the divisional assistant superintendents ... [as well as] gathering the information that the school needed as far as which individuals and which positions were available at that school that would be up for discussion relative to the reduction." Tr. at 163.

As it relates to the issuance of the specific notices of RIF to affected employees, Ms. Sheppard explained that it was a process whereby her office:

[C]reated packages with sealed envelopes for each individual who was going to receive a [RIF] notice and a cover letter and a sign-in sheet for each school. So a package was sent to each school that had the letters, sealed letters, a draft copy of just the basic format of the letter, and then that list of individuals who were to receive it. That package was sent to each school for the principal to hand to the employee and they would sign for the document. The sign-in sheet would then be forwarded back to the Office of Human Resources to the staffing division with any letter they could not give to an employee because that individual was not there. Any notices that were returned to us would then be mailed out to the individual.

Tr. at 171.

Agency Exhibit Number 6 was introduced into evidence through the testimony of Ms. Sheppard. It is an affidavit Ms. Sheppard created in relation to the instant matter. It briefly explains what processes she undertook in order to carry out the instant RIF. It states in pertinent part that:

[Ms. Sheppard] was involved in the Agency-wide abolishment

which occurred in June 2004.

The Office of Human Resources was responsible for a segment of the implementation of the abolishment procedures. The Divisional Assistant Superintendents informed each school of the requirement to reduce the number of positions to comport with the budgetary and personnel limitations that were imposed on each school.

The Principal was instructed to complete a memorandum which tracked the positions that were selected for abolishment and to return it to the Divisional Assistant Superintendent and to me, Valarie Sheppard.

Upon receipt, my office created a data base from all of the schools and all the information relevant to each employee in the personnel data base...

Attached is the data base for Anacostia Senior High School. The last field on the attached data base relates to whether that position was abolished. The attached data base was created in May 2004. It was reprinted on 2/13/06 to respond to the instant matter.

The school site principal is not responsible for issuing specific notice of abolishment...

The position of Instructional Coordinator was subject to abolishment. Since this was a single person competitive level a CLDF was not used. A CLDF would only be used to compare employees in the same competitive level. Nevertheless, a principal would not be responsible for issuing or sending a specific notice [of RIF].

Accordingly, consistent with the abolishment procedures [the Office of Human Resources] sent a specific notice to the address of record for each employee noted on the data base that was subject to abolishment.

Thereafter, the Division of Staffing and Employment Services sent a copy of the specific notice to the Personnel File room which is responsible for inserting the documents in an employees official personnel file.

The placement of the specific notice of abolishment in an official personnel folder is separate from the procedure of the Division of Staffing and Employment services sending specific notices to each employee who was subject to abolishment.

In the instant case, the Division of Staffing did send to the employee Ms. Geraldine Green-Reed a specific notice [of RIF] on the stated date on the document.

Agency Exhibit Number 7 was admitted into evidence through the testimony of Ms. Sheppard. It is a two page RIF notice addressed to the Employee with a courtesy copy being sent to the "Personnel File". It is signed by Karen R. Jackson, Chief Human Resources Officer. Ms. Sheppard testified that as part of the instant RIF she sent out RIF notices to all affected employees whose positions were scheduled to be abolished, on the date stated in the RIF notice. She went on to state that the record keeping of Agency's copy of the RIF notice is something that is done by a separate department which she has no direct responsibility over. Within the Agency, the process of document retention of a copy of a RIF notice is a separate and distinct Agency function from the generation and mailing of that same document to an affected employee. She went on to testify that she sent a RIF notice to the Employee. However, during cross examination Ms. Sheppard stated that the instant RIF included approximately 500 Agency employees and she does not remember sending a RIF notice to any specific individual, including the Employee.

Ms. Sheppard testified about Employee's Exhibit Number 2 which is a Personnel Action Form for the Employee dated June 18, 2004. In box number 10 of this document it states that the Nature of Action/ Code is "Termination." While in the Remarks section it states that the "Employee has been separated due to abolishment effective June 30, 2004." Ms. Sheppard explains that the discrepancy between the two entries is due to the limited number of codes that can be input into the computer system that is used to generate this document. "Termination" was the most applicable descriptive code (for box number 10) for the instant action that was available to the Agency when this document was generated. She further stated that according to this document, the Employee's was separated from service due to a RIF and not any sort of adverse action.

3. *The Employee (Tr. 105 – 155 & 187 – 189).*

The Employee testified in relevant part that: she has worked as a teacher since 1979. She started working for the Agency in 1984 as a substitute teacher. On December 15, 2003, the Employee went to work at Anacostia Senior High School initially as a Teacher in Health and Physical Education, however, when she reported for duty she found out that said position had been abolished. The Employee immediately inquired about and ultimately filled the staff position of "Instructional Facilitator" (*see note 1 supra*). This position did not have a codified job description before the Employee encumbered the position. Dr. Wilson instructed the Employee to write her own job description for this position. According to the Employee, her job duties included "assess[ing] the data in regards to testing... I would handle all of the testing information for the students, also assess the information of data for parents when they came in for their student's testing information. I would also work with the teachers making sure that the teachers had stand space classrooms and making sure that the teachers were also teaching in their lesson plan standards, base lessons." Tr. at 110.

According to the Employee, at the start of her tenure at Anacostia Senior High School the relationship between herself and Dr. Wilson was "very good." However, the relationship soured in or about March or April 2004, when the Employee got into an argument with a fellow employee. The circumstances surrounding the argument are irrelevant to the instant matter. Suffice to say, after the argument, the Employee felt that Dr. Wilson's attitude and demeanor toward her became unfriendly. To substantiate her claim of a soured relationship, the Employee testified that after the argument, she was no longer allowed to participate in daily staff meetings, when prior to the argument she actively participated in these same meetings.

According to the Employee, she first learned of the instant RIF in or about April 2004 when Dr. Wilson mentioned it was forthcoming. She next heard about the RIF when a telephone message left at her residence on May 28, 2004 indicated that her position was being RIF'd effective June 30, 2004. The Employee admitted that she was not present at work on May 28, 2004. The Employee testified that she did not receive a written notice of RIF until she instituted her appeal process through this Office.

FINDING OF FACTS, ANALYSIS, AND CONCLUSIONS

The following findings of facts, analysis, and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

Of particular guidance in the instant matter is D.C. Official Code § 1-624.08 which states in pertinent part that:

- (d) An employee affected by the abolishment of a position pursuant to this section who, but for this section would be entitled to compete for retention, shall be entitled to one round of lateral competition... which shall be limited to positions in the employee's competitive level.
- (e) Each employee selected for separation pursuant to this section shall be given written notice of at least 30 days before the effective date of his or her separation.
- (f) Neither the establishment of a competitive area smaller than an agency, nor the determination that a specific position is to be abolished, nor separation pursuant to this section shall be subject to review except that:
 - (1) An employee may file a complaint contesting a determination or a separation pursuant to subchapter XV of this chapter or § 2-1403.03; and

- (2) An employee may file with the Office of Employee Appeals an appeal contesting that the separation procedures of subsections (d) and (e) were not properly applied.

According to the preceding statute, a District of Columbia government employee whose position was abolished pursuant to a RIF may only contest before this Office:

1. That she did not receive written notice thirty (30) days prior to the effective date of her separation from service; and/or
2. That she was not afforded one round of lateral competition within her competitive level³.

The Employee has alleged that she did not receive her written RIF notice as was required; that the Agency did not allow for a lateral competition with other similarly situated employees; and that her removal was done for personal reasons⁴ rather than the pure budgetary reasons contemplated by D.C. Official Code § 1-624.08. The Employee contends that the Agency's action in all counts is contrary to the letter and intent of the preceding statute and consequently should merit a full reversal of Agency's action.

The Agency counters with the assertions that the Employee did in fact receive her RIF notice and that the Employee was in a single person competitive level when her position was RIF'd thereby negating any potential right to lateral competition with other similarly situated employees. The Agency also denies that any personal animus prompted the Employee's removal.

As it relates to the whether or not the Agency sent the Employee's written RIF notice at least 30 days prior to its effective date, both Valerie Sheppard and the Employee testified credibly on this issue. I am then left to consider the fact that the Agency took several months to produce its copy of the RIF notice as part of the documents it presented during the Employee's appeal process. Typically, in a matter such as this, the Employee's RIF notice is usually one of the documents that are initially submitted by both parties. Prior to the Prehearing conference, neither party was able to produce a copy of the Employee's written RIF notice. The Employee explained that she never received it which is the reason why she did not submit one. Initially, the Agency also failed to produce a copy of the RIF notice, citing record keeping problems. However, the Agency eventually submitted a "RIF notice" to this Office several months after the initial Prehearing conference. I am mindful of the fact that Ms. Sheppard admitted, during cross examination, that she was unable to recall, specifically, whether or not she had sent a RIF notice to the Employee (or anyone else for that matter). While the Employee testified, credibly, that prior to her appeal process with this Office, she did not receive her RIF notice. Finally, I must take into consideration the manner in which the Agency presented

⁴ The Employee's final point of contention – that personal animus prompted her unlawful removal (via RIF) is without merit. As was stated *supra*, the Employee was the only ET-10 Instructional Coordinator at Anacostia Senior High School when the instant RIF occurred. Furthermore, Dr. Wilson testified credibly that the Employee's position was RIF'd because it would have no effect on the teacher to pupil ratio that he had to maintain as part of a properly functioning school.

its copy of the Employee's RIF notice to this Office. The long delay buttresses Employee's argument that the RIF notice was not sent within the required 30 day timeframe. Given the preceding facts and circumstances, I find that the Agency was unable to meet its burden of proof as it relates to whether or not the Employee was given her written RIF notice in a timely manner. Consequently, I find that the Employee did not receive her written RIF Notice within the thirty (30) day time frame.

The Employee contends that she was improperly placed in a single person competitive level when the instant RIF occurred. I disagree. Agency Exhibit Number 3 clearly states that the Employee was the only person to hold the position of Instructional Coordinator at Anacostia Senior High School. Furthermore, the Employees' position was so unique that according to the Employee's testimony she created her own job description when she initially took this position. Lastly, the Employee was the only ET-10 at Anacostia Senior High School when the instant RIF occurred.

In an appeal before this Office I cannot consider the one round of lateral competition issue if I determine that the Employee was properly placed in a single person competitive level. Based on the foregoing, I find that the Employee was properly placed in a single person competitive level when the instant RIF occurred; therefore "the statutory provision affording [her] one round of lateral competition [is] inapplicable. *Cabaniss v. Department of Consumer and Regulatory Affairs*, OEA Matter No. 2401-0156-99 (January 30, 2003), ___ D.C. Reg. ___ (). Based on the foregoing, I must uphold Agency's action of abolishing the Employee's position through a RIF.

ORDER

It is hereby ORDERED that:

1. Agency reimburse the Employee thirty (30) days pay and benefits commensurate with her last position of record; and
2. Agency's action of abolishing the Employee's position as an Instructional Coordinator through a RIF is UPHeld; and
3. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Administrative Judge

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:)	
)	
SHENEEN MOORE-AUSTIN)	OEA Matter No. 1601-0072-06
Employee)	
)	Date of Issuance: December 19, 2006
v.)	
)	Eric T. Robinson, Esq.
)	Administrative Judge
D.C. PUBLIC SCHOOLS)	
(DIVISION OF)	
TRANSPORTATION))	
Agency)	

Sheneen Moore-Austin, Employee *Pro-Se*
Brian Hudson, Esq., and Kenneth Slaughter, Esq., Agency Representatives

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On June 21, 2006, Sheneen Moore-Austin, (hereinafter “the Employee”) filed a Petition for Appeal with Office of Employee Appeals (hereinafter “OEA” or “the Office”) contesting the District of Columbia Public Schools – Division of Transportation’s (hereinafter “the Agency”) adverse action of terminating her employment. I was assigned this matter in August 3, 2006. A Prehearing Conference was held on September 7, 2006. During this Conference, the Agency reiterated its contention that the Employee failed to exhaust the Agency’s “grievance” process before coming to the OEA. Therefore, the Employee should be precluded from having her appeal adjudicated before this Office. The Agency also contends that assuming *arguendo* that this Office possesses jurisdiction over this matter, Agency’s action in this instance was legally adequate and should be upheld.

The Employee, while agreeing with the Agency’s rendition of certain salient facts, nonetheless contends that she did exhaust Agency’s “grievance” process before coming to the OEA and that this Office has proper jurisdiction over this matter¹. She

¹ I determined that while the Agency did not properly apprise the Employee of the procedure involved with contesting Agency’s removal action at the Agency level, such error, under the circumstances, was *de minimis*. Consequently, I issued an Order dated October 23, 2006, which required, *inter alia*, the Agency to re-evaluate the Employee’s grievance. Based on that Order and the findings contained therein, I hereby deny Agency’s Motion to Dismiss on the grounds that the Employee did not avail herself of the Agency

further argued that Agency's adverse action was ultimately in error and should be reversed.

Because the relevant facts of this matter were not in dispute, I decided that an Evidentiary Hearing was unnecessary. I Ordered the parties to submit final legal briefs in this matter. The parties have each provided their respective final legal briefs. The record is now closed.

ISSUE

Whether Agency's adverse action of separating the Employee from service for cause was done in accordance with applicable law, rule, or regulation.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

JURISDICTION

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

STATEMENT OF THE CHARGE

According to a letter dated June 8, 2006 (hereinafter "the Termination Letter") addressed to the Employee and signed by David Gilmore, Transportation Administrator, the Employee was charged with the following:

1. Unsatisfactory Work Performance (the sharing of confidential information with a non-DOT/DCPS employee)

internal grievance process before filing with the OEA.

A review of your e-mail records revealed that you have, on several occasions, forwarded your time and attendance spreadsheets with Mr. Dale Matheson., former [Agency] employee. As you are aware, time and attendance information is confidential information and should never be shared with unauthorized individuals.

This type of behavior cannot be tolerated. Therefore, you are being terminated.

POSITION OF THE PARTIES

Prior to her termination, the Employee worked for the Agency as a timekeeper. The bulk of her job-related duties including inputting time and attendance information for other Agency employees so that their paychecks would reflect an accurate calculation of hours worked. The information which was entrusted to the Employee was of a sensitive nature which included, but was not limited to, the names, addresses, and social security numbers of various employees of the Agency. The Agency alleges that the Employee shared the confidential information of several Agency employees with Mr. Dale Matheson (hereinafter "DM"). At the time this information was shared, DM was neither an employee nor an independent contractor of the Agency. The Agency further contends that the sharing of this information was in direct violation of Agency policy², which the Employee either knew of or should have been aware of.

To further buttress its removal action, the Agency also notes that the Employee has been reprimanded on a number of occasions prior to the instant matter. This, according to the Agency, provides further legal justification for its adverse action of removal.

The Employee readily admits that she shared the aforementioned confidential information with DM. In a nutshell, she explains that she had a problem with her computer system that would not allow her to complete her time and attendance reporting duties in a timely manner. Furthermore, the Employee worked in an office environment where she did not feel comfortable reporting her computer problems to her supervisor. Consequently, she undertook measures under her own accord to remedy the problem, specifically, enlisting the aid of DM to fix the computer problem. According to the documents of record, DM had previously worked for the Agency as a full-time employee. However, at the time the Employee enlisted DM's aid, she knew that he was not currently working for the Agency in any capacity. Also, the Employee denies that the Agency had a policy regarding the sharing of confidential information. The Employee contends that

² According the Agency, it distributed to the Employee, and her former co-workers, a Network and Internet Policy which in relevant part states:

Communication of Proprietary Data. Unless expressly authorized to do so, User is prohibited from sending, transmitting, or otherwise distributing proprietary information or other confidential information belonging to [the Agency].

she was unaware that she was violating Agency policy when she shared the aforementioned confidential information with DM.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

The proceeding findings of fact, analysis and conclusions are based on the documents of record and the respective position of the parties as stated during the Prehearing conference.

The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. *See Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), __ D.C. Reg. __ (); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), __ D.C. Reg. __ (). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *See Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

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. *See Stokes, supra; Hutchinson, supra; Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ (); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ ().

In the instant matter, I find that the Employee violated clear Agency policy (and common sense) when she shared the aforementioned confidential information with a non-employee of the Agency. In this era where the threat and consequences of identity theft are prevalent and dire, it is incumbent upon on all of those who are entrusted with confidential information to safeguard it with the utmost care. Here, the Employee failed to exercise that care when she shared the aforementioned confidential information with DM. Even if, as the Employee alleges, she was not aware of Agency policy as delineated in Note 1 *supra*, it still did not evidence good judgment on the part of the Employee to not report a computer problem to her supervisor that supposedly hindered her ability to complete her work assignment in a timely fashion. Nor did she evidence good judgment when she exacerbated the situation by sharing confidential information with DM, a former Agency employee. As such, I find that the Agency had cause to institute the removal action against the Employee.

According to the documents of record, this was not the first instance in which the Employee has been disciplined. In accordance with *Stokes* and its progeny, I further find that the Agency legitimately invoked and exercised its discretion in this matter when it removed the Employee from service. Neither the Employee's argument nor my own investigation into this matter reveal the sort of managerial indiscretion that would require

me to either reverse or modify Agency's action. Accordingly, I find that I must uphold Agency's action in the instant matter.

ORDER

It is hereby ORDERED that Agency's action of removing the Employee from service is UPHELD.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:
STANLEY JOHNSON,
Employee
v.
D.C. DEPARTMENT OF
CONSUMER AND
REGULATORY AFFAIRS,
Agency
OEA Matter No. 1601-0025-05
Date of Issuance: February 15, 2007
ERIC T. ROBINSON, Esq.
Administrative Judge

L. Sandra White, Esq., Employee Representative
Matthew Green, Jr., Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 4, 2005, Stanley Johnson (hereinafter "the Employee") filed a Petition for Appeal with the Office of Employee Appeals (hereinafter "the Office" or "OEA") contesting the District of Columbia Department of Consumer and Regulatory Affairs' (hereinafter "the Agency") adverse action of removing him from his position as a Housing Inspector, DS-1802-9. A prehearing conference as well as various status conferences were held for this matter. During the course of these proceedings, I decided that an Evidentiary Hearing was required. Consequently, a Hearing was held on March 2 and 8, 2006. The record is now closed.

ISSUE

Whether Agency's adverse action of separating the Employee from service for cause was done in accordance with applicable law, rule, or regulation.

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact

shall be by a preponderance of the evidence.
“Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

JURISDICTION

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

STATEMENT OF THE CHARGES

The Employee’s Notice of Final Decision: Proposed Removal dated January 31, 2005 states in relevant part that:

This is a notice of final decision regarding the proposal to remove you from your position as a Housing Inspector, DS-1802-9, [with the Agency]. This action is based on a charge of Conduct Unbecoming a District Government Employee...

The report and recommendation of the hearing officer were considered in this final decision. Your response to the advanced written notice has been reviewed carefully. It is not clear that you operated a vehicle on an expired permit or that you failed to report to your supervisor that your license was suspended. However, you were not able to refute the fact that you altered the expiration date on your driver’s license. On several occasions you provided false information to obtain temporary driver’s licenses and you provided false information on [your] D.C. Employment application and on your D.C. driver’s license. Based on the preponderance of the evidence, the proposed action shall be **sustained**...

SUMMARY OF THE TESTIMONY*1. Karen Meunier (Tr.1¹ at 15 – 128).*

Karen Meunier(hereinafter “*Meunier*”) testified in relevant part that: at all times relative to this matter she has been employed by the District of Columbia Office of the Inspector General (hereinafter “OIG”). As of the date of the Evidentiary Hearing in this matter, she was recently promoted to the position of Director of Investigations. During her investigation of the Employee, Meunier held the position of Criminal Investigator. It was in this capacity that she came to know the Employee.

As Meunier relates her understanding of this matter, she reacted to initial information received from the District of Columbia Metropolitan Police Department (hereinafter “MPD”) whereby an investigation was commenced (by both OIG and the MPD concurrently) because someone named Stanley Johnson attempted to register a “fraudulent” title with the District of Columbia Department of Motor Vehicles (hereinafter “DMV”). As part of the OIG investigation into the matter it was initially theorized that the Stanley Johnson who attempted to register the fraudulent title was possibly the Employee. OIG became involved with the investigation since this matter potentially implicated a District of Columbia government employee. As part of her preliminary investigation into the Employee’s background, it was discovered by Meunier that the Employee worked for the Agency as a Housing Inspector.

At some point Meunier conducted an initial interview with the Employee. Going into the interview it was discovered that the Employee had previously had his driver’s license suspended. However, by the date of this interview, the Employee had obtained a valid driver’s license. Meunier questioned the Employee as to whether he had driven a motor vehicle during the time his driving privileges were suspended. She testified that he had responded by stating “...that only on emergencies did he drive a vehicle and once in a while he would have to drive the district vehicle if there was nobody else to drive. Most of the time he would he would try to get other people to drive.” *Tr.1* at 20 – 21.

After she completed her initial interview with the Employee, Meunier interviewed a Bernard Ferguson (hereinafter “Ferguson”), who at the time of the interview was the Employee’s supervisor. According to Meunier, Ferguson indicated that the Employee was assigned a government vehicle in order to perform his assigned duties and that to his knowledge the Employee was operating a government vehicle during the time in which his driver’s license was expired. According to Meunier, the Employee’s driving privileges were suspended from June 27, 2000 through October 31, 2001.

Meunier further testified that as a continuing part of her investigation she investigated the Employee’s driver’s license record. She accomplished this by going to the DMV and retrieving the Employee’s driving record as maintained by the DMV. She discovered that “[the Employee] received several licenses... some of the licenses showed

¹ Tr.1 refers to the transcript generated for the first day of the Evidentiary Hearing in this matter held on March 2, 2006.

a different date of birth. Some of the licenses showed an address that he no longer lived at." *Tr.1* at 36. Also, according to the DMV records the Employee's birth date "appeared two different ways, September 11, 1955 and September 11, 1957." *Tr.1* at 36.

After uncovering this additional information, Meunier conducted another interview with the Employee. As part of his participation in this second interview Meunier asked the Employee to provide a copy of his birth certificate, which showed the Employee's birth date was September 11, 1957.² During this second interview she asked the Employee about his allegedly using multiple birth dates. According to Meunier the Employee gave two explanations: first, when he was younger, the Employee's mother was ill and he needed to obtain a driver's license before he would otherwise be legally allowed to do so in order that he could drive her around; the Employee's second explanation was that he had incurred "some fines and that he was trying to buy time so he was switching things over so he didn't have to pay the fines." *Tr.1* at 37.

During her investigation into the Employee, Meunier discovered that he had previously been convicted of a felony for which he was placed on either probation or parole. Meunier then noted that the Employee failed to disclose his felony conviction on his District of Columbia employment application.

While some of the acts the Employee allegedly committed could have been pursued criminally, according to Muenier, the United States Attorney General's Office for the District of Columbia declined to prosecute this matter. The investigation continues solely on its current administrative track.

Agency's Exhibit A was admitted into evidence and referenced throughout the testimony of Meunier. As was stated in Note 2 *supra*, Agency's Exhibit A, which is dated October 14, 2004, contained Meunier's research, findings, and recommendations regarding her investigation into the Employee's alleged improprieties. According to Agency's Exhibit A, Meunier investigated two issues:

Whether [the Employee] violated D.C. Code § 50-1403.01 and District ethics standards by operating a government vehicle while his driving privileges were suspended and misleading DCRA management as to his driver's license status. And;

Whether [the Employee] forged his D.C. driver's license and falsified information on official government documents in violation of D.C. Code §§ 22-3241 and 2405 and DPM § 1803.1(f).

² A copy of the Employee's birth certificate along with a multitude of other documents relating to Ms. Meunier's investigation into said matter were included in Agency's Exhibit A which was authored by Ms. Meunier and titled "Report of Investigation Into the Misconduct on the Part of a District of Columbia Housing Inspector Employed with the [Agency] OIG No. 2001-0039(S)." Exhibit A contains, *inter alia*, Ms. Meunier's ultimate findings in her investigation of the Employee. Exhibit A shall be discussed in more detail *infra*.

Agency's Exhibit A at 2.

Contained within Agency's Exhibit A are several exhibits that were used to justify Meunier's findings and recommendations therein. The aforementioned exhibits include: a partial copy of the Employee's driving record with the DMV evidencing that his driver's license was suspended from 6/27/00 through 10/31/01; an alleged copy of the Employee's altered driver's license (one of the copies has comments from a DMV official that buttress Agency's contention that the license, as presented, was altered); a copy of the Employee's driver's license as it appears within the DMV database; a copy of the Employee's birth certificate (which indicates that the Employee's birth date is September 11, 1957); driver's license applications for the Employee (from calendar years 1997, 1998, 2000, 2001, and 2002); and a copy of the Employee's employment application. Utilizing the information gathered through Muenier's investigation, the OIG (by and through Muenier) found that both issues as listed in Agency's Exhibit A were Substantiated and referred these findings and recommendations to the Agency. Based on Agency's Exhibit A, the Agency elected to pursue the instant adverse action against the Employee.

2. *Alfreda Barron (Tr.1 at 128 – 144).*

Alfreda Barron (hereinafter "Barron") testified in relevant part that: she filled out and typed the Employee's District of Columbia Employment Application. In doing so, she utilized information provided by the Employee, which he gave to her for the purpose of filling out the employment application with the information it requested. Barron was unaware of the Employee's criminal history at the time she filled out his employment application. This is why she marked certain items on the Employee's employment application as if he did not have a criminal conviction to report. The Employee's employment application appears in the record as both Employees' Exhibit No. 6 and as part of Agency's Exhibit A. After having filled out the employment application for the Employee, she presented it to him. She believes that he went directly to a job fair so that he could immediately submit it for a new job. Barron assumed that his efforts were successful because some time later, the Employee informed her that he was hired by the Agency. While Barron readily admitted that she filled out said employment application for the Employee, she did not sign it.

3. *Carlton Washington (Tr.1 at 144 – 168).*

Carlton Washington (hereinafter "Washington") testified in relevant part that: he and the Employee have worked together at the Agency for approximately 15-20 years. During a comparatively brief portion of their time working together, Washington was Employee's Acting Supervisor. In 2001 while serving in the capacity of Acting Supervisor, the Employee informed Washington that his driver's license was suspended and that he needed Washington to write a letter to the DMV so that he could obtain a restricted driver's license³. Mr. Washington complied by submitting said letter to the DMV via facsimile. A copy of the letter was forwarded to Henry House (hereinafter

³ For the sole purpose of performing his work related duties.

“House”) (Washington’s supervisor). According to Washington, House dealt with all follow-up in regards to the DMV approval of a restricted license for the Employee. Washington has no knowledge of the results of his action of sending the aforementioned letter to the DMV, nor of what mode(s) of transportation the Employee utilized for getting to and from his work assignments. Also, he has no knowledge of whether the Employee drove a District government vehicle while his driving privileges were suspended.

4. Frank Brown (Tr.1 at 171 – 178).

Frank Brown (hereinafter “Brown”) testified in relevant part that: he is employed by the Agency as a Neighborhood Stabilization Officer/Housing Inspector and that he has worked alongside the Employee since 1993. At one point, the Employee told Brown that his driver’s license was revoked. During this period of time, Brown would drive both himself and the Employee to their respective work assignments. At one point, the Agency provided bus passes and car allowances in order to meet the work-related transportation needs of its Housing Inspectors. However, starting in 1999 (approximately) the Agency started providing District government vehicles to its Housing Inspector’s. According to Brown, the policy of providing a car allowance was discontinued when the Agency started providing vehicles for work-related duties.

5. Michael Byrd (Tr.1 at 178 – 229).

Michael Byrd (hereinafter “Byrd”) testified in relevant part that: he is employed with the Agency as a Housing Inspector and has held this position for approximately 19 ½ years. He has served as the Union’s Shop Steward for approximately three and half years. He was the Union appointed representative for the Employee when the issues that provided the basis for the instant matter were tried as part of an Agency level grievance proceeding. As far as he is aware, the action that instigated the OAG and MPD investigation of the Employee was the attempt by someone (using the name Stanley Johnson) to register a stolen automobile with the DMV. According to his investigation into the matter, Byrd understood that the Employee was being investigated both criminally and administratively. While Byrd does not recall the Agency instigating an adverse action against another employee because of a background check done years later, he however does concede that the Agency has the authority to do so if it so chose. Also, according to Byrd, when asked to juxtapose the Employee’s employment application with the NCIC report that was relied upon by the OIG, the Employee seemingly answered falsely on his employment application when he answered “No” to box Number 42 on his application.

6. Jewell Little (Tr.1 at 229 – 260).

Jewell Little (hereinafter “Little”) testified in relevant part that: she currently works for the District of Columbia Office of Human Rights (hereinafter “OHR”) under the auspices of the Attorney General’s Office of the District of Columbia. Little’s current position with the OHR is Assistant Attorney General. At the time that she performed the

duties of hearing officer, Little was employed as an Investigator working at DS grade level 12 step 8.

Little was assigned by the General Counsel of the OHR, Alexis Taylor (hereinafter "Taylor"), to perform the administrative review of the Agency's proposed adverse action against the Employee. Little has no knowledge of how the matter came to be assigned to Taylor. Aside from the Employee, Lela Franklin (hereinafter "Franklin") was the only person from the Agency that Little interacted with as part of the administrative review. Although Little was unaware of Franklin's exact job title with the Agency, she did not believe that Franklin was the Agency's Director. Little reported her recommendations in this matter to Franklin.

7. Robert Garrett (Tr.2⁴ at 5 – 179).

Robert Garrett (hereinafter "Garrett") testified in relevant part that: he currently is employed by the Agency as the Branch Chief of the Neighborhood Stabilization Program in the Western sector. Garrett came to know the Employee through his previous position with the Agency as Acting Program Manager of the Neighborhood Stabilization Program.

On being a Housing Inspector, Garrett stated that all of the Housing Inspector's are issued a District vehicle to drive so that they can perform their work-related duties. During his tenure with the Agency, Garrett stated that:

[Housing Inspectors] use government vehicles to conduct their inspections. And further, since I've been in the program we haven't had any – we haven't any initiatives where individuals use their own cars and be reimbursed. Since I've been there we haven't given any reimbursements, to my knowledge, to any employee that uses their own vehicle. In fact, we discourage employees from using their own vehicle... for...insurance purposes..." Tr.2 at 14.

Garrett went on to describe the Agency's policy regarding the ethical standard that an employee must operate by:

[W]e've had what we call all staff meetings...it's a time where the entire staff for [the Agency] gets together and we go over different initiatives... [I]n other words, its training. And we've had all staff meeting where we've issued the little ethics booklets. We've done skits on ethics. And we've gotten into ethics.

⁴ Tr.2 refers to the transcript generated for the second day of the Evidentiary Hearing in this matter held on March 8, 2006.

As a housing inspector, part of their job and their duty is to go out and conduct inspection of the interior property and of the exterior property to determine if there are violations of the DCMR 14, which, in other words, is the Bible that the inspectors use to make sure that the tenants of the District of Columbia are not living in housing that we will consider substandard. They have to be living in safe and decent housing.

So part of their job is to inspect that. And when you talk about the ethics, ethics play a large part in what they do because they issue violation notices to the owners, the property owners of the residences that they inspect. And with these notices comes a price tag...

And we are depending on the inspectors, when they conduct these inspections, to be ethical in their approach to dealing with the landlord because, as a branch chief and also when I was a program manager, there have been times when inspectors have come to me and they've stated that they've been offered jobs, they've been offered money... for them to maybe alter their report.

That's where the ethics come into play. And we talk with the inspectors about being ethical in the performance [of] their duties, because you could be unethical and tenants and the citizens will be harmed by your behavior.

Tr.2 at 16 - 18.

According to Garrett, the Agency relied exclusively on the OIG's findings as provided in Agency's Exhibit A in order to justify the Employee's removal. The Agency did not conduct an independent investigation in order to corroborate the OIG findings in this matter. As was stated previously, according to the OIG report, the Employee falsified certain answers in his employment application regarding his criminal record; the Employee was also cited for altering the expiration dates of his driver's license; as well as providing false information in order to obtain a driver's license.

Of note, Garrett indicated during his testimony that the Employee was not singled out for removal. If it were found that *any* Agency employee had answered falsely, in the manner of the Employee, on his/her employment application, the Agency would effectuate a similar removal action against that person as well. *See generally*, Tr.2 at 26.

Garrett went on to describe the process the Agency undertook in deciding to initiate the instant adverse action against the Employee:

What we did is we reviewed the investigative report that was submitted to us. We discussed the training that not only [the

Employee] but all members of [the Agency] undergo in terms of ethics, in terms of the trustworthiness, that they have stated that they will uphold these different – their performance of their duties.

Because in the performance of their duties they could be susceptible to bribes... Those were the things that we took into consideration when we decided to take the action that we took. It was not anything that we took lightly or that was capricious in nature.

We weighed the evidence that was before us. We talked with the supervisor. We talked with the branch chief, which was Mr. Washington and myself and we conferred. And based upon what was in front of us, that is the action that we deemed necessary.

Tr.2 at 111 – 113.

Garrett went on to testify that the Agency had no proof that the Employee falsified Agency documents or accepted a bribe while performing his work-related duties.

According to Garrett, Franklin was the Deputy Director of Compliance and Enforcement for the Agency. The Agency Director delegated to Franklin the authority to initiate an administrative review of the Employee's actions. Pursuant to that authority, Franklin designated Little as the hearing officer in order that she may conduct the administrative review of the instant matter.

8. The Employee (Tr.2 at 181 – 340).

The Employee testified in relevant part that: prior to his removal he was employed by the Agency as a Housing Inspector and had held that position from 1992 until 2005. At some point in 2001, the MPD conducted an investigation into whether he attempted to have a stolen automobile registered with the DMV. The MPD ceased its investigation relative to the Employee when he provided handwriting samples that did not conform to the fraudulent signature used to attempt to register the aforementioned stolen automobile.

Some time later, Meunier conducted an interview with the Employee and his then legal counsel Reginald May. During this interview the Employee stated that he did not admit to fraudulently altering his driver's license. He categorically denies ever altering his driver's license or admitting to same as part of an interview conducted by the OIG.

The Employee enlisted the aid of Barron so that she could type his employment application which is reproduced in the record as part of Agency's Exhibit A. He admits to providing his resume so that Barron could fill out his employment application with the information the application requested. He admits to not reading over the employment

application thoroughly before signing it. If he had, he would have marked the sections inquiring about his criminal past differently. He further explains that his failure to mark the boxes appropriately was an unintentional oversight that happened because he was in a rush to turn in his employment application for a pending job fair.

FINDING OF FACTS, ANALYSIS AND CONCLUSION

One of the Employee's argument as to why the adverse action instituted by the Agency should be invalidated concerns the appointment of Little as the hearing officer. The Employee contends that the Little did not fulfill all of the requirements of a Hearing Officer as mandated by Chapter 16 of the District of Columbia Personnel Manual (hereinafter "DPM"), which provides in pertinent part as follows:

1612 Administrative Review of Removal Actions: General Discipline

1612.1 The personnel authority shall provide for an administrative review of a proposed removal action against an employee.

1612.2 The administrative review shall be conducted by a hearing officer, who shall meet the following criteria:

- (a) Be appointed by the agency head;
- (b) Be at grade levels DS-13 and above or equivalent;
- (c) Not be in the supervisory chain of command between the proposing official and the deciding official, nor subordinate to the proposing official;
- (d) Have no direct and personal knowledge (other than hearsay that does not affect impartiality) of the matters contained in the proposed removal action; and
- (e) Be an attorney, if practicable, or if required pursuant to § 1612.7.

1612.10 After conducting the administrative review, the hearing officer shall make a written report and recommendation to the deciding official, and shall provide a copy to the employee.

1612.11 For the purposes of §§ 1612.2 and 1612.7 of this section only, an "attorney" is an individual authorized to practice law in any jurisdiction of the United States.

The Employee contends that Little was not appointed by the Agency Director as

mandated by DPM § 1612.2 (a). Little testified that she was assigned this matter by Taylor, General Counsel of the OHR. Little also testified that she was in contact with and reported her findings to Franklin. Garrett testified that at the time this matter was being reviewed, Franklin was the Agency's Deputy Director of Compliance and Enforcement. Garrett further testified that the Agency Director delegated his authority to appoint a hearing officer to Franklin. During the course of these proceedings, I had the opportunity to hear and evaluate the testimony of both Garrett and Little and I have no plausible reason to disbelieve their testimony in this regard. Therefore, I find that relative to DPM § 1612.2 (a), Little was appointed, via Deputy Director Franklin who had a delegation of authority from the Agency Director, to perform the task of hearing officer in this matter.

The Employee also contends that Little was unqualified to be the hearing officer in this matter because at no time during the pendency of her administrative review was she working at a grade level DS 13 or above or equivalent as mandated by DPM § 1612.2 (b). The Employee is technically correct. Little testified that at the time she conducted the administrative review, she was working as an Investigator with the OHR at DS grade level 12 step 8. The DPM does not provide direction as to what the consequence shall be if the hearing officer that is appointed to perform an administrative review does not meet all of the mandates outlined in DPM § 1612.2. I have already found that the Agency complied with DPM § 1612.2 (a). Coupled with the fact that it is undisputed that Little was otherwise qualified to perform the duties as assigned in this matter, I find that, while it was an error for the Agency to utilize someone to be a hearing officer who was not at a grade level DS 13 or above or equivalent as mandated by DPM § 1612.2 (b), under the instant circumstances, this error was *de minimis*. Considering this finding, I cannot overturn Agency's action because of a *de minimis* procedural error on its part.

The Agency asserts that the Employee committed several acts that support its charge of Conduct Unbecoming a District Government Employee. Allegedly, the Employee provided false information in order to obtain multiple temporary driver's licenses and he altered the expiration date on his driver's license. The Employee denies these allegations in their entirety. The Agency also contends that the Employee failed to properly note his criminal history on his employment application. The Employee explains that this was an unintentional mistake and that his work history since then should justify his continued employment. To support its multiple contentions, the Agency relies almost exclusively on the investigative efforts of Meunier and the OIG as enunciated in Agency's Exhibit A. Each of these arguments shall be addressed *infra*.

Agency's Exhibit A, chronicles the relevant information gathered by the OIG as part of its investigation into the Employee. In it, Meunier reveals that when she interviewed the Employee regarding the status of his driving privileges, he allegedly gave altering accounts. There are two noticeable problems with the account of the Employee's interview as provided by the Agency's Exhibit A. First, the Employee's testimony as provided in this Exhibit was not sworn testimony. As such, its indicia of reliability is insufficient for me to render a finding favorable to the Agency under these circumstances.

The second problem with this account is that when the Employee was asked to

verify his recollection, while under oath, he denied ever making the alleged admissions to Meunier. The Employee admits that his driving privileges were suspended for a time. However, the Employee explains that he utilized various means to compensate for the temporary loss of his driving privileges, including, sharing rides with fellow employees (this account was supported by Brown who testified he and the Employee would ride together, with Brown driving, to their respective work assignments); and taking public transportation to his various work assignments. Furthermore, Washington buttressed Employee's account by testifying that the Employee came to him and reported that his driver's license was suspended and asked that he send a letter to the DMV so that he could be granted a driver's license for work related duties only. Washington complied and consequently sent a letter to the DMV on Employee's behalf. Under oath, the Employee denied ever driving a District government vehicle while his driving privileges were suspended. This is in stark contrast to the testimony given by Meunier who testified that the account as provided in Agency Exhibit A was accurate. I had the opportunity to observe the testimony of Meunier, Washington, Brown and the Employee. I observed their demeanor and poise while answering the questions posed to them relative to the instant matter. Considering this, I find that the Employee's account is more believable given that certain salient portions of the Employee's account of events were corroborated by Washington and Brown. Namely, that the Employee reported the loss of his driving privileges to his supervisor, attempted to get a driver's license for work related purposes only, and that when all else failed, he either rode with his co-workers to his work assignments or used public transportation.

The Agency alleges that the Employee altered the expiration date on his driver's license. The Agency relied on the OIG's investigative efforts into the matter. The crux of the Agency's evidence on this point is contained within attachment C⁵ of Agency's Exhibit A. Attachment C of Agency's Exhibit A contains a photocopy of the Employee's driver's license. The photocopy of the driver's license has an expiration date of 10/31/2001. According to the Agency's Exhibit A, Meunier confirmed that the expiration date on the Employee's license was altered by checking with Joan Saleh, an employee of the DMV. See Attachment C in Agency's Exhibit A. Meunier also provided a copy of the Employee's driving information as it is contained within the DMV database. The Employee contends that he did not alter the expiration date on his driver's license. The Employee has no knowledge of what happened with attachment C. The foremost problem with attachment C is that this document, among others in Agency's Exhibit A, are hearsay.

Regarding the admissibility of hearsay in an administrative proceeding, the District of Columbia Court of Appeals held in *Compton v. D.C. Board of Psychology*, 858 A.2d 470, 476 (D.C. 2004) "that duly admitted and reliable hearsay may constitute substantial evidence. See, e.g., *Coalition for the Homeless v. District of Columbia Dep't of Employment Services.*, 653 A.2d 374, 377-78 (D.C. 1995) ("Hearsay found to be reliable and credible may constitute substantial evidence . . ."); *Wisconsin Avenue Nursing Home v. District of Columbia Commission on Human Rights*, 527 A.2d 282, 288

⁵ Agency's Exhibit A contains several exhibits which are termed, "exhibits". In order to avoid confusion, I am using the term "attachment" as opposed to "exhibit".

(D.C. 1987) (explaining that reliable hearsay standing alone may constitute substantial evidence); *Simmons v. Police & Firefighters' Ret. & Relief Bd.*, 478 A.2d 1093, 1095 (D.C. 1984); *Jadallah v. District of Columbia Dep't of Employment Servs.*, 476 A.2d 671, 676 (D.C. 1984); see also *Richardson*, 402 U.S. at 402; *Hoska v. United States Dep't of the Army*, 219 U.S. App. D.C. 280, 287, 677 F.2d 131, 138 (1982). Thus, nothing in the hearsay nature of evidence inherently excludes it from the concept of "substantial" proof in administrative proceedings."

The Court of Appeals went on to explain that "just because hearsay may constitute substantial evidence does not mean that it will do so in every case. The circumstances under which hearsay rises to the level of substantiality are not ascertained by any definitive rule of law, but rather by a set of considerations applied to the particular facts of each case. See *Robinson v. Smith*, 683 A.2d 481, 488-89 (D.C. 1996) (citing *Washington Times v. District of Columbia Dep't of Employment Servs.*, 530 A.2d 1186, 1190 (D.C. 1997) (stating that even hearsay "that lacks indicia of reliability may be entitled to some weight")). The weight to be given to any piece of hearsay evidence is a function of its truthfulness, reasonableness, and credibility. See *Wisconsin Ave. Nursing Home*, 527 A.2d at 288 (quoting *Johnson v. United States*, 202 U.S. App. D.C. 187, 190-91, 628 F.2d 187, 190-91 (1980)). We have said that:

[A]mong the factors to consider in evaluating the reliability of hearsay evidence are whether the declarant is biased, whether the testimony is corroborated, whether the hearsay statement is contradicted by direct testimony, **whether the declarant is available to testify and be cross-examined, and whether the hearsay statements were signed or sworn.** *Id.*; see also *Gropp*, 606 A.2d at 1014 n.10." *Emphasis added.*

Compton v. D.C. Bd. of Psychology, 858 A.2d 470, 476-477 (D.C. 2004).

While attachment C would tend to be probative of the issue at hand, I find that it lacks the indicia of reliability necessary to adequately support the Agency's argument. Joan Saleh, allegedly made a statement (in her professional capacity as a representative of the DMV) concerning the authenticity of the information contained within attachments C, D, and E of Agency's Exhibit A. However, the Agency failed to produce her for sworn testimony in this matter, or to at least get an affidavit from Joan Saleh, which would ostensibly buttress the statement made by her in attachment C. As was stated previously by the Court of Appeals, one of the considerations I must make regarding the reliability of hearsay is whether the declarant (Joan Saleh) is available to testify. She was not. Further is the consideration of whether the statement was signed or sworn. While attachment C was signed it was not attested to. Considering the fact and circumstances as a whole, I find this to be inadequate for the purposes of making a finding of fact favorable to the Agency.

Consequently, as it relates to whether the Employee altered his driver's license, I find that the Agency did not meet its burden of proof relative to this issue. Therefore, I

find that the Employee did not alter his driver's license.

The Agency had also charged the Employee with operating a District government vehicle while his driving privileges were suspended and that he had failed to report same to the Agency. However, according to the recommendation of the hearing officer, these charges were not proven beyond a preponderance of the evidence standard. During the Evidentiary Hearing that I conducted, the Agency surreptitiously attempted to prove that the Employee did in fact commit these actions, among others. I find that the Agency did not meet its burden of proof relative to this issue. I also find that the Employee did not operate a District government vehicle while his driving privileges were suspended.

Lastly, the Agency argues that the Employee failed to disclose his criminal history on his employment application. To support this claim, the Agency makes specific reference to Agency's Exhibit A, which includes a copy of the Employee's employment application. Specifically, Agency Exhibit A at 6, states as follows:

On the SF-171 form under "Background Information," [the Employee] was asked, "During the **last 10 years** have you forfeited collateral, been convicted, been imprisoned, been on probation, or been on parole?" [The Employee] marked "No" for this question.

During the course of the investigation, [the Employee's] criminal record was checked through the National Crime Information Center (NCIC), and verified through the courts in the proper jurisdiction. [The Employee's] criminal record revealed that he was placed on probation for 1 year after being convicted of a crime in 1988, within the 10-year time frame outlined in the SF-171 application. *Emphasis in original.*

The Employee admits that the information contained in his employment application was not completely accurate. He explains that he procured the services of Barron to type out his employment application, however, the Employee failed to inform Barron about his criminal past. The Employee further explains that he was in a rush to get to a job fair and that he did not read over his employment application with care before signing it. He counters with the assertion that the mistake was not intentional, and that he was otherwise qualified for the position and with his many years of diligent work for the Agency, this aberration should be overlooked. I disagree. The Employee's employment application at § 42 states in relevant part that:

SIGNATURE, CERTIFICATION, AND RELEASE OF INFORMATION

YOU MUST SIGN THIS APPLICATION.

Read the following carefully before you sign.

- A false statement on any part of your application may be grounds for not hiring you, or for firing you after you begin

work. Also, you may be punished by fine or imprisonment...

- **I understand** that any information I give may be investigated as allowed by law or Presidential order.
- **I consent** to the release of information about my ability and fitness for Federal employment by employers, schools, law enforcement agencies and other individuals and organizations...
- **I certify** that to the best of my knowledge and belief, **all** of my statements are true correct, complete, and made in good faith.

Emphasis in Original.

In § 48 of the employment application, the Employee signs his employment application. Also in § 49 of same, he writes that the date he signed said application was 5/20/92. It is clear from the wording of the application that a false answer on the employment application by the Employee in the manner described *supra* would carry dire consequences. According to Agency's Exhibit A, the Employee had been on probation approximately four years before he signed the employment application. This is well within the ten years as referenced in § 42 of the employment application. The Employee claims that he failed to read over the application thoroughly before signing. Also, the application forewarned of the possible consequence of the Employee being removed from service, after being hired, if it was later found that the responses supplied therein were inaccurate.

The DPM § 1603.3 defines "cause" in relevant part as "any knowing or negligent⁶ material misrepresentation on an employment application or other document given to a government agency." The Agency has failed to establish by the preponderance of the evidence standard that the Employee *knowingly* misrepresented his criminal history on his employment application. However, the Employee failed to exercise the care of a reasonably prudent person when he failed to carefully review his employment applications for errors or omissions before signing and submitting it to the Agency for consideration. Consequently, I find that the Employee *negligently* misrepresented his criminal history on his employment application. Furthermore, I conclude that the Agency had adequate cause to substantiate its adverse action of removal.

The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), ___ D.C. Reg. ___ (); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), ___ D.C. Reg. ___ (). Therefore, when assessing the appropriateness of a penalty, this

⁶ Black's Law Dictionary (8th Edition, 2004) defines negligent in salient part as "a person's failure to exercise the degree of care that someone of ordinary prudence would have exercised in the same circumstance."

Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." *See Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

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. *See Stokes, supra; Hutchinson, supra; Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ (); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ (). I find that based on the preceding findings of facts and resulting conclusion thereof that the penalty of removal was within managerial discretion and otherwise within the range allowed by law.

ORDER

Based on the foregoing, it is ORDERED that Agency's action of removing the Employee from service is hereby UPHeld.

FOR THE OFFICE:

ERIC T. ROBINSON, Esq.
Administrative Judge

THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:
CAROLYN ROBINSON,
Employee
OFFICE OF UNIFIED
COMMUNICATIONS,
Agency

OEA Matter No. 1601-0117-05
OEA Matter No. 1601-0019-06
Date of Issuance: March 23, 2007
ERIC T. ROBINSON, Esq.
Administrative Judge

Carolyn Robinson, Employee Pro-Se
Andrea Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 4, 2005, Carolyn Robinson (hereinafter "the Employee") filed a Petition for Appeal with the Office of Employee Appeals (hereinafter "OEA" or "the Office") contesting the Office of Unified Communications' (hereinafter "the Agency") action of suspending her for 60 calendar days from her position of Fire Communications Operator. This adverse action formed the basis for OEA Matter Number 1601-0117-05. On December 28, 2005 the Employee filed another petition for appeal contesting Agency's subsequent action of removing her from service. This action formed the basis for OEA Matter Number 1601-0019-06. I was assigned both matters on March 16, 2006. A prehearing conference and various status conferences were held in the above captioned matters. Pursuant to the parties positions as stated during the various aforementioned conferences, I decided that the above-captioned matters should be consolidated pursuant to OEA Rule 612.1, 46 D.C. Reg. 9309 (1999). I also determined that an evidentiary hearing was ultimately necessary. Initially, the evidentiary hearing was scheduled for August 3, 2006. However, pursuant to my Order, the evidentiary hearing for both matters was ultimately held on November 2, 2006. Although the parties were not required to do so, they were afforded approximately 30 (thirty) days in which to submit written closing arguments. The time that I allotted for submitting said written closing arguments has since passed. Neither party elected to submit a written closing argument. The record is

now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUES

Whether Agency's adverse action of suspending the Employee for 60 (sixty) calendar days was done in accordance with applicable law, rule or regulation. And/or,

Whether Agency's adverse action of removing the Employee from service was done in accordance with applicable law, rule or regulation.

STATEMENT OF THE CHARGES

According to a letter dated June 22, 2005 regarding "Advanced Written Notice of Proposed Suspension of 10 days or More", the Agency states in pertinent that:

In accordance with Chapter 16 of the D.C. Personnel Manual (hereinafter "DPM"), this is advance notice of at least fifteen (15) calendar days of a proposal to suspend you without pay for 60 calendar days from your position of Fire Communications Operator, in the Office of Unified Communications. This proposed action is based on the charge of:

Rude and Discourteous Treatment to a Member of the Public Seeking Services or Information from the Government. (emphasis omitted).

Specifically, on March 25, 2005, you received a call for assistance from a constituent. During this call, the caller failed to identify the section of the city she was located in. After about four (4) attempts, you gave the caller examples of what a section of the city is. She replied with the correct section of the city and you responded "that's the section of the city ma ma." The caller then says "excuse the hell out of me" and you responded "excuse the hell out of you."

This instance constitutes a direct violation of [the Agency's] policies and procedures. Your failure to display courteous treatment to the caller has resulted in this proposal for suspension without pay.

According to a letter dated September 19, 2005 regarding "Advanced Written Notice of Proposed Removal", the Agency states in pertinent that:

In accordance with Chapter 16 of the [DPM], this is advance notice of at least fifteen (15) calendar days of a proposal to remove you from your position of Fire Communications Operator, in the Office of Unified Communications. This proposed action is based on the charge of:

Failure to Answer Call and Enter Call Data Into the System.
(*emphasis omitted*).

The details to support this action are stated below:

On July 16, 2005 at approximately 03:15, a call was transferred to the Fire Communications side of the [Agency's] Operations floor from the MPD side. After being investigated by Watch Commander Clark Higgs, it was determined that the call dropped into the Vesta terminal at Position C22. You were assigned to that position at the time of the call.

The findings of the investigation conclude the following:

Vesta display at position FD CT-22 on the Address Location Identification screen was reviewed and confirmed that [the Employee] was assigned to that position. [The Employee] failed to answer the call for service and failed to process or enter the request for assistance into the CAD.

Your failure to answer a call and failure to enter the call data into the CAD constitutes a direct violation of [Agency] policies and procedures and followed another incident (date of occurrence June 22, 2005) which prompted an investigation and 60 day suspension for rude and discourteous treatment of a member of the public.

A review of your personnel folder shows that you have had other infraction(s) within the three (3) years preceding the date of this proposal.

After carefully reviewing the investigation, event chronology and your past infraction(s) I have determined that this infraction warrants a proposal for termination.

SUMMARY OF THE TESTIMONY

1. Kenneth Mallory (hereinafter "KM") (Transcript at 11 – 53)

KM testified in relevant part that: he is the Agency's Operations Manager and has held this position since October 2004. Prior to October 2004, KM worked in the same position for the District of Columbia Fire Department (hereinafter "Fire Department"). KM has known the Employee since she was first employed by the Fire Department as a Fire Communications Operator. According to KM, the Employee's duties consisted of handling 911 emergency calls as they were received by the call center.

Agency's Exhibit No. 1 is Agency's position description for a Fire Communications Operator (hereinafter "FCO"). This six (6) page document outlines, *inter alia*, the duties and responsibilities of an incumbent of the position. This exhibit was first introduced through the testimony of KM and shall be discussed in more detail *infra*.

Agency's Exhibit No. 2 is an excerpt of the trainee lesson plan that an incumbent FCO had to learn and ultimately utilize in the performance of their work-related duties. This exhibit was first introduced through the testimony of KM. It states in salient portion that a trainee should:

1. *Be polite.* Treat every caller with respect and courtesy.
2. *Be calm and reassuring.* You need to calm the caller in order to get the information you need to make the dispatch decisions. Reassuring them that you want to help them can help you calm them and keep them calm.
3. *Be firm.* You need to maintain control of the call. The best way to deal with difficult callers is to handle them firmly. **Just**

be careful not to become impolite in the process. (*Emphasis added*).

4. *Be clear, concise and use accurate speech.* Don't confuse callers by using jargon or difficult terms. Try to speak in a clear voice (so the caller can hear every word). Try to keep your questions, comments, etc. short and to the point...

KM testified that the Employee had to undergo training in order for her to occupy her position of record with the Agency. KM also testified that a portion of the Employee's job training included Agency's Exhibit No. 2.

Agency's Exhibit No. 3 was admitted into evidence through the testimony of KM. This exhibit is a tape recording of a 911 emergency telephone call wherein the Employee allegedly used profanity at the person who made the 911 call. After listening to Agency's Exhibit No. 3, KM testified that that it was the Employee who had the exchange with the 911 caller seeking emergency services. KM also testified that the exchange between the caller and the Employee was inappropriate according to Agency guidelines. First, under no circumstances should an employee use profanity during a 911 emergency call, and that Employee's use of the word "hell" during the aforementioned 911 emergency call was in his opinion profanity. KM also provided testimony regarding the technique of "repetitive persistence." Regarding this technique, KM explained that:

...[C]all takers are trained to deal with people and extreme situations to people who call, and they're extremely calm about what's going on, and to treat them with respect and be courteous.

If there's a situation where you can't get certain information because a caller is not cooperative or whatever the case may be, then there's a term and a technique called "repetitive persistence," where you remain calm and continue to ask the same questions until you get the information you need.

But courtesy and respect was not paid in my opinion, to this caller. And the profanity that was used in response to the caller giving the section of the city was totally inappropriate.

Tr. at 18. It was KM's opinion that the Employee failed to use "repetitive persistence" as a means of getting the required information from the caller in an efficient and tactful manner. The result was an inappropriate exchange with a caller seeking emergency services.

As a result of this incident, it was recommended and ultimately decided by the Agency that appropriate sanction was a 60 (sixty) calendar day suspension¹.

¹ This incident formed the basis for OEA Matter No. 1601-0117-05.

KM explained the grounds for the Agency's proposed removal of the Employee thusly:

A call came to the position where [the Employee] was assigned. Calls are delivered via an automatic call distributor to a call taker who's next in line to receive it, based on how idle they have been. A call came to her position and dropped at her location, and she never answered the call. So the caller had to call back and get services from another call taker. Tr. at 21.

In substantiating the proposed removal of the Employee, the Agency relied on a report generated by the Employee's supervisor, Clark Higgs. The Agency also relied on a MagIC document. KM explained that a MagIC document is generated by the MagIC system and it "shows a person, where they're logged on, their identification number and name. And it will show that the call came to the position where they're assigned." Tr. at 22.

Agency's Exhibit No. 6 was admitted into evidence through the testimony of KM. It is a MagIC document for the Employee wherein it is alleged that the Employee was logged into position number 22 at the time the telephone call that gave rise to the Employee's removal was logged as received by the MagIC system.

KM describes the incident that precipitated the Employee's removal as follows:

[The Agency] didn't have... what's called a universal call taker, a person who can take police and fire or EMS calls. So the person who answered the call, who was in the primary safety answering point, which is the Metropolitan Police Department call taker. And even though we were combined, those call takers didn't have the ability to take Fire and EMS calls. So they would have to transfer a call to the next person who's available. The call was transferred, and the young lady notified her supervisor that the person she thought was supposed to pick the call up wasn't answering the call.

Alton Gadsen, who was her supervisor on duty, went to the fire side and notified the fire side that the call had been transferred over, and nobody answered the call. That's when Mr. Higgs went to investigate where the call went. It was still at [the Employee's] position.

ANI/ALI is the address location identifier and address number identifier. And the [MagIC] system is designed that when that information comes into your phone, it also dumps on the computer-aided dispatch system that we use to process a call for dispatch and send it to the dispatcher so an ambulance can be dispatched for service. That call was still on [the Employee's]

screen, and she was asleep at the position when Mr. Higgs walked over to her position, per his report.

Tr. at 23-24.

During cross examination, the Employee inquired about the possibility of a terminal malfunction, which is why the call was not properly received. KM responded by stating that he was not aware of any malfunction at the time of the incident and that there is an established procedure for reporting a problem with the system and that according to the Agency's records, at the time of the incident, there were no reports of a terminal malfunction at the Employee's work station. Furthermore, if there was a malfunction, the Agency would have moved the Employee to a properly functioning terminal for her shift.

KM further testified that in determining the appropriate penalty for the cause of action that led to the Employee's removal (OEA Matter No. 1601-0019-06), he considered the Employee's past disciplinary history within the preceding three years. KM noted that the Employee had been cited for a five calendar day suspension (*See*, Agency Exhibit No. 7); a 10 (ten) day suspension for being Absent Without Official Leave (hereinafter "AWOL") (*See*, Agency Exhibit No. 8); a 40 (forty) day suspension; and a 60 (sixty) day suspension (OEA Matter No. 1601-0117-05, which is being reviewed alongside the removal action in this decision). All of the aforementioned disciplinary actions imposed by the Agency had occurred within three years of the Employee's removal. KM determined that further discipline in the form of a suspension was not warranted given the Employee's checkered disciplinary history. Ultimately, KM decided that removal was the only appropriate adverse action.

2. *Laveda Williams (hereinafter "LW") (Transcript at 56 – 62)*

LW testified in relevant part that: she works for the Agency as a call taker in a similar position to the Employee. The main difference in their responsibilities, at the time of the incident, being that LW responded to calls that required police assistance whereas the Employee responded to calls that required fire or emergency medical services. On July 16, 2005, LW testified that her grandmother called 911 and complained that LW's grandfather was having a seizure. LW received the call because her family knew of her position with the Agency and wanted to alert her to the problem so that LW could make sure that emergency assistance would arrive in an expeditious manner. Initially, LW followed Agency protocol, which at the time of this incident required her to transfer the call to a fire and emergency call taker so that the call could be processed and assistance sent to her grandparent's home. LW testified that her grandmother had called 911 before and that there was no response when she was switched over to the fire and emergency portion of the Agency. According to LW, her grandmother was unsure if whether no one picked up the telephone call or if the person just hung up on her.

3. *Clark Higgs (hereinafter "CH") (Transcript at 63 – 72)*

CH testified in relevant part that: he has been employed for 21 (twenty one) years, first with the District of Columbia Fire Department and then with the Office of Unified Communications. Currently, CH occupies the position of Watch Commander.

During direct examination, CH testified as follows regarding the incident that preceded the Employee's removal from service:

Q: Did you investigate an incident regarding [Employee's] failure to answer a call on July 16, 2005?

A: Yes, I did.

Q: ... How did you investigate that incident?

A: Well I was informed by my assistant supervisor the [the Employee] had not put in a call. I came out I looked on her VESTA. I noticed that a call was still there. I listened to the tape of the incident, and did my report.

Q: And what did you determine from your investigation?

A: I determined that she failed to take a call that was dropped into her system, at her desk, her position...

Q:... Now you said you came out and you saw the call on the VESTA terminal. Does that mean you went to the position where [the Employee] was sitting?

A: Correct. I went to her position to observe what was happening at that position, and noticed that the call was still on the terminal. So I talked to her about it. She appeared to be asleep at the time.

But I listened to the call. And after listening to the call, I determined that the call in fact came to that position. It wasn't answered after her tape was played, which puts her in violation, neglect of duty.

Q: And you listened to her call there at her station?

A: At her station. That's the only place we can listen to it, basically.

Q: And what did you hear when you listened to the call?

A: I heard her tape come on². And after that, just some noises that appeared to me to be snoring, but -- that's it. No other answer at all.

Q: So it was clear to you that the call in fact went to [the Employee's] position?

A: Yes, it was clear to me. I heard the caller. I did hear the caller but no answer from that position or [the Employee] at all.

Tr. at 64 – 66.

Agency's Exhibit No. 11 is a tape recording of the telephone call wherein it is alleged that the Employee did not respond to a 911 caller seeking emergency assistance. It was admitted into evidence without objection. During the telephone call the Employee's recorded greeting is played but afterwards there is no further communication between the caller and the Employee. The caller continually asks for assistance with no verbal response outside of what *may* resemble snoring or heavy breathing.

4. Everett Lott (hereinafter "EL") (Transcript at 72 – 88)

EL testified in relevant part that: he has been employed by the Agency for approximately 25 months and that he currently occupies the position of Deputy Director and Chief of Staff for the Agency. EL was the deciding official that promulgated both the Employee's 60 calendar day suspension and removal from service.

In making the determination to remove the Employee from service, EL relied on the audio tapes wherein it was alleged that the Employee did not answer a 911 call and subsequently she failed to enter the call data into the computer system; the proposal by the administrative hearing officer; as well as the Employee's prior infractions over the previous three years.

Of note, EL had the following exchange with the Employee during cross examination:

Q: ... In regards to the profanity, what profanity was said in the tape?

A: It's been a while since I listened to the tape but I believe your response to the call taker was, "Excuse the hell out of me."

Q: That was my response.

A: I believe that - - was your response.

² When a call is routed to a 911 telephone operator, a recorded greeting, peculiar to the operator who will be handling the call, is played before the call is personally responded to by that operator.

Q: Was I repeating what the caller said or that was my response.

A: You were repeating - - excuse me. That was your response to the caller.

Tr. at 81.

EL further testified that Employee's actions that lead to her 60 day suspension as well as her removal were in direct contravention of the policies and procedures that the Agency temporarily inherited from the Police and Fire Department prior to it promulgating its own rules and regulations. EL testified that it was his understanding that all employees' of the Agency and its predecessors received a copy of the Agency's standard operating procedures, but he has no actual knowledge of whether the Employee ever received a copy.

5. The Employee (Transcript at 88)

The Employee testified in relevant part that: there existed several issues that would either explain or mitigate her actions. First there was the issue of securing the appearance of her witnesses. She did not notify her listed witnesses of the rescheduled date of the evidentiary hearing. She was under the impression that either the Agency Representative or I would secure the presence of her witnesses.

The Employee made the allegation that her checkered employment history is the Agency's way of retaliating against her because she gave testimony to the District of Columbia Council that was allegedly adverse to the Agency. She also argues that during her tenure with the Agency she was allowed to work copious amounts of overtime but was seemingly termed a "poor" employee. And, she also cites numerous equipment failure issues as a reason why she did not pick up the 911 call wherein she allegedly was asleep.

She feels that she was "victimized" because she was a person that keeps "records" regarding Agency mishaps. She was unable to produce any of these records. She stated that they may have been in her car but she was unwilling to go to her car to go get them, even after I offered to briefly recess the proceedings so that she could retrieve these "records".

As it related to the 911 call wherein she allegedly cursed at a caller, the Employee admits that she said the word "hell" but does not recognize that word as profanity. She also explains that she was just repeating what the caller had said to her.

As it relates to the call wherein she was allegedly snoring, the Employee states that she was not snoring but that she has a respiratory and thyroid problem that cause her to breath heavily. Her breathing problems coupled with the alleged equipment failure are the reasons why the she was seemingly "snoring" on a 911 call that she did not answer.

Employee's Exhibit No. 9 is a wet reading report dated 6/30/04 done by Dr. Dennis Scurry, Jr. for the Employee. This document buttresses the Employee's claim that she has a thyroid problem which results in her breathing heavily.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The following findings of facts, analysis, and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

60 Day Suspension - OEA Matter No. 1601-0117-05

Relative to this matter, the Agency contends that the Employee was rude and discourteous to a member of the public who was seeking service or information from the government. The Agency argues that this alleged negative interaction is contrary to its mission, the Employee's training, and Agency policy. To help substantiate its adverse action, the Agency provided several documents the most salient of which was Agency Exhibit No. 3. This exhibit was a recording of the aforementioned interaction that formed the basis for OEA Matter No. 1601-0117-05. After listening to this interaction I find that the Employee uttered the phrase "excuse the hell out of you," in response to the caller's instigation. Further, according to Agency Exhibit No.2, the Employee's job training required the Employee to *always* display a high degree of tactfulness and respect in the commencement of her duties. It is specifically contemplated that the Employee, in the performance of her duties, would be continually subjected to rude, disrespectful, and bewildered 911 callers. According to the Agency, the Employee was trained to rise above those circumstances in order to provide the tactful service that is required of all fire and emergency medical services operators. The Agency further contends that the Employee failed to live up to her training and the mission of the Agency on the occasion that gave rise to OEA Matter No. 1601-0117-05 and as such its adverse action should be upheld.

To further buttresses the legitimacy of its adverse action the Agency presented the testimony of EL, KM and CH. They each agreed that relative to this incident, the Employee's interaction with the 911 caller was inappropriate and contrary to the mission of the Agency. Combined and separately, they each have long standing tenure with the Agency (and its predecessor) and as such are innately familiar with its rules and procedures. Also, they each have obtained high ranking status within the Agency. And, they each testified consistently that the Employee was rude and discourteous to a member of the public who was seeking service or information from the government. In making this determination, *inter alia*, EL, KM, and CH either witnessed the interaction first-hand or listened to an audio tape recording of the interaction. During the course of the proceedings, I had the opportunity to observe the demeanor, poise, and credibility of these witnesses. I find that there testimony relative to this matter to be credible and persuasive.

The Employee explains that her interaction with the caller in this instance was

inescapable because her training would not allow for her to provide the caller with the quadrant of the District of Columbia where emergency services are being requested to be sent. In trying to elicit this crucial piece of information the caller became verbally combative with the Employee. This combative tone resulted in the caller stating to the Employee "excuse the hell out of me" and the Employee responded with the comment "excuse the hell out of you". The Employee did not recognize this exchange as inappropriate relative to Agency policy, nor did she feel that she used a profanity in the instant exchange. The Employee testified that she was just repeating what the caller was stating to her. I disagree.

I had the opportunity to listen to the aforementioned exchange via Agency's Exhibit No. 3. I find that exchange disturbing to say the least. The Employee is trained and instructed to remain calm and respectful during her telephonic interactions with the public. The very nature of her position requires her to interact with person(s) who are potentially irate, frantic, and quite possibly in genuine fear of their (or someone else's) life. As such, the Employee is trained to remain calm, and in the adequate commencement of her duties is required to do so. In this matter, she failed to live up to this standard which, given the Agency's mission and the attending circumstances of this call is unreasonable, and worthy of discipline.

The Employee posits another contention that at the time of this incident the Agency had not properly promulgated rules and regulations that would properly dictate how the Employee was supposed to act and interact in the performance of her duties. I find this argument self serving and unreasonable.

Consequently, I find that relative to OEA Matter No., 1601-0117-05, that on March 25, 2005, the Employee was rude and discourteous to a member of the public who was seeking service or information from the government. I conclude that the Agency has met its burden of proof relative to substantiating its adverse action of suspending the Employee for 60 days.

Removal - OEA Matter No. 1601-0019-06

Relative to this matter, the Agency argues that the Employee failed to answer an incoming call and subsequently enter that call's data into the system. As a result of this adverse action the Agency elected to remove the Employee from service. In substantiating this adverse action, the Agency provided testimony from EL, KM, LW, and CH. LW testified that her grandmother called 911 on July 16, 2005, in order to procure emergency medical assistance for LW's grandfather who was suffering from a seizure at the time of the 911 call. LW testified that her grandmother told her that she had tried to call 911 previously but that either no one responded or the person who answered was asleep at the time. After LW was able to procure medical assistance for her family members, CH investigated what actually occurred relative to the call not being answered. He found out that the previous call attempt was routed to the Employee's work terminal. When he went to the Employee's work terminal in order to inquire about the incident, he observed the Employee asleep at her work terminal. According to CH, he

then listened to a recording of the incident at the Employee's work terminal where it was determined that the Employee's pre-recorded greeting was played but then the recording reverts to what sound like snoring, ostensibly suggesting that the Employee was asleep while on duty. Agency's Exhibit No. 11 is a recording of this incident. This recording supports Agency contention that the Employee was asleep in that during the recording it starts with the Employee's pre-recorded greeting and then commences with what I interpret as snoring. Agency's Exhibit No. 6 provides credible documentary evidence that the call was properly routed to the Employee's terminal and was subsequently handled (or rather mishandled) by the Employee.

The Employee explains that she was not asleep while on duty but rather a combination of equipment malfunction and a thyroid problem which causes her to breathe heavily is the reason why she did not answer the aforementioned 911 call. The Employee was unable to provide credible evidence to support her contention that her work terminal was malfunctioning at the time of this incident. However, the Employee did introduce into evidence Employee's Exhibit No. 9 which is a report from Dr. Scurry, Jr., that supports the Employee's contention that she has a thyroid problem

During the course of the proceedings I had the opportunity to observe the demeanor, poise, and credibility of LW, CH, and the Employee. I find that the testimony provided by LW and CH relative to this matter to be credible and persuasive. I further find that CH's and LW's rendition of the events that led to the Employee's removal to be more believable than the Employee's rendition of the event. The most pertinent testimony relative to this matter is CH's first hand observation of the Employee sleeping at her working station. I find that the Employee's testimony was self-serving and generally not credible. Consequently, I further find that relative to the events that gave rise to OEA Matter No. 1601-0019-06, the Employee was asleep when the aforementioned July 16, 2005 call from LW's grandmother was not properly answered and processed by the Employee. I conclude that the Agency has met its burden of proof relative to substantiating its adverse action of removing the Employee from service.

Witnesses

The Employee did not actively attempt to procure the appearance of any witness that would ostensibly testify on her behalf. The reason given by the Employee was that she was under the impression that the Agency Representative (or I) would make the effort to secure their appearance. The Employee was mistaken. My Order Convening a Hearing dated June 19, 2006 clearly states in relevant part that:

Each party will be allowed to present the testimony of witnesses at the Hearing and to cross-examine the opposing party's witnesses. See OEA Rule 627.2, 46 D.C. Reg. at 9315. Only those witnesses who have been identified by the parties and approved by me will be allowed to testify at the Hearing.

Each party is responsible for insuring that their witnesses

attend this Hearing. If either the Employee or the Agency wishes to add new witnesses to their previously submitted witness list, the opposing party and I must be notified no later than July 13, 2006.

It is the responsibility of the parties to notify their witnesses of the Hearing date and to take all reasonable steps to ensure their attendance. Further, Agency must make available any approved witnesses who work for the District of Columbia government at the time of the Hearing. Those witnesses will be on official duty status when providing testimony. See OEA Rule 628.2, 46 D.C. Reg. at 9316-17. Witnesses not employed by the District of Columbia government at the time of the Hearing may be required to appear at the Hearing by subpoena. See OEA Rule 628.3, 46 D.C. Reg. at 9317...

If there are any questions, contact me as soon as possible at [Administrative Judge Robinson's office telephone number].
Emphasis Added.

The initial date for the evidentiary hearing in this matter was rescheduled pursuant to my Order. It was incumbent upon the Employee to address any known or unknown issues that she may have had with her appeal process. I was/am purposefully receptive for any discussion with any party that may need guidance on how the appeal process shall develop. In this matter³, I was willing to discuss any issue or question that the Employee (or the Agency Representative) may have had with the appeal process. Further, the Employee was on written notice, pursuant to my Order Convening a Hearing referenced *supra*, that she was required to personally secure the presence of any previously named witness. I would assist in that endeavor by issuing a subpoena, if and only if a party requests one of me. It is incumbent upon any Employee (or Agency) who has an appeal before the OEA to represent their interests to the best of their abilities. Because the Employee failed to do so in this instance is no one's fault but the Employee. She must now live with the consequences.

Appropriateness of the Penalty

The primary responsibility for managing and disciplining Agency's work force is a matter entrusted to the Agency, not this Office. See *Huntley v. Metropolitan Police Dep't*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994), ___ D.C. Reg. ___ (); *Hutchinson v. District of Columbia Fire Dep't*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994), ___ D.C. Reg. ___ (). Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercised." See *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985).

³ As well as any other matter that I am assigned.

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. *See Stokes, supra; Hutchinson, supra; Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996), __ D.C. Reg. __ (); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995), __ D.C. Reg. __ (). KM credibly testified that in making the dual determinations to suspend the Employee and then finally removing her from service, the Agency considered the Employee's checkered employment history which was rife with instances of escalating substantiated adverse actions. I find that based on the preceding findings of facts and resulting conclusion thereof that the penalty of suspending the Employee for 60 days as well as her removal from service was within managerial discretion and otherwise within the range allowed by law.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's adverse action of suspending the Employee for 60 (sixty) calendar days is hereby **UPHELD**. And,
2. Agency's adverse action of removing the Employee from service is hereby **UPHELD**.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Administrative Judge

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)
 In the Matter of:)
)
 BRYAN EDWARDS,)
 Employee)
)
 v.)
)
 DISTRICT OF COLUMBIA)
 DEPARTMENT OF YOUTH)
 REHABILITATION SERVICES,)
 Agency)
 _____)

OEA Matter No. 1601-0017-06

Date of Issuance: May 14, 2007

ERIC T. ROBINSON, Esq.
Administrative Judge

Robert H. Stropp, Esq., Employee Representative
Andrea G. Comentale, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On December 15, 2005, Bryan Edwards (hereinafter “the Employee”), filed a petition for appeal with the Office of Employee Appeals (hereinafter “OEA” or “the Office”) contesting the District of Columbia Department of Youth Rehabilitation Services (hereinafter “the Agency”) adverse action of removing him from service. This matter was assigned to me on or about February 14, 2006. Subsequently, a Prehearing conference was held. Ultimately, I determined that an Evidentiary Hearing was required and one was subsequently held on June 19, 2006¹. The OEA has since received each parties respective closing arguments in this matter. The record is now closed.

JURISDICTION

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

¹ The initial agreed upon evidentiary hearing dates of May 23 and 24, 2006 were rescheduled primarily so that the Agency could secure the presence of the Medical Review Officer. On June 19, 2006, at the start of the evidentiary hearing, the Agency Representative informed me that the Medical Review Officer was unable to physically attend the hearing date. Although the Agency Representative offered to provide his testimony telephonically, I rejected that option because I determined that I would be unable to effectively evaluate the Medical Review Officer’s credibility without his/her live in-person testimony. I provided the Agency Representative leave to continue the matter for another date so that we could secure the presence of the Medical Review Officer; however she opted to rest her case without his/her testimony.

606.03 (2001).

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.

“Preponderance of the evidence” shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether Agency’s action of removing the Employee from service was done in accordance with applicable law, rule, or regulation.

STATEMENT OF THE CHARGES

By notice dated October 3, 2005, the Employee was notified of his summary removal from the Agency based on a charge of “employment-related conduct that threatened the integrity of government operations and constitutes an immediate hazard to the Agency, to other employees of the government, and is detrimental to public health, safety, or welfare.” In pertinent part, the notice reads as follows:

Specifically on May 17, 2004, and again on September 14, 2005 you were randomly tested under the MEDAT Program. On both occasions the results for the test were positive for Cocaine. These test results have rendered you unsuitable for employment in a setting in which children or youth are present.

By letter dated January 31, 2006, Michael I. Watts, Jr., Chief of Staff, notified the Employee of Agency’s final decision affirming the October 3, 2005, summary removal.

SUMMARY OF THE TESTIMONYRodney Thomas

Rodney Thomas (hereinafter "RT") testified in relevant part that: he has worked as a collector with EMSI for approximately one year. His primary duties include the collection of urine samples. In carrying out this duty, RT has to, *inter alia*, make sure that the collected urine specimens are at the proper temperature; that the specimens have not been adulterated with a foreign substance; and that the specimens are properly sealed and labeled for eventual testing by a laboratory. The collection process usually involves the taking of a *split sample* wherein a portion of the original urine sample collected is taken to be tested to detect whether evidence of illicit drug use is present. The other portion is kept in case an employee who has tested positive for drugs wants to have an independent laboratory conduct another drug test on the second sample. In carrying out the aforementioned duties, RT must document the collection process for each individual person he collects a sample from and record all pertinent observations on a chain of custody form.

As it relates to the instant matter, RT filled out a chain of custody form on September 14, 2005, as part of a random drug test of the Employee. *See Agency Exhibit No. 1.* He testified that he collected the urine specimen of the Employee as the form indicates. On Agency's Exhibit No. 1, RT indicated that four attempts were made over approximately a four hour period to collect the required amount of urine from the Employee for a proper analysis, generally 45 milliliters. It was believed at the time that the Employee had what was termed as "shy bladder" syndrome, wherein a urine specimen giver is unable to produce the required amount of urine in a single attempt. Because of the rules and regulations in place regarding the collection of the urine specimen, RT was unable to pool the several attempts at sample collection into one sample. In an effort to counteract the perceived shy bladder syndrome, the Employee was instructed to drink water and to walk around. After the fourth attempt the Employee provided enough urine for only the Agency's drug test (approximately 30 milliliters) and not enough for a split sample. Of relevance, on Agency's Exhibit No. 1, a handwritten note appears by the Employee's signature which states that "waiver to provide only 30 mls." RT testified that he did not write this handwritten note and is not exactly sure who did, but believes that it may have been Linda Redd. RT also testified that if the Employee did not produce an adequate amount of urine for Agency's drug test that it would be tantamount to a refusal.

Lance Presley

Lance Presley (hereinafter "LP") testified in relevant part that: he has worked for Quest Diagnostics and its' predecessor company Lab One continuously for approximately six years. As it relates to his educational background, in 1983, LP received his Bachelor of Science degree with an emphasis in chemistry from Mississippi College and in 1990, LP graduated from the University of Southern Mississippi with a Doctor of Philosophy degree, with an emphasis in chemistry. Currently, LP is employed

as Laboratory Director for Quest Diagnostics. His work-related duties require him to oversee forensic urine drug testing. In that capacity he has had numerous occasions to oversee the testing of urine samples for the presence of illicit drug use. It is in this regard that Quest Diagnostic tested various urine samples sent by the Agency, including the September 14, 2005, urine sample of the Employee referenced *supra*.

LP explained the lengthy process that a urine sample undertakes as part of the forensic urine drug testing procedure. In a nutshell, first, the urine sample is received from the organization that is requesting the test be taken; usually, the Medical Review Officer (hereinafter "MRO") is the person from the organization that undertakes the responsibility of sending the urine sample to Quest Diagnostics usually taking particular care to include the chain of custody form. From there, the sample received is divided, and tested using a chemical analyzer. If the urine sample comes back negative for the presence of illicit drug use, no more tests are done and that result is forward to the organization or the MRO requesting the test. If, however, the test comes back presumptively positive, the urine sample undergoes other tests to verify that result. Relative to the Employee, LP testified that this was the procedure that was followed by Quest Diagnostics when it tested the Employee's urine and found the presence of cocaine metabolites. With only the barest of exception, LP testified that only the use of cocaine can produce cocaine metabolites in a person's urine. Of relevance was the following excerpt of LP's testimony:

The Court: To your knowledge, is there any scenario that would create a false positive on either one or both of those tests you just mentioned for cocaine metabolites?

[LP]: A false positive being what?

The Court: A person – say, for instance my urine was taken. I don't [use] cocaine.

[LP]: Sure.

The Court: But for whatever reason, if it's possible, a cocaine metabolite is present.

[LP]: Oh no sir, there's nothing, to my knowledge, that can create the presence of a cocaine metabolite or anything that resembles a cocaine metabolite in your urine specimen.

The Court: Unless you took cocaine.

[LP]: Unless you took cocaine. That - - that's been my experience, my education, and my training in the field of forensic urine drug testing.

The Court: So no prescribed medications or interactions with a person's body may create a situation with a false positive of the presence of a cocaine metabolite?

[LP]: No, sir, not to my knowledge. Now, some physicians still use cocaine, and can be legally used by physicians.

One situation that I know of can be if you have an ear, nose, and throat, maybe some nasal surgery or things like that. Some physicians still use cocaine preparations to pack and use as a topical anesthetic, before they do their procedures, to deaden the pain.

So that can be used under a physician's care. But to my knowledge, that's still cocaine. That's the only way, in my experience, that a cocaine metabolite could be found present in a urine specimen.

Tr. at 78 – 80. *Emphasis Added.*

Linda Redd

Linda Redd (hereinafter "LR") testified in relevant part that: she works for the District of Columbia Department of Corrections. She began her tenure with the Department of Corrections approximately ten years ago. When she started, LR was employed as a drug program specialist. Now, she is the acting drug program coordinator and has held this position for approximately five years. The Department of Corrections also provides for LR to perform her work-related duties on an as-needed basis for the Agency. As a drug program coordinator, LR has numerous work-related duties, most relevant to the instant matter being that she coordinates the random drug testing programs of the Department of Corrections². LR also, on occasion, functions as the site coordinator when random drug tests occur. She served in the capacity of site coordinator when the Agency conducted random drug tests on September 14, 2005. On this date (as well as on May 17, 2004), the Employee allegedly submitted a urine sample that was later determined to be positive for the presence of cocaine and/or cocaine metabolites. LR testified that she was present when the random drug test was conducted on September 14, 2005. As it relates to what she observed while the Employee was being tested on the aforementioned date, LR testified thusly:

Well his supervisor was a Mr. Brooks that had escorted him over to the site where we did the testing. And [the Employee] - - he gave a sample, but it wasn't enough.

² LR also performed as a site coordinator for the Agency on an as needed basis. She was assisting in the training of her counterpart with the Agency, during the September 14, 2005, random drug test referenced herein.

And we can't accept - - it has to be enough to fill two vials or it has to be enough to fill one vial...

And if he can't give any more, then we have him waive his rights for an independent test, just in case it comes back different - - I mean, well, positive...

...[[T]he Employee] was wasn't drinking a lot of water. And we were trying to encourage him to drink more water. And he kept telling us that he could not drink a lot of water.

And - - but there's only a four-hour window. And we gave him about four attempts to produce urine, and each time he never gave us enough.

Tr. at 94 - 95

When asked what would happen if the Employee failed to produce enough urine for the purposes of the Agency's random drug test, LR replied that "[the Employee] is basically fired, because unless there's a medical reason that you can't do a urine specimen in four hours, you are - - there's no fight for it. There's - - you're just basically fired from your job." Tr. at 96. When queried about the handwritten waiver that appears on Agency Exhibit No. 1 that allowed for the testing of only 30 milliliters of the Employee's urine, LR said that she did not write it but she thinks that it was probably one of the collectors. She also testified that she was notified via facsimile letter dated September 23, 2005, from the MRO, that the Employee had tested positive for cocaine and/or cocaine metabolites.

LR further testified that she was aware as early as the Employee's random drug test on May 17, 2004, that he had had his kidney and half of his bladder removed. Further, it was later revealed that the Employee allegedly tested positive for cocaine and/or cocaine metabolites as a result of the May 17, 2004 random drug test. Pursuant to Agency's policy as codified in Agency's Exhibit No. 3, for a first time offense, the Employee was referred to the Employee Assistance Program (hereinafter "EAP"). Upon successful completion of the EAP program, the Employee would be allowed to return to work. Successful completion of the EAP program includes but is not limited to; drug counseling which was administered by COPE Inc., constant follow-up random drug testing of the Employee, and a mandate that a subsequent positive test result for illicit drug use would result in the Employee's summary removal from service. COPE Inc. is a private contractor whose services have been retained by the Agency to provide drug counseling services as needed. Since the Employee was present and working when the September 14, 2005, random drug test occurred, LR assumes that the Employee must have successfully completed the EAP program. She also asserts that when the Employee successfully completed the EAP program, Cope Inc. should have provided some written documentation to the Agency. However, the Agency did not have written documentation to that effect.

During cross examination, LR was shown Employee's Exhibit No.2, a two page facsimile letter sent to LR from Al Beaubier, Vice President of Bensinger, Dupont and Associates. This is the company that the Agency contracts with to provide MRO services for its random drug tests. The cover sheet of the facsimile states in relevant part:

Attached are the series of questions that BDA's MROs ask a donor who has a laboratory positive. The donor is given the opportunity to present medications that may have caused a positive lab result... The MRO process considers any and all reasons for a positive lab result prior to declaring the result as a verified positive. If for any reason the donor thinks of something later on that may have contributed to the lab positive, the case may be re-opened...

The second page of Employee's Exhibit No.2 consists of a letter sent to Al Beaubier by Melissa Liberatore, RN and MRO Assistant with University Services, which states in pertinent part:

Dear Mr. Beaubier:

The following are the general questions asked during an MRO interview:

1. Last use of the positive drug
2. Prescription medications
3. Over the counter medications
4. Doctor visits
5. Emergency Room visits or hospitalizations
6. **Recent Surgeries**
7. **Dentist visit (for cocaine positives)**
8. Eyes, Ears, Nose or Throat specialists (for cocaine positives)

(Emphasis added)

When asked where there is reference to allowing an Employee to waive his right to a split urine sample, LR was unable to find any written reference to this policy.

Alice Holland

Alice Holland (hereinafter "AH") testified in relevant part that: she is currently employed with the District of Columbia Department of Corrections. Prior to her working at the Department of Corrections, she worked for the Agency for approximately seven years as a human resource manager. Part of her work-related duties with the Agency involved administering and tracking the Mandatory Employee Drug and Alcohol Testing Program (hereinafter "MEDAT"). AH was employed with the Agency at the time of the Employee's May 17, 2004, random drug test wherein he allegedly tested positive for

cocaine and/or cocaine metabolites. AH created Agency's Exhibit No. 8, a letter dated May 27, 2004, that notified the Employee that he was, *inter alia*, placed on administrative leave and referred to COPE Inc. as a result of his testing positive for drug use. She further testified that the Employee enrolled and successfully completed the EAP program that COPE Inc. administered. Consequently, the Employee was eventually reinstated to full time duty. AH further testified that she would track the Employee's progress with COPE Inc. through bi-weekly telephone calls with a COPE Inc. representative. The practice of bi-weekly telephone calls was the usual and accepted means of tracking an employee's progress through the program. While AH assumes that COPE Inc. would maintain a written record of Employee's treatment under their auspices, they would not transmit this written record to the Agency. Any confirmation of the Employee's completion of the EAP program would only be done verbally.

Of note, COPE was "not authorized to determine the results of [Agency's] drug testing. They were only authorized to assist the employee into going into a treatment program." Tr. at 166.

AH was aware that the Employee was a kidney donor. The main issue that Agency had with this determination was that "[t]here was no actual documentation that says that [the Employee] was unable to produce urine." This questions the Employee's ongoing contention that he is/was unable to produce large quantities of urine in a single session.

Dr. Schavez Tidwell

Dr. Schavez Tidwell testified in relevant part that: he is a surgeon dealing primarily with general cosmetic dentistry. Dr. Tidwell has a Bachelor of Science degree in biology and chemistry from Central State University which was awarded in 1980 and a Doctor of Dental Surgery degree from Howard University which was awarded in 1984. Dr. Tidwell has been a practicing dentist and dental surgeon for approximately 22 years, and the Employee is a patient of his. Regarding a dental visit on September 14, 2005, by the Employee, Dr. Tidwell testified as follows:

We did a scaling procedure of quadrants one and two. And we anesthetized him with two [capsules] of two percent xylocaine with epinephrine, one to one hundred thousand... [t]he patient called my office sometime the latter part of the year and he requested from our front desk the release of his information. And normally, I don't release information, because the girl at the front desk told me that there was an outstanding bill. Tr. at 185-186.

Dr. Tidwell further testified that while he was not sure of exactly what time the aforementioned procedure was done on September 14, 2005, that he normally schedules procedures of this nature for the morning. Of note, the following exchange between Dr. Tidwell and me is of particular relevance to this matter:

The Court: With the medications that were administered under your care... [do] any of them contain cocaine or cocaine derivative, to your knowledge?

Dr. Tidwell: Well, to my knowledge, remembering the properties of local anesthetics, they are all derivatives of the cocaine molecule, so to speak...

I would say it's probably likely that a xylocaine or prilocaine, octocaine, or some other anesthetic probably can be detected as cocaine. I would think so, through my chemical knowledge...

The Court: Which drugs did you administer to the Employee?

Dr. Tidwell: Xylocaine...

The Court: All right. So xylocaine was the only cocaine derivative chemical that you used on the Employee?

Dr. Tidwell: Yes, it is, xylocaine is. That's what I use. That's the only anesthetic I used on him xylocaine.

Tr. at 192 – 195.

Michael I. Watts, Jr.

Michael I. Watts, Jr. (hereinafter "MW") testified in relevant part that: he is the current Chief of Staff for the Agency. He was the Agency official who ultimately made the decision to remove the Employee from service. In coming to the decision to remove the Employee, MW relied on a perceived violation of the agreement entered into between the Employee and the Agency (Agency Exhibit No. 9) as well as the Employee's work related duties which required him to work with children and the implicit example that the Employee may set for these children. Since the Employee violated the terms of the agreement (Agency Exhibit No. 9) by using cocaine, MW felt obligated to remove the Employee from service.

Glen Adams

Glen Adams (hereinafter "GA") testified in relevant part that: he is employed by the Agency as a correctional officer, and is currently the chairman of the terminal order board. In May 2004, he escorted the Employee to his random drug test. GA recalls that the Employee had troubles providing an adequate amount of urine for the drug test. On this day, the Employee made three to four attempts to provide a sufficient amount of urine. The Employee was notified that if he was unable to provide sufficient urine for testing that it would be tantamount to a refusal. The Employee was also instructed to provide documentation regarding his medical condition as well as any prescribed or over

the counter medications he was currently taking. After that, GA instructed the Employee to gather the requested documentation and to present it to the Agency. GA recalls that both he and the Employee and presented Employee's Exhibit No. 4 to AH. This document is a doctor's note which reads in pertinent part "[the Employee]... has had removal of his left kidney...which has now resulted in decreased urine output. This should be kept in mind with respect to his ability to produce large amounts of urine."

GA further recalled that relative to the Employee's random drug test in September 2005, the Employee informed him the day after he was tested that they may have misplaced the medical documentation he submitted with the May 2004 random drug test. Further, the Employee alleged that he was again unable to provide a sufficient amount of urine for the test. The Employee also informed him that he had had dental surgery the day of the random drug test (September 14, 2005). GA resubmitted to the Agency Employee's medical documentation regarding his condition of having only one kidney. GA also instructed the Employee to submit to the Agency (specifically AH) Employee's Exhibit No. 8, a doctor's note on Providence Hospital letter-head (I cannot make out the name of the physician who signed the document) evidencing that the Employee was seen for a "pilonical abscess" on September 13, 2005 and was prescribed various medications.

Tyrone A. Coates

Tyrone A. Coates (hereinafter "TC") testified in relevant part that: he has worked for the Agency and its predecessor for approximately twenty years as a correctional officer. Further, TC also served as the Vice Chairman of the Fraternal Order of Police from 2004 to 2006. TC was present to view the Employee's September 14, 2005, random drug test as a union representative. TC recalls that the Employee was unable at that time to provide a sufficient amount of urine for testing. TC further recalls that there was a discussion regarding the Employee needing to provide medical documentation to the Agency. It was proffered that AH or somebody already had possession of documentation regarding the Employee's medical condition. Lastly, TC testified that no one asked the Employee to waive any of his rights while he was present.

The Employee

The Employee testified in relevant part that: he was initially employed by the Agency's predecessor in 1990, however the Employee's position was abolished through a reduction in force two years after he was initially employed. In 1995, the Employee donated one kidney and half of his bladder to his father. In 1999, the Employee was re-employed by the Agency as a youth correctional officer. At the time he was re-hired by the Agency, the Employee underwent a physical examination wherein his condition of having only one kidney was first disclosed to the Agency.

When he was randomly drug tested on May 17 2004, the Employee recalls that when he went for testing he was asked about what medications he was taking as well as any surgeries he may have had. The Employee remembers informing the urine collectors about the prescription medications he was then currently taking which included but was

not limited to blood pressure pills, percocet, and tylenol number 3. He also remembers telling them of his having only one kidney and half of a bladder as a result of his kidney donation. During this drug test, the Employee asserts that he made four attempts to produce urine. However, the amount of urine he produced each time was insufficient for testing. In an attempt to facilitate sufficient urine production, the employee repeatedly drank water and walked around, all to no avail.

The Employee inquired about the possibility of stockpiling numerous urinations in order to provide a sufficient amount. He was informed by the urine collector that that is not a viable option because the urine must be kept at a certain temperature when it is collected, a practice made virtually impossible if the urine collector opted to stockpile several urination attempts. Eventually, a drug test was performed on his urine sample. As was stated previously, it came back positive for the use of cocaine and/or cocaine metabolites.

The Employee recalls submitting various documents regarding his medical condition to AH (as well as the MRO). However, according to the Employee, AH felt that it was not sufficient to explain why the Employee could not produce enough urine for a random drug test. He also recalls signing the last chance agreement after being notified of the result of the May 17, 2004, random drug test. *See*, Agency Exhibit No. 9. A couple of weeks after being referred to the EAP program, the Employee asserts that he had an assessment interview with a Ms. Crosby where he reiterated his contentions that he was not using cocaine, that his kidney and half of his bladder had been removed, and that he was taking a combination of prescribed pain medications because he was having back problems. After hearing all of this, the Employee contends that Ms. Crosby then had a private conversation with AH, the result of which was that the Employee was sent back to the Agency to submit more documentation regarding his condition. Ultimately, the Employee was allowed back to work approximately a month after he was put on administrative leave. The Employee testified that in June of 2004, he was then subjected to multiple random drug tests, the results of which were inconclusive.

In September of 2005, the Employee recalls that he had dental problems that eventually warranted emergency surgery on the morning of September 14, 2005. This surgery was performed by Dr. Tidwell. Since the surgery was performed on an outpatient basis and his shift at work did not start until 2:30pm, the Employee reported to work on September 14, 2005. After arriving at work, he was subsequently informed that he would participate in a random drug test. The Employee again had problems providing an adequate amount of urine for the drug test. After submitting an inadequate amount of urine for the second time, the Employee was again reminded by LR and Mark Bryant (a supervisor) that failure to provide an adequate amount of urine would be tantamount to a refusal. The Employee then requested the presence of a union representative. TC appeared and further discussion was had by all regarding the Employee urine production and submission of supporting medical documents (which the Agency allegedly misplaced). On September 15, 2005, the Employee provided documentation regarding his medical condition, including Employee's Exhibit No. 4.

The MRO eventually called the Employee and informed him that the September 14, 2005, random drug test was positive for cocaine and/or cocaine metabolites. The Employee could not discuss the matter in detail with the MRO at the time of his call because he was working in coverage which required his full undivided attention. When the Employee tried to return the MRO's phone call, the MRO was unavailable. He eventually talked to someone in the office and she reiterated the positive test result and that the only excuse could be surgery, for example, dental surgery. He informed her that he had had dental surgery on the day of the random drug test. He recalls her response being, "why didn't you report this?" Whereby, the Employee responded with, "I didn't have a chance to. Really, no one even really asked me." Tr. at 282. The Employee asserts that he then submitted copies of Employee's Nos. 6, 7, and 8 to the MRO, in order to document his various dental procedures in September 2005.

The Employee asserts that he has never been convicted of any felonies, any crimes involving moral turpitude, or of any drug related crime. Further, the Employee denies ever using cocaine.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

The Agency's position in this matter simply relates to the Employee's alleged continued abuse of cocaine. Specifically, on the dates outlined in the Statement of the Charges section *supra* on May 2004, and again in September 2005, the Employee tested positive for the use of cocaine. After the May 2004, positive test result, the Agency and the Employee entered into an agreement whereby the Employee would undergo drug counseling and treatment through the Agency's EAP program. *See*, Agency Exhibit No. 9. Assuming that the Employee successfully completed the program and continued to stay drug free, he would be allowed to enjoy continued employment with the Agency. According to the September 2005, random drug test results, the Employee seemingly did not live up to his end of the agreement and the Agency felt obligated to subsequently remove him from service.

In a nutshell, the Employee's position in this matter is that he has never taken or abused cocaine. He explains that the positive test results from the May 2004, and September 2005, were a result of varying combinations of several factors; his having donated one kidney and a half of bladder (which affected the volume of his urine output); a combination of over the counter medications that would interact in his body to create a false positive of his using cocaine; and prescribed medications that he took under the care and lawful order of a dental surgeon (most notably xylocaine which is a pain reliever derived from cocaine).

According to Agency's policy relative to this matter, in order to effectuate the removal of an employee on the basis of a verified positive random drug and/or alcohol

test result, the offending employee is given the opportunity, after the first positive test result, to enter into the Agency's EAP program, and is then given the opportunity to enter into a last chance agreement. *See*, Agency Exhibit No. 3 at 14. An employee's failure to either successfully complete the EAP program or a second verified positive drug test result, puts the offending employee in immediate jeopardy of summary removal from service. Therefore, I find that an employee, pursuant to Agency policy, is afforded a second opportunity to rehabilitate him/herself after receiving a verified positive drug and/or alcohol test result.

Taking due consideration with Agency's policy as delineated in Agency Exhibit No. 3 at 14³, the fact that the Employee had successfully completed the EAP program⁴ as well as the last chance agreement freely entered into by the Agency and Employee (*See*, Agency Exhibit No. 9), I find that *if* the Employee in the instant matter is able to invalidate either one or both of the verified drug tests that have been referenced *supra*, Agency action should be reversed. In evaluating this matter, it would be prudent to examine it from the perspective of the two seminal incidents; the May 17, 2004, random drug test and the September 14, 2005, random drug test.

May 17, 2004

On this date, the Employee was subjected to a random drug test which is a standard and customary practice for employees' of the Agency. As was stated previously, the Employee tested positive for the presence of cocaine and/or cocaine metabolites as a result of the random drug test conducted on this day. The Employee denies using cocaine and proffers the following possible explanations (either singularly or in combination with one another) to explain why the test result was positive:

1. The Employee alleges that the urine test registered a false positive drug test result because of an interaction of over the counter and prescribed medications, including percocet, tylenol number 3, and blood pressure pills.
2. The Employee also maintains that the fact that he has only one kidney and half of a bladder and the resulting lack of the volume of urine he was physically able to produce in a single setting somehow contributed to the alleged false positive test result.

Relative to the process of testing the urine samples collected by the Agency for the purposes of drug and/or alcohol testing, the Agency provided the testimony of LP who oversaw the entire process of testing all of the urine samples provided to it by the

³ If an employee has a verified positive drug test result, that employee is referred to the EAP program for emergency evaluation, required to, *inter alia*, sign an Employee Treatment agreement Form (referred to interchangeably in this decision as either Agency's Exhibit No. 9 and the last chance agreement), and is required to cease the use of any illegal substances

⁴ According to the testimony of AH, the Employee's successful completion of the EAP program is plainly evidenced by the fact that the Employee was allowed to return to work. AH further testified that a paper trail relating to any employee's successful completion of the EAP program would not exist unless COPE Inc. maintains a paper file that is purposefully not shared with the Agency and that the Agency is notified of an employee's successful completion of the EAP program orally via periodic telephone conversations.

Agency. LP credibly testified that there is no known combination of over the counter medications that can produce a false positive for the use of cocaine. LP testified that the only permissible reason why cocaine would be present in a urine sample is if it was prescribed and administered by a licensed physician. For the May 17, 2004, test I find that the Employee proffered no credible evidence either as part of his appeal process before this Office or to the Agency, when the test result was initially disclosed to him, that he was prescribed cocaine or some derivative of cocaine.

Considering the Employee's aforementioned combination of factors juxtaposed with LP's explanation, I further find that the Employee legitimately tested positive for the use of cocaine and/or cocaine metabolites as a result of the May 17, 2004 random drug test.

September 14, 2005

On this date, the Employee was subjected to another random drug test which is a standard and customary practice for employees' of the Agency. As was stated previously, the Employee again tested positive for the presence of cocaine and/or cocaine metabolites as a result of the random drug test conducted on this day. The Employee offers the same arguments as noted *supra* as to why the test allegedly registered a false positive, with one notable addition. A few weeks prior to the September 14, 2005, random drug test, the Employee started experiencing physical problems that required the care of a physician. The overall result of this care required dental surgery which was performed by Dr. Tidwell the morning of September 14, 2005. The Agency's random drug test was conducted the afternoon of September 14, 2005, when the Employee reported for duty for his shift which was scheduled from approximately 2:30 pm to 11:00 pm. The fact that the Employee underwent dental surgery is credibly evidenced by a combination of Employee's Exhibit No. 7, the testimony of Dr. Tidwell (who created as well as testified regarding Employee's Exhibit No. 7) and the Employee's own testimony. Dr. Tidwell testified that he administered Xylocaine to the Employee when he performed said surgery. He further testified that Xylocaine (among others) is a derivative of the cocaine molecule and thus shares many properties and characteristics of cocaine. During the evidentiary hearing I had the opportunity to observe the demeanor, poise, and credibility of Dr. Tidwell. I find that his testimony relative to this matter to be both credible and persuasive.

As it relates to the September 14, 2005, random drug test, LP's testimony is also relevant in that he testified that cocaine, while considered an illegal drug under most circumstances, can still be *legally* prescribed and administered by a licensed physician (like Dr. Tidwell). Also, Employee's Exhibit No.2 also references a possible exception for a cocaine positive test result which would usually necessitate further inquiry, if the person has had either a recent surgery or a recent dental visit. Said inquiry should be conducted by the MRO. According to Agency's Exhibit No. 3 at 9, it provides in pertinent part that:

If the MRO determines that there is a legitimate medical

explanation for the positive test result, the MRO may deem that the result is consistent with *legal drug use* and take no further action other than reporting the test result as negative due to legitimate medical explanation. *Emphasis Added.*

On this point, the Employee testified, credibly, that he notified numerous persons within the Agency, including the MRO, regarding his recent dental surgery after being notified of the positive test result. The Agency did not utilize the opportunity afforded by the evidentiary hearing to provide the testimony of the MRO in this matter. As such, I find that the Employee submitted adequate documentation to both the Agency and the MRO evidencing that he was lawfully prescribed and administered Xylocaine by Dr. Tidwell the morning of September 14, 2005. Further testimony and evidence provided by both the Agency and the Employee provides for the lawful use of Xylocaine as well as the likelihood that the use of Xylocaine would register as positive for the presence of cocaine and/or cocaine metabolites as part of the Agency's random drug test.

Based on the foregoing, I find that the proper designation for the Employee's September 14, 2005, positive test result for the presence of cocaine and/or cocaine metabolites is negative due to legitimate medical explanation. Based on that finding, I CONCLUDE that Agency's action of removing the Employee from service must be REVERSED.

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency's action of removing the Employee from service is REVERSED; and
2. The Agency shall reinstate the Employee and reimburse him all back-pay and benefits lost as a result of his removal; and
3. The Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

Eric T. Robinson, Esq.
Administrative Judge

DISTRICT DEPARTMENT OF THE ENVIRONMENT**NOTICE OF FILING OF AN APPLICATION
TO PERFORM VOLUNTARY CLEANUP**

Pursuant to § 601(b) of the Brownfield Revitalization Amendment Act of 2000, effective June 13, 2001 (D.C. Law 13-312; D.C. Official Code § 8-636.01(b) (Supp. 2005)(Act)), the Voluntary Cleanup Program in the District Department of the Environment (DDOE), Land Development and Remediation Branch (LDRB), is informing the public that it has received an application to participate in the Voluntary Cleanup Program (VCP). The application, case VCP2007-014, pertaining to certain real property located at 82 I Street, S.E, was submitted by Mr. Kevin Hurley, Director of Realty Services of CSX Realty Inc., 301 West Bay Street, Suite 800, Jacksonville, Florida 32202. The application identifies low levels of polychlorinated biphenyls, (PCBs), petroleum products, polynuclear aromatic hydrocarbons (PAH) and some metals in soil and groundwater. The applicant intends to conduct an investigation of the subject property prior to redevelopment.

Pursuant to § 601(b) of the Act, this notice will also be mailed to the Advisory Neighborhood Commission (ANC) for the area in which the property is located. The application is available for public review at the following location:

Voluntary Cleanup Program
District Department of the Environment (DDOE)
51 N Street, N.E., 3rd Floor, Room 3004
Washington, DC 20002

Interested parties may also request a copy of the application for a small charge to cover the cost of copying by contacting the Voluntary Cleanup Program at the above address or calling (202) 535-1337.

Written comments on the proposed approval of the application must be received by the VCP program at the address listed above within twenty one (21) days from the date of this publication. DDOE is required to consider all public comments it receives before acting on the application, the cleanup action plan, or a certificate of completion.

EXECUTIVE OFFICE OF THE MAYOR

**SERVE DC
DC COMMISSION ON NATIONAL AND
COMMUNITY SERVICE**

PUBLIC MEETING

The mission of the DC Commission on National and Community Service (Serve DC) is to promote the District of Columbia's spirit of service through national service, partnerships and volunteerism.

The DC Commission on National and Community Service (Serve DC) is pleased to announce its next Commission meeting on:

Wednesday, July 11, 2007, 5:00 P.M.

Conference Room 1114

One Judiciary Square

441 Fourth Street, NW

Washington, D.C.

All meetings are open to the public. Meeting minutes can be obtained from 441 4th Street NW, Suite 1140N, Washington, DC 20001.

For additional information or to request a copy of the minutes, please call 202-727-7925.

HOPE ACADEMY PUBLIC CHARTER SCHOOL (HAPCS)**REQUESTS FOR PROPOSALS**

Hope Academy Public Charter School (HAPCS) in accordance with, § 38-1802. 04.c. 1 of the *DC School Reform Act of 1995 as Amended*, is currently soliciting bids for the Modular Unit Construction Services, Food Services, Accounting Services and Special Education Services.

All bids should be sent to the attention of:

Lisa Thompson
Hope Academy Public Charter School (HAPCS)
P.O. Box 31309
Washington, DC 20030
or faxed to 202-574-0629.

For additional information, please contact Lisa Thompson at 202-903-3100 or via email at lthompson@hopeacademypcs.org.

I. Modular Unit Construction Services

Soliciting bids for construction, delivery and removal of temporary modular units utilized as classroom and/or office space. Bids will be evaluated based upon services provided, the initial guaranteed maximum price for construction and references provided. **Final bids are due by July 3, 2007.** Early bids are encouraged.

II. Food Services

Food services sought for students and staff for the 2007-2008 School Year. Bids should include breakfast, lunch, and afternoon snack. All meals must meet, but are not restricted to, minimum federal nutrition requirements, as well as, all compliance standards of the School Breakfast Program (SBP) and the National School Lunch Program (NSLP).

Interested parties must: 1) state their credentials, including licenses held, and 2) provide sample menu that are made in accordance with federal nutrition and serving requirements.

No proposal will be considered without following all guidelines listed above" and providing an estimated cost. For additional information (including number and age range of students), please contact Lisa Thompson at the above telephone number or email. **Final bids are due by July 6, 2007.**

III. Accounting Services

Accounting services sought for the 2007-2008 School Year. Bids will be evaluated based upon services provided, estimated cost for services, and references provided. **Final bids are due by July 6, 2007.**

IV. Special Education Services

Special education services sought to be provided during the 2007-2008 School Year. Bids will be evaluated based upon services provided, estimated cost of services, and references provided. **Final bids are due by July 15, 2007.**

Office of the Secretary of the
District of Columbia

June 11, 2007

Notice is hereby given that the following named persons have been appointed as Notaries Public in and for the District of Columbia, effective on or after July 1, 2007.

Branch, Shirley	Rpt	4920 Ames St,NE 20019
Hilton, Judy M.	Rpt	Ross Dixon & Bell 2001 K St,NW 20006
Kilcline, Eleanor F.	Rpt	Internat'l Monetary Fund 700 19 th St,NW 20431
Malasky, Laurie F.	Rpt	Madison Marquette 2001 Pa Ave,NW10thF1 20006
Pierre, Joanne M.	Rpt	Cosmos Club 2121 Mass Ave,NW 20008
Reed, James M.	Rpt	Regus/HQ Global 601 Pa Ave,NW#900 20004
Santos, Barbara J.	Rpt	SouthernCalifornia Edison 555 12 th St,NW#640 20004
Schlosser, Carole Jean	Rpt	Stein & Rosenberg 1140 Conn Ave,NW#1202 20036
Venson, Agnes R.	Rpt	3201 Alabama Ave,SE 20020

THE SEED PUBLIC CHARTER SCHOOL OF WASHINGTON DC**REQUEST FOR PROPOSALS****VoIP Telephony Services**

The SEED Public Charter School of Washington DC will receive bid proposals from an IT-communications services company to provide **VoIP telephony services**. Bid packets may be picked up in the main office of the school at the below address.

The deadline for submitting bid proposals is July 3, 2007 at 12 noon.

Send your proposal to:

Jorge Ricardo Troncoso-Ramirez
Technology Coordinator
THE SEED PUBLIC CHARTER SCHOOL
of Washington DC
4300 C Street SE
Washington DC 20019
202-248-7773

THE SEED PUBLIC CHARTER SCHOOL OF WASHINGTON DC**REQUEST FOR PROPOSALS****Refresh the School's Current Desktop Computer Systems**

The SEED Public Charter School of Washington DC will receive bid proposals from an IT-communications services company to **refresh the school's current desktop computer systems**. Bid packets may be picked up in the main office of the school at the below address.

The deadline for submitting bid proposals is July 3, 2007 at 12 noon.

Send your proposal to:

Jorge Ricardo Troncoso-Ramirez
Technology Coordinator
THE SEED PUBLIC CHARTER SCHOOL
of Washington DC
4300 C Street SE
Washington DC 20019
202-248-7773