LINDA G. LOWELL
v.
DEPARTMENT OF THE AIR FORCE

DOCKET NO.
DA07528010300

OPINION AND ORDER

This case comes before the Board on appellant's petition for review (hereinafter PFR) of the decision of the Board's Dallas Regional Office sustaining her removal from the position of Security Clearance Clerk (Typing) at Kelly Air Force Base. The removal action was based upon two current charges as well as two prior instances of disciplinary action.

Appellant was charged with misuse of commissary privileges in that she attempted to purchase food with food stamp coupons issued in the name of other persons who were not authorized commissary privileges. Additionally, she was charged with entering the Base parking lot in her vehicle while intoxicated, striking two parked cars, physically resisting Security Police called to the scene and using abusive language. Both incidents occurred while appellant was off-duty.

The PFR alleges procedural defects and reargues the facts as found by the presiding official. The PFR does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. However, we reopen on our own motion pursuant to 5 C.F.R. § 1201.117 for consideration of the issue of nexus in this case.

The Board held in *Merritt v. Department of Justice*, 6 MSPB 493 (1981) that in adverse actions based on off-duty conduct, a nexus must be established linking the employee's off-duty misconduct with the efficiency of the service. While the presiding official did not have the Board's decision in *Merritt* before her, the initial decision shows that she considered all of the facts pertaining to nexus in the record in connection with her consideration of the question of the reasonableness of the penalty.[1]

The requisite nexus is clearly established in this case as the actions of the appellant occurred on agency property, and required the use of Air Force Base Security Police and investigative personnel. Thus the activities of the agency were disrupted and the agency

[1]We note that the presiding official did not have available to her the Board's decision in *Douglas v. Veterans Administration*, 5 MSPB 313 (1981), but she did consider the question of the reasonableness of the penalty based upon the record as a whole in determining to uphold the agency action. In *Douglas*, the Board pointed out the clear distinction between the question of the appropriateness of the penalty and that of nexus. *Douglas, Supra*, at 329.

resources were unduly burdened. *See, Venson v. Department of the Air Force*, 9 MSPB 606 (1982) and *Winner v. Department of the Air Force*, 9 MSPB 432 (1982).[2] Thus, is disciplinary action found in this instance to clearly promote the efficiency of the service.

As noted above, other allegations of error raised in the petition for review are based on factual determinations on issues which the presiding official fully addressed in his initial decision. The appellant's arguments and characterizations represent mere disagreement with the finds of fact, credibility determination, and interpretation of the evidence of the presiding official. They do not establish a misapplication of the proper standard of proof sufficient to warrant a review of the presiding official's fact finding. *Venson, Supra; Weaver v. Department of the Navy*, 2 MSPB 297, 298–99 (1980). Nor has the appellant otherwise established that the initial decision of the presiding official is based on an erroneous interpretation of statute or regulation. 5 C.F.R. § 1201.115(b).

Accordingly, the initial decision of the presiding official is AFFIRMED as modified by this Opinion and Order, and the agency action is SUSTAINED.

This is the final order of the Merit Systems Protection Board in his appeal. 5 C.F.R. § 1201.113(c).

Appellant is hereby notified of the right to petition the Equal Employment Opportunity Commission to consider the Board's decision on the issue of discrimination. A petition must be filed with the Commission no later than thirty (30) days after appellant's receipt of this order.

Appellant is hereby notified of the right to seek judicial review of the Board's action as specified in 5 U.S.C. § 7703. A petition for judicial review must be filed in the appropriate court no later than thirty (30) days after appellant's receipt of this order.

For the Board:

ROBERT E. TAYLOR,
Secretary.

WASHINGTON, D.C., *May 12, 1982*

[2] *Venson* specifically involved the question of intoxication on agency premises while off-duty.