

BETTY A. ROHN,
appellant,
v.
DEPARTMENT OF THE ARMY,
agency.

DOCKET NUMBER
NY07528510521

DATE: FEB 28, 1986

Following a hearing, the presiding official sustained the action finding the following: (1) the agency proved that appellant willfully altered her time cards with the intent to

defraud the government and that she received and kept monies to which she was not entitled; (2) the agency failed to prove that appellant made false statements about the accuracy of her time cards; (3) appellant's penalty was not unlike penalties for similarly situated employees; and (4) appellant's removal did not exceed the bounds of reasonableness.

Appellant has now petitioned for review contending that the agency charges are not supported by the record, that her penalty was harsher than penalties assessed to other employees who engaged in similar misconduct, and that her removal exceeds the bounds of reasonableness in light of the factors set forth in Douglas v. Veterans Administration, 5 MSPB 313 (1981).

Analysis

Appellant has failed to establish that the agency failed to prove the charges against her. Appellant asserts that the presiding official erred in crediting Ms. Reiner's testimony because Ms. Reiner wanted appellant's position. We find, however, that the record supports the presiding official's conclusion that another employee was first offered appellant's position. We also agree that it is unlikely that Ms. Reiner would assume the risk of criminal prosecution by falsely accusing appellant in order to possibly obtain appellant's position. Initial Decision at 4 n.1; Hearing Transcript (Tr.) at 47, 102.

Further, while appellant contends that she worked the 8 and 1/2 hours of overtime at issue in the July 30, 1983 pay period but merely entered the overtime for the wrong day, she has not advanced a plausible explanation for the other five pay periods cited by the agency. With respect to these periods, appellant asserts that the signed overtime requests and her testimony establish that she worked the hours in

question. An overtime request, however, does not establish that appellant worked the days in question. Tr. at 6. We also defer to the presiding official's findings concerning her testimony on these points in light of the presiding official's opportunity to observe the demeanor of the witnesses. See Weaver v. Department of the Navy, 2 MSPB 297 (1980).

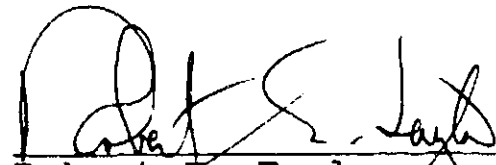
Appellant has also failed to establish that she was treated differently than similarly situated employees. See Douglas v. Veterans Administration, supra, at 331-32 (consistency of penalty with those imposed upon others for the same or similar offenses is relevant factor in determining the appropriateness of penalty). Although the record establishes that other employees committed offenses involving fraud or falsification, only one other case of time card fraud occurred at the agency within the past five years and the employee involved was removed. Appellant's Exhibit 12; Tr. at 238-39. In addition, there has been only one case of an employee altering time and cost cards during the same period and that employee resigned after confessing during an investigation. Appellant's Exhibit 12. Further, unlike the other cases, appellant's offense went to the heart of her duties as timekeeper, and her fraudulent acts were recurrent, and required a considerable degree of premeditation, stealth and cunning. In light of this evidence we conclude that appellant's penalty was not unlike penalties for similarly situated employees. See Initial Decision at 6-7. We further find that the agency's removal action does not exceed the bounds of reasonableness in view of the pertinent factors in this case. See Douglas v. Veterans Administration, supra.

Notice

This is the final order of the Merit Systems Protection Board in this appeal. The initial decision shall become final five (5) days from the date of this order. 5 C.F.R. § 1201.113(b).

The appellant is hereby notified of the right under 5 U.S.C. § 7703 to seek judicial review, if the Court has jurisdiction, of the Board's action by filing a petition for review in the United States Court of Appeals for the Federal Circuit, 717 Madison Place, N.W., Washington, D.C. 20439. The petition for judicial review must be received by the Court no later than thirty (30) days after the appellant's receipt of this order.

FOR THE BOARD:


Robert E. Taylor
Clerk of the Board

Washington, D.C.