THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
MICHAEL MINOR,	)	
Employee	)	
	)	OEA Matter No.: 1601-0052-18
v.	)	
	)	Date of Issuance: June 30, 2020
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Michael Minor ("Employee") worked as an Investigator for the Metropolitan Police Department ("Agency"). On November 1, 2017, Agency issued Employee a Notice of Proposed Adverse Action. Employee was charged with violating General Order ("GO") 120.21 for "engaging in [the] commission of a crime, whether or not a court record reflects a conviction; failure to obey directives by the Chief of Police; and conduct unbecoming of an officer." The charges stemmed from a February 20, 2016 incident wherein Employee was involved in a traffic dispute with another civilian, ("W.S."), while traveling near Interstate 295 in the District of Columbia. According to Agency, during the incident, Employee and W.S. engaged in a verbal and physical altercation during which Employee threw an empty water bottle in the direction of W.S.

Employee proceeded to follow W.S. southbound on the interstate and subsequently engaged in a second physical altercation which resulted in W.S. sustaining injuries to his neck. During the altercation, Employee admitted to removing and pointing his service weapon at W.S. As a result, Employee was arrested and charged with Assault with a Dangerous Weapon ("ADW"). Agency held an Adverse Action Hearing on February 14, 2018. The Adverse Action Panel ("Panel") determined that Employee was guilty of each charge against him. On March 22, 2018, Agency issued its Final Notice of Adverse Action. On April 5, 2018, Employee filed an appeal with the Chief of Police. On April 25, the Chief of Police denied Employee's appeal. The effective date of his termination was May 11, 2018.[1]

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on June 8, 2018. In his appeal, Employee argued that Agency's termination action was arbitrary and capricious; unsupported by substantial evidence; not taken in accordance with the law; and that Agency lacked cause to terminate him. Therefore, he requested to be reinstated with back pay, benefits, and asked for an award of attorney's fees.[2]

Agency filed its Answer to the Petition for Appeal on July 10, 2018. It denied Employee's substantive claims and requested an oral hearing.[3] On December 21, 2018, the OEA Administrative Judge ("AJ") held a prehearing conference to assess the parties' arguments.[4] During the conference, the AJ determined that the Collective Bargaining Agreement ("CBA") between Employee's union and Agency, as well as the holding in *Pinkard v Metropolitan Police Department*, 801 A.2d 86 (D.C. 2006), precluded a *de novo* hearing.[5] Thus, the parties were

[1] *Final Notice of Adverse Action* (May 11, 2018).
[2] *Petition for Appeal* (June 8, 2018).
[3] *Agency's Answer to Petition for Appeal* (July 10, 2018).
[4] *Order Convening a Prehearing Conference* (October 25, 2018).
[5] 801 A.2d 86 (D.C. 2002). Under the holding in *Pinkard*, this Office may not conduct a de novo hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met: 1. The appellant is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical

ordered to submit written briefs addressing whether Agency's termination action was supported by substantial evidence; whether Agency committed a harmful procedural error; and whether Employee's termination was taken in accordance with all applicable laws, rules, and regulations.[6]

In its brief, Agency argued that it did not commit a harmful procedural error because it complied with D.C. Code § 5-1031, commonly referred to as the ("90-day rule"), which imposes a time limit in which agencies must levy proposed adverse actions against employees. Agency stated that the ninety-day period for issuing its proposed adverse action in this case was immediately tolled because Employee's conduct during the February 20, 2016 altercation was the subject of a criminal investigation. It explained that on the date of the incident, Employee's police powers were revoked on the scene; the Internal Affairs Division ("IAD") prepared a Preliminary Report of the incident, citing an allegation of ADW; and a Cobalt Offense report for Simple Assault was prepared. The matter was subsequently referred to the United States Attorney's s Office ("USAO") for review. According to Agency, the criminal investigation concluded on June 23, 2017, when the Superior Court of the District of Columbia ("Superior Court") dismissed Employee's ADW charge as *nolle prosequi*. Since Agency issued its Notice of Proposed Adverse Action on November 1, 2017, the ninetieth business day after the conclusion of the criminal investigation into Employee's conduct, it opined that there was no violation of the 90-day rule.[7]

Next, Agency contended that its termination action was based on substantial evidence. It provided that Employee committed a criminal assault when he admitted to drawing his service weapon during the altercation. It disagreed with Employee's argument that he acted in self-defense

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Services Department; 2. The employee has been subjected to an adverse action; 3. The employee is a member of a bargaining unit covered by a collective bargaining agreement; 4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*; and 5. At the agency level, Employee appeared before a Trial Board that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee.

[6] *Post-Conference Order* (December 24, 2018).

[7] *Agency Brief* (February 4, 2019).

because he believed that W.S. was possibly armed. Additionally, Agency posited that the evidence supported a finding that Employee threw an empty water bottle at W.S. through his driver's side window. It stated that Employee also committed a physical assault when he placed W.S. in a neck hold. Agency submitted that Employee failed to obey GO RAR-901-01 by unnecessarily displaying his service weapon and that his conduct on February 20, 2016, was unbecoming of a police officer. Lastly, it opined that termination was the appropriate penalty. As a result, Agency requested that the AJ uphold its termination action.[8]

In his Brief, Employee argued that Agency violated the 90-day rule and stated that merely asserting that the USAO or IAD was conducting a criminal investigation was insufficient to toll the ninety-day time period. According to Employee, Agency had the burden of proof in establishing that there was an actual criminal investigation into his conduct occurring up until June 23, 2017. He reasoned that Agency failed to present any evidence to show that the USAO was conducting a criminal investigation beyond April 20, 2016, the day on which the arrest warrant was issued. As a result, Employee contended that Agency's Notice of Proposed Adverse Action was issued 295 days late; thereby, violating D.C. Official Code § 5-1031. Further, it was Employee's position that the dismissal of the criminal charges might not always provide a "bright line" measure for purposes of the 90-day rule. He explained that Agency ignored the evidence that charging him with ADW, arresting him, and jailing him all constituted measures that could be used to calculate the ninety-day deadline. [9]

Moreover, Employee submitted that there was insufficient evidence in the record to sustain the substantive charges against him and that the Panel's findings were not supported by substantial evidence. He also stated that Agency violated his due process rights. Lastly, Employee argued that

[8] *Id.*
[9] *Employee Brief* (February 25, 2019).

the Panel erred in conducting an analysis of the *Douglas* factors. Consequently, he asked that Agency's termination action be reversed.[10]

Agency filed a reply brief on March 11, 2019. It disagreed with Employee's arguments regarding the 90-day rule and contended that his arguments regarding the 90-day rule were inconsistent with the D.C. Council's intended legislative purpose. According to Agency, both the 2004 and 2015 amendments to D.C. Code § 5-1031 indicate that that the Council intended for the 90-day rule to toll through the end of any criminal prosecution. Thus, it reasoned that Employee's contention that the criminal investigation concluded on April 20, 2016, was without merit. Moreover, it maintained that Employee's due process rights were not violated. Therefore, Agency, again, requested that Employee's termination be upheld.[11]

After reviewing the initial briefs, the AJ ordered the parties to submit supplemental briefs addressing whether Agency adhered to D.C. Code § 5-1031 when it initiated Employee's termination.[12] Additionally, Agency was ordered to submit evidence, if any, to indicate that it conducted a continuing criminal investigation into Employee's conduct beyond April 20, 2016, the date of Employee's arrest and arraignment.

Agency submitted briefs on June 3, 2019 and July 5, 2019. It argued that its notice of proposed adverse action was timely based on the plain language of the tolling provision found in D.C. Code § 5-1031. According to Agency, the actions it took on the day of Employee's alleged misconduct were indicative of the commencement of a criminal investigation. It provided that the D.C. Court of Appeals in *District of Columbia v. D.C. Office of Employee Appeals*, 883 A.2d 124 (D.C. 2005) ("Jordan"), has previously held that the conclusion of a criminal investigation must

[10] *Id.*
[11] *Agency's Reply Brief* (March 11, 2019).
[12] *Second Post-Conference Order* (May 6, 2019).

involve an action taken by an entity with prosecutorial authority. It contended that the public policy for the 90-day rule is to prevent unnecessary delays in initiating disciplinary actions so that an employee is not prejudiced in defending themselves. Therefore, it opined that the USAO's criminal investigation in this matter concluded on June 23, 2017, when Superior Court dismissed the charges against Employee pursuant to the agreement reached by the parties at mediation. [13]

In support of its position that a criminal investigation was ongoing through June 23, 2017, Agency submitted the affidavit of Assistant United States Attorney ("AUSA") Laura Crane ("Crane"). Crane's affidavit stated that she continuously identified and interviewed witnesses and reviewed documents until the scheduled trial date of May 10, 2017. Crane explained that if the mediation between Employee and W.S. was unsuccessful, a new trial date would have been set and she would have resumed preparing for trial.[14] Agency also submitted the Affidavit of IAD Director, Brian Bray ("Bray"). Bray's statement provided that Agency's criminal investigation commenced on February 20, 2016, but he did not address when the investigation concluded.

Employee submitted briefs on May 20, 2019, June 3, 2019, and July 12, 2019. He argued that the statutory language of D.C. Code § 5-1031 provides that the 90-day rule is only tolled by a criminal investigation, and not by the court case itself. Employee cited to GO 202.22, Part III. B, which provides that the ninety-day period is only tolled if "there is an ongoing criminal investigation into the act constituting cause…." According to Employee, there was nothing in the record to indicate that an ongoing criminal investigation into the February 20, 2016 incident was conducted after he was arrested on April 20, 2016, and arraigned on April 21, 2016. Additionally, he contended that the 90-day rule was mandatory, not directory, in nature. Thus, Employee believed that Agency committed a harmful procedural error when it issued its Notice of Proposed

[13] *Agency's Legal Brief* (June 3, 2019); *Agency's Brief* (July 5, 2019).
[14] *Id.*

Adverse Action in an untimely manner, in violation of D.C. Code § 5-1031.[15]

Employee objected to Agency's submission of the affidavit of Captain Bray, arguing that the holding in *Pinkard* precluded OEA from conducting a *de novo* evidentiary hearing. He stated that Captain Bray's affidavit had no information which was new or relevant to the ninety-day issue in his case. Employee contended that the affidavit of AUSA Crane confirmed that Agency did not conduct an actual criminal investigation into his conduct beyond May 10, 2017. Moreover, he submitted that Agency had the burden of proving circumstances that would toll D.C. Code § 5-1031. Employee noted that the only post-arrest evidence presented by Agency in support of its proof of an ongoing criminal investigation was the May 24, 2017 settlement agreement, wherein the USAO agreed not to criminally prosecute Employee. Therefore, he echoed his previous sentiment that Agency's issuance of its advance notice of termination was untimely.[16]

The AJ issued an Initial Decision on August 26, 2019. He held that the D.C. Court of Appeal's ruling in *Pinkard* precluded OEA from conducting a *de novo* hearing in this matter and that OEA was required to base its decision solely on the administrative record. Additionally, he provided that the Court in *Pinkard* limited OEA to determining whether Agency's decision was based on substantial evidence; whether Agency committed a harmful procedural error; and whether Agency's adverse action was taken in accordance with all applicable laws, rules, and regulations. With respect to the substantial evidence requirement, the AJ concluded that the Panel's findings regarding each charge against Employee were supported by the record. The AJ disagreed with Employee's argument that the mere fact that he was arrested and charged with ADW did not prove that a crime was committed. He also found Employee's contention that he acted out of self-

[15] *Employee's Statement of the Facts for 90-day Rule Issue* (May 20, 2019); *Employee's Supplemental Brief on 90-day Rule Issue* (June 3, 2019); and *Employee's Supplemental Brief on 90-day Rule Issue* (July 12, 2019).
[16] *Id.*

defense during the confrontation with W.S. to be without merit. As is related to the penalty of termination, the AJ held that Agency properly considered and weighed each *Douglas* factor in selecting the appropriate penalty. He noted that Employee's disagreement with Agency's conclusions regarding the *Douglas* factors did not serve as a basis for reversing the termination action.[17]

With respect to whether Agency committed a harmful procedural error, the AJ held that Agency did not violate D.C. Code § 5-1031(b). Highlighting the holdings in *Ebert v. Metropolitan Police Department* ("Ebert"),[18] *D.C. Metropolitan Police Department v. D.C. Office of Employee Appeals* ("Thomas-Bullock"),[19] and *McCain v. D.C. Office of Employee Appeals* ("McCain"),[20] the AJ explained that Agency was permitted to rely on "bright lines" to determine the appropriate tolling period. He stated that the relevant inquiry as to when an investigation ends is determined by the date on which the prosecuting authority no longer has the discretion to bring charges against an employee. In this case, the AJ held that the conclusion of the criminal investigation into Employee's conduct occurred on June 23, 2017, the date on which Employee's ADW charge was dismissed as *nolle prosequi*. Accordingly, he determined that Agency had ninety days to initiate its adverse action against Employee under D.C. Code § 5-1031. Since Agency issued its Notice of Proposed Adverse Action November 1, 2017, exactly ninety business days after the conclusion of the criminal investigation, the AJ held that there was not a violation of the 90-day rule. As a result, Employee's termination was upheld.[21]

Employee filed a Petition for Review and a Motion to Stay and Request for an Extension

[17] *Initial Decision* (August 26, 2019).
[18] OEA Matter No. 1601-0223-98, *Opinion and Order on Petition for Review* (December 31, 2004).
[19] OEA Matter No. 1601-0039-17 (April 30, 2018).
[20] Case No. 2015 CA 004589 P(MPA) (D.C. Super. Ct. February 8, 2017).
[21] *Id.*

of Time to Submit a Statement of the Reasons for Appealing the Award on September 16, 2019. In his petition, Employee states that the legal disposition of this matter is not ripe for review before the OEA Board because the AJ relied heavily upon the holdings in *McCain* and *Thomas-Bullock* in support of his ruling; however, both cases were on appeal at the time of his filing. Employee challenges the AJ's finding that the tolling period under D.C. Code § 5-1031 ended on June 23, 2017, and states that no one could reasonably conclude that the USAO continued to conduct a criminal investigation after the mediation between Employee and W.S. was settled on May 24, 2017. Employee requests that the Board stay his appeal pending the resolution of *McCain* and *Thomas-Bullock*. He further requests thirty calendar days after the issuance of the aforementioned cases to file his Statement for the Reasons for Appealing the Initial Decision.[22]

Agency filed an Opposition to Employee's Petition for Review and Motion to Stay and Request for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award on October 10, 2019. It states that Employee's petition does not meet the requirements of OEA Rule 633.3.1 because it does not set forth objections to the Initial Decision which are supported by reference to the record. Agency believes that Employee's request for an extension of time to file a statement would constitute a waiver of the thirty-five-day deadline for filing a Petition for Review.[23] It notes that Employee was well aware that appeals in the matters of *McCain* and *Thomas-Bullock* were filed before the AJ issued the Initial Decision in this matter. Thus, it reasons that Employee should have requested a stay prior to the issuance of Initial Decision and not before the Board on petition for review. Consequently, Agency asks that Employee's motion be denied

[22] *Petition for Review and a Motion to Stay and Request for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award* (September 16, 2019).
[23] Under OEA Rule 633.1, a Petition for Review must be filed "within thirty-five (35) calendar days of issuance of the initial decision."

and requests that the Initial Decision be upheld.[24]

Discussion

In accordance with OEA Rule 633.3, a Petition for Review must present one of the following arguments for it to be granted. Specifically, the rule provides:

> The petition for review shall set forth objections to the initial decision supported by reference to the record. The Board may grant a Petition for Review when the petition establishes that:
>
> (a) New and material evidence is available that, despite due diligence, was not available when the record closed;
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> (b) The decision of the Administrative Judge is based on an erroneous interpretation of statute, regulation or policy;
>
> (c) The findings of the Administrative Judge are not based on substantial evidence; or
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> (d) The initial decision did not address all material issues of law and fact properly raised in the appeal.

Additionally, this Board must determine whether the AJ's findings were based on substantial evidence in the record. The Court of Appeals in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), held that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[25]

90-day Rule

[24] *Agency's Opposition to Employee's Petition for Review and Motion to Stay and Request for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award* (October 10, 2019).
[25] *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

While Employee's September 16, 2019 filing does not raise one of the issues contemplated in OEA Rule 633.3 as a basis for granting his motion and request for a stay, this Board will nonetheless address the timeliness issue. Germane to the disposition this appeal is whether Agency violated D.C. Code § 5-1031 when it issued its Proposed Notice of Adverse Action. The 2015 iteration of D.C. Code § 5-1031 states the following, in pertinent part:

> (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department knew or should have known of the act or occurrence allegedly constituting cause.
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> (b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department or any law enforcement agency with jurisdiction within the United States, the Office of the United States Attorney for the District of Columbia, or the Office of the Attorney General, or is the subject of an investigation by the Office of the Inspector General, the Office of the District of Columbia Auditor, or the Office of Police Complaints, the 90-day period for commencing a corrective or adverse action under subsection (a) or (a-1) of this section shall be tolled until the conclusion of the investigation.

It is well-settled that the 90-day deadline is a mandatory, not a directory provision.[26] Therefore, any violation of the statute by an agency would result in a reversal of the adverse action. The only exception to this rule lies within subsection (b) of the statue. Under § 5-1031(b), the ninety-day deadline shall be tolled until the conclusion of the criminal investigation into an employee's alleged misconduct.

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[26] *McHugh v. Department of Human Services*, OEA Matter No. 1601-0012-95 (November 20, 1995); *Ross v. Department of Human Services*, OEA Matter No. 1601-0338-94 (May 15, 1995); *Robert L. King v. D.C. Housing Authority*, OEA Matter No. 1601-0062-98, p. 16 (May 24, 2000); *Velerie Jones-Coe v. Department of Human Services*, OEA Matter No. 1601-0088-99, p. 3 (June 7, 2002); *Curtis Adamson v. Metropolitan Police Department*, OEA Matter No. 1601-0041-04 (February 14, 2006); and *Sherman Lankford v. Metropolitan Police Department*, OEA Matter No. 1601-0147-06 (March 26, 2007).

Employee requested that the OEA Board hold this matter in abeyance pending the outcome of the rulings in *McCain* and *Thomas-Bullock* because both matters were on appeal as of the date of his September 16, 2019 filing. Nothing within OEA's rules permits this Board to stay a Petition for Review; however, we consider Employee's argument regarding *McCain* to be moot, as the District of Columbia Court of Appeals issued its Memorandum Opinion and Judgment on March 19, 2020.

In *McCain*, the Court of Appeals addressed whether the agency – D.C. Fire and Emergency Services – violated the 90-day rule when issuing its proposed notice of removal. The employee in *McCain* argued that the agency's notice of proposed removal was untimely because it was not issued within ninety days of her July 30, 2009 arraignment on charges of Driving While Intoxicated and Driving Under the Influence. While it did not conclusively pinpoint when a criminal investigation ends under D.C. Code § 5-1031 (2019 Repl.), the Court held that the agency acted reasonably in determining that, under the circumstances, the investigation did not conclude until the date on which the employee entered a guilty plea.[27] Highlighting the holding in *Jordan*, the Court noted that the circumstances of a particular case may dictate when an investigation concludes under D.C. Code § 5-1031.[28] The Court further explained that any perceived unfairness to the employee did not outweigh the agency's "reasonable choice to refrain from taking adverse actions against employees until the agency is certain the employee committed removable misconduct."

Additionally, in *Thomas-Bullock*, Superior Court examined the statutory construction of D.C. Code § 5-1031. Similar to the holding in *Jordan*, the Court in *Thomas-Bullock* held that, in a time limit context, the conclusion of a criminal investigation must involve an action taken by an

[27] The employee in *McCain* pleaded "not guilty" to the criminal charges when she was arraigned on July 30, 2009. The Court held that it was reasonable for the agency to conclude that the investigation was incomplete because the employee planned to challenge the prosecution's case.
[28] 883 A.2d at 128.

entity with prosecutorial authority – meaning the authority of a prosecutorial body to review evidence, and to either charge an individual with the commission of a criminal offense, or decide that the charges should not be filed.[29] The Court disagreed with OEA's finding that the conclusion of the criminal investigation ended when the employee was arrested. Instead, it held that the ninety-day period under D.C. Code § 5-1031 began tolling on the date on which the USAO's exercise of its discretionary authority concluded and the case was dismissed pursuant to a Deferred Sentencing Agreement.

In this case, the act allegedly constituting cause occurred on February 20, 2016, when Employee and W.S. were involved in a traffic dispute and altercation. Agency was apprised of Employee's conduct on February 20, 2016, when IAD Agents Felicia Carson ("Carson")[30] and Lieutenant Jonathan Dorrough ("Dorrough") responded to the scene of the altercation. On the same day, Agent Carson generated Incident Summary ("IS") number 16000544, citing to Employee's ADW charge.[31] The tolling exception under D.C. Code § 5- 1031(b) was triggered because the allegations against Employee were the subject of a criminal investigation by the USAO. However, on June 23, 2017, Superior Court dismissed the ADW charge against Employee as *nolle prosequi* pursuant to the settlement agreement reached by Employee and W.S.[32] Agency subsequently had ninety business days to serve Employee with a written notice of proposed adverse action. Agency issued its Advance Notice of Proposed Termination on November 1, 2017, ninety business days after it proposed Employee's termination.

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[29] The employee in *Thomas-Bullock* was arrested for Simple Assault on February 4, 2016. However, on April 11, 2016, the employee pleaded guilty to the charge and entered into a Deferred Sentencing Agreement with the USAO. The matter was dismissed on September 23, 2016, in accordance with the Deferred Sentencing Agreement.
[30] Agent Felicia Carson is also referred to as her former married name, Felicia Taliaferro ("Taliferro") in Agency's Investigative Report.
[31] *Agency's Statement of Facts and Supporting Affidavit*, Exhibit 1, Attachment 2 (May 20, 2019).
[32] *Id* at Exhibit 1, Attachment 6.

In light of the foregoing, this Board finds that there is substantial evidence in the record to support the AJ's finding that Agency was compliant with the requirements of D.C. Code § 5-1031(b). Agency acted reasonably in relying on June 23, 2017, the date on which Employee's ADW charge was dismissed as *nolle prosequi*, in determining the criminal investigation into Employee's conduct was concluded.[33] The USAO no longer retained the authority to prosecute Employee's alleged misconduct after June 23, 2017. Agency's determination that June 23, 2017 constituted a "bright line" measure for purposes of the 90-day rule is consistent with the holdings in *McCain* and *Thomas-Bullock*. Additionally, Agency's actions were not incongruent with the legislative purpose of the 90-day rule.[34] In light of the foregoing, this Board finds that the Initial Decision is supported by substantial evidence. Consequently, Employee's Petition for Review and a Motion to Stay and Request for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award must be denied.

[33] *See Jordan supra* at 128 (holding that though a prolonged period of inactivity by the United States Attorney may signify the end of an investigation, we disagree with the OEA and the trial court that the criminal investigation concluded in this case merely because the record is void of evidence that any further action was taken by the USAO between May 22, 1996 – the date on which the Inspector General issued its report addressing the employee's alleged misconduct and July 18, 1996 – the date when the arrest warrant for the employee was issued.)

[34] The legislative purpose of the 90-day rule was to ensure that adverse actions against employees were commenced and administered in a timely manner. The deadline was intended to bring certainty to employees over whose heads a potential adverse action might otherwise linger indefinitely. *See Lawrence v. Metropolitan Police Department*, OEA Matter No. 1601-0080-16, *Opinion and Order on Petition for Review* (September 4, 2018). Additionally, the District of Columbia Court of Appeals has held that the D.C. Council, in enacting this legislation, "sought to expedite the process and provide certainty with some degree of balance and flexibility." *See also D.C. Fire and Medical Services Department v D.C. Office of Employee Appeals*, 986 A.2d 419 (D.C. 2010).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review and a Motion to Stay and Request for an Extension of Time to Submit a Statement of the Reasons for Appealing the Award is **DENIED**.

FOR THE BOARD:

Clarence Labor, Jr., Chair

Patricia Hobson Wilson

Jelani Freeman

Peter Rosenstein

Dionna Maria Lewis

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.