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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE ¹	)	
	)	OEA Matter No.: 1601-0049-24
v.	)	
	)	Date of Issuance: August 13, 2026
D.C. DEPARTMENT	)	
OF TRANSPORTATION,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Transportation Planner with the D.C. Department of Transportation (“Agency” or “DDOT”).² On November 1, 2023, Agency issued an Advance Notice of Proposed Removal charging Employee with violation of District Personnel Manual (“DPM”) § 1605.4(d) (failure or refusal to follow instructions) and § 1607.2(d)(2) (deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions). The cause of the proposed action was based on Employee’s refusal to accept their direct supervisor’s decision that they could not attend a conference (the “conference”) on Light Electric Vehicles (“e-bikes”) as a representative of DDOT. According to Agency, rather than accept their supervisor’s refusal, Employee

¹ Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

² Consistent with the Initial Decision and Employee’s request not to be addressed by name and/or gender-specific pronouns, this Board will utilize gender neutral pronouns.

went outside of their chain of command and asked Agency's then-acting Deputy Mayor for Operations and Infrastructure ("DMOI") and Agency's then-acting Chief Operations Officer to seek alternative approval to attend the conference. The effective date of Employee's termination was April 9, 2024.

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on May 8, 2024. They argued that Agency failed to utilize progressive discipline and failed to consider mitigating circumstances surrounding the removal action. Employee also submitted that Agency did not properly consider their effective work performance. Additionally, they asserted that the request to attend the conference did not constitute a deliberate or malicious failure to follow instructions. As a result, Employee requested to be reinstated to a different division with back pay and lost overtime pay.³

In response, Agency contended that Employee's termination was taken for cause. It averred that termination was proper under the Table of Illustrative Actions and the *Douglas* factors.⁴ Agency

³ *Petition for Appeal* (May 8, 2024).

⁴ The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

- 1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
- 2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
- 3) the employee's past disciplinary record;
- 4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
- 5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
- 6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
- 7) consistency of the penalty with any applicable agency table of penalties;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee's rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

noted that Employee previously received verbal counseling in April of 2022, as well as a corrective suspension in October of 2022. As such, Agency opined that the removal action was warranted.⁵

This matter was first assigned to OEA Administrative Judge (“AJ”) Hochhauser, who left the employ of OEA in June of 2025. The matter was reassigned to a new AJ in June of 2025. On July 16, 2025, the AJ issued a post-status conference order requiring the parties to submit briefs addressing whether Agency had cause for the termination action; whether Agency followed all applicable statutes, regulations, and laws; and whether removal was the appropriate penalty.⁶

In its brief, Agency asserted that Employee’s conduct violated DPM §§ 1605.4(d) and 1607.2(d)(2). Agency explained that on August 18, 2023, Employee emailed their supervisor, Joseph Kerwin (“Kerwin”), and Haley Pickett (“Pickett”), requesting clearance to participate as an Agency representative at the e-bike conference. It went on to provide that after the request was denied by Kerwin, Employee emailed three members from the Office for the Deputy Mayor for Operations and Infrastructure to request approval to attend the conference on behalf of DDOT. Additionally, Employee sent a Microsoft Teams message to Agency’s Chief Operations Officer Neelima Ghanta (“Ghanta”) to seek approval. Agency noted that Employee’s supervisor, Kerwin, was not included in these communications, and Employee admitted that Kerwin wasn’t “currently favorable” of the request. Consequently, it reasoned that Employee’s conduct constituted a deliberate and malicious refusal to comply with proper supervisory instructions. Finally, Agency reiterated that removal was consistent with the Table of Illustrative Actions and an assessment of the *Douglas* factors. Consequently, it opined that Employee’s removal was proper.⁷

⁵ *Agency’s Answer to Petition for Appeal* (June 7, 2024).

⁶ *Post-Status Conference Order* (July 16, 2025).

⁷ *Agency’s Brief in Response to July 16, 2025[,] Order* (August 13, 2025).

Employee argued that Agency lacked cause to terminate them. They claimed that Agency failed to follow the progressive discipline steps outlined in DPM §§ 1610.1 and 1610.2. Employee also posited that there was no clear supervisory instruction provided by Kerwin. They contended that Agency improperly relied on Employee's past conduct in determining that the current conduct warranted termination, and they asserted that the penalty was excessive. Therefore, Employee requested that the adverse action be reversed.⁸

The AJ issued an Initial Decision on May 6, 2026, finding that Agency established cause to discipline Employee pursuant to DPM § 1605.4(d) and § 1607.2(d)(2). She ruled that Employee deliberately refused to comply with Kerwin's instruction that Employee could not identify themselves as a DDOT representative at the conference and instead shopped for an alternate approval of their request. The AJ also concluded that the conduct was intentional because Employee failed to inform Kerwin or Pickett of their efforts, and Employee acknowledged that their supervisors did not approve the request because e-bikes were not a part of the division's mission.⁹

Concerning progressive discipline, the AJ highlighted that Employee previously received verbal counseling in April of 2022, as well as a corrective suspension in October of 2022. As a result, she held that Agency properly considered past discipline in assessing the penalty in the instant matter. Lastly, the AJ provided that the Table of Illustrative Actions authorized termination as a permissible penalty for a first and second occurrence of a failure to follow instructions charge, even if Agency did

⁸ *Employee Response to Agency's Brief* (November 14, 2025). Employee previously filed a response brief on September 16, 2025; however, they subsequently requested to withdraw the brief, noting inaccuracies in the citations of four cases relied upon in their brief. *See Motion to Withdraw Employee Response to Agency's Brief* (October 20, 2025). Employee's motion was granted by the AJ on October 22, 2025. Agency filed a reply brief on December 3, 2025. It asserted that Employee was removed for cause; verbal counseling is established by the DPM as an important step to progressive discipline, which it utilized; Employee's previous suspension established a pattern of repeated disobedience of proper supervisory instructions; and Employee's conduct did not demonstrate good faith. Therefore, it again requested that the termination action be sustained. *Agency's Sur-Reply Brief in Response to October 22, 2025, Order* (December 8, 2025),

⁹ *Initial Decision* (May 6, 2026).

not consider Employee's past counseling or suspension. Accordingly, the AJ upheld Agency's removal action.¹⁰

In Employee's Petition for Review to the Board, they contend that the Initial Decision was based on an erroneous interpretation of DPM §§ 1605.4(d) and 1607.3(d)(2). They assert that the AJ failed to consider mitigating *Douglas* factors. According to Employee, the Initial Decision also failed to address all material issues of law and fact properly raised on appeal. Lastly, they believe that an evidentiary hearing was warranted to resolve issues of clarity, intent, and instructions. Therefore, Employee asks that the Board grant their petition.¹¹

Substantial Evidence

According to OEA Rule 637.4(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987), found 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.¹²

Cause

Employee was charged with violating DPM § 1605.4(d) (failure or refusal to follow instructions) and § 1607.2(d)(2) (deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions). In *Raphael v. Okyiri*, 740 A.2d 935, 945 (D.C. 1999) the District of Columbia Court of Appeals interpreted a previous, similar iteration of the regulations which addressed the charge of insubordination. The Court provided that in order to

¹⁰ *Id.*

¹¹ *Petition for Review* (June 11, 2025).

¹² Black's Law Dictionary, Eighth Edition; *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).

establish a deliberate or malicious failure to comply with instructions, an agency must show that the employee was given clear instructions and that the supervisor had the authority to issue the instructions.¹³ Additionally, Section 1607(d)(2) of the regulations includes an element of intent-- the evidence must support a finding of deliberate or malicious refusal to comply.

Based on a review of the record, this Board finds that Employee received a proper supervisory instruction when Kerwin denied Employee's authorization to attend the conference as a representative of DDOT. Employee's duties as a Transportation Planner included working on the School Parking Zone Program and the Residential Permit Parking Zone Program. Their position did not include managing the District's e-bike program. Thus, on August 18, 2023, Employee was provided with a clear and unambiguous directive to not identify themselves as a representative of DDOT at the conference because Employee was not the appropriate representative to speak on the topic. The directive came from Employee's direct supervisor, who was acting within the scope of his duties. Further, there is no evidence to support a finding that the instruction was unlawful.

This Board also concludes that the element of intent was satisfied under DPM § 1607(d)(2), as Employee's own statements provide that their "...direct supervisors are not currently favorable as they do not see e-bikes as part of my Division's mission..." and "[w]hen they said 'not at this time' and gave a reason that didn't make sense to me, I reached further to ask our new Chief Ghanta via Teams text if she would override them."¹⁴ Instead of complying with the supervisory instruction, Employee continued to seek approval from individuals outside of their direct supervisory chain despite knowing that the request was denied. Communications from both DMOI and Acting Chief Operations Officer Neelima Ghanta informed Employee that endorsement for attending the

¹³ *Okyiri* at 946. See also 6-B DCMR § 1619.1(f)(4)(2008)(defining previous iteration of insubordination).

¹⁴ *Petition for Appeal* at p. 81 and Attachment 1, p. 9.

conference as a representative of DDOT was predicated on approval from their supervisor, which did not occur.

Moreover, Employee's supervisor was deliberately excluded from these communications in an effort to solicit an override from a more senior authority to attend the conference. Contrary to Employee's position, their requests were not simply seeking approval, they established an intentional dismissal of Kerwin's proper managerial authority and an attempt to circumvent his instructions. Accordingly, Employee's conduct constituted a deliberate refusal to follow a lawful supervisory instruction. As a result, Agency met its burden of proof in establishing cause under DPM §§ 1605.4(d) and 1607.2(d)(2), and the AJ's findings related to such are supported by substantial evidence. Therefore, Employee's arguments to the contrary are unpersuasive to this Board.

Progressive Discipline

Employee argues that the AJ findings concerning progressive discipline constitute a reversible error. Chapter 6-B, Section 1610 of the District of Columbia Municipal Regulations ("DCMR") provides guidance on progressive discipline. Specifically, 6-B DCMR §1610.1 provides that "... the District uses a progressive disciplinary system when an employee's conduct fails to meet expectations. The District's progressive system includes the following steps: [v]erbal counseling; [r]eprimand; [c]orrective action; and [a]dverse action." However, § 1610.2 provides that "[e]very situation is different and in each case[,] management must consider a number of factors when determining an appropriate action to take. This includes, among others, consideration of the seriousness of the situation, the employee's past disciplinary history, and the employee's work history. When appropriate, and consistent with §§ 1606 and 1607, management may skip any or all of the progressive steps outlined in § 1610.1."

While Agency was not required to engage in progressive discipline before initiating the current removal action, the record reflects that Employee received verbal counseling in April of 2022

and a corrective suspension in October of 2022 related to their failure to follow instructions.¹⁵ Of note is Employee's 2022 suspension, which concerned their continued pursuit of the e-bike program despite a directive from Associate Directory Peckett to cease.¹⁶ Consequently, Employee's argument that the AJ failed to address the grievance defects associated with the 2022 suspension is not outcome-determinative in this matter because, as will be discussed below, Agency was permitted to remove Employee based on a first violation of failure or refusal to follow instructions. Notwithstanding, Agency engaged in progressive discipline in this matter, and it was authorized under DPM § 1610.2 to bypass the steps provided in § 1610.1.

Penalty Within the Range Allowed by Law, Regulation, or Applicable Table of Penalties

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).¹⁷ According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. The Table of Illustrative Actions provides that the penalty range for a first occurrence of failure or refusal to follow instructions: deliberate or malicious refusal to comply with rules, regulations, written procedures or proper supervisory instructions under DPM § 1607.2(d)(2) is a three-day suspension to removal.

¹⁵ *Id.* at Exhibits 2 and 3.

¹⁶ *Agency's Answer* at Exhibit 1.

¹⁷ *Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-00540-01, *Opinion and Order on Petition for Review* (May 23, 2008); *Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601- 0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98, *Opinion and Order on Petition for Review* (September 5, 2007); *Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

The record reflects that Agency weighed the *Douglas* factors before imposing the penalty of removal, including mitigating circumstances surrounding the offense. Employee's disagreements with management's analysis are not a basis for granting their petition. Additionally, there is no credible evidence of an abuse of managerial discretion. Thus, Agency's penalty determination is permissible even if this Board excluded Employee's 2022 suspension from consideration in the current removal action. Consequently, the AJ's finding that removal was within the range allowed by law is supported by substantial evidence.

Conclusion

Agency established cause to remove Employee for violating DPM §§ 1605.4(d) and 1607.2(d)(2). The penalty of removal was within the range allowed by law, regulation, and any applicable table of penalties. The penalty was also based on relevant factors, and there was no clear error of judgment by Agency. Moreover, Employee's argument on progressive discipline lacks merit. Accordingly, their Petition for Review must be denied.¹⁸

¹⁸ As for Employee's other arguments, this Board finds no compelling basis for granting their petition. Employee was already provided with the opportunity to engage in discovery during the course of this appeal in accordance with OEA Rule 620.2. Pursuant to OEA 622.2, the AJ retained the authority to bypass an evidentiary hearing after determining that no genuine issues of fact existed. Further, there is no compelling evidence to support a finding that the AJ violated OEA Rule 602.1, which provides that this Office's rules shall be applied to promote justice, fairness, and economy.

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.
consideration.

FOR THE BOARD:

Pia Winston, Chair

LaShon Adams

Jeanne Moorehead

Lafayette Barnes

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.