**THE DISTRICT OF COLUMBIA**

**BEFORE**

**THE OFFICE OF EMPLOYEE APPEALS**

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| In the Matter of:<br><br>EMPLOYEE[1]<br><br>v.<br><br>D.C. FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT,<br>Agency | OEA Matter No. 1601-0012-24<br><br>Date of Issuance: August 7, 2025 |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Firefighter/Emergency Medical Technician for the District of Columbia Fire and Emergency Medical Services Department ("Agency"). On October 12, 2023, Agency served Employee with a Final Agency Decision: Termination, charging him with: (1) Violation of [Agency] Order Book Article VI, § 6, Conduct Unbecoming an Employee. Specifically, Agency determined that the misconduct was Neglect of Duty, which is found in Order Book VII, § 2(f)(3).[2] Additionally, Employee was charged with Article XXIV, § 8, Emergency Responses and [Agency] Order Book Article XVII, Driving Safety. According to Agency, while on duty, Employee intentionally delayed his response to a medical dispatch by several minutes

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency also cited to District Personnel Manual ("DPM") § 1603.3(f)(3).

when he drove in the opposite direction to make a stop at a Chic-fil-A. The effective date of Employee's termination was October 28, 2023.[3]

On November 27, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He contended that while there was a slight delay in response time, there was no delay in patient care. Employee explained that the Advanced Life Support ("ALS") and the Basic Life Support ("BLS") units were dispatched at the same time and his unit, the BLS, was not able to provide the level of care needed for the patient who was experiencing chest pain. Thus, he posited that care could not be rendered until the ALS unit arrived. Additionally, Employee asserted that termination was unwarranted due to the nature of the offense. As a result, he requested that Agency's adverse action be reconsidered.[4]

Agency filed its Answer to the Petition for Appeal on December 15, 2023. It contended that the penalty for Employee's misconduct was warranted based on his egregious action of stopping at a restaurant instead of immediately responding to a dispatch call. Agency argued that prior to receiving the dispatch call, Employee had a two-hour break, which was sufficient time for him and his partner to eat lunch. Additionally, it opined that the Fire Trial Board ("FTB") considered the *Douglas*[5] factors before reaching its decision to terminate Employee. Therefore,

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[3] *Petition for Appeal*, p. 5 (November 27, 2023).
[4] *Id.*, 1-2 and 7-8.
[5] 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.

Agency requested that Employee's removal action be upheld.[6]

The OEA Administrative Judge ("AJ") issued an order requesting the parties to submit briefs addressing whether the FTB's decision was supported by substantial evidence; whether there was harmful procedural error; and whether Agency's action was done in accordance with applicable laws or regulations. Additionally, the AJ noted that Agency cited to both the 2012 and 2019 District Personnel Manual ("DPM") versions in its Answer to the Petition for Appeal. Thus, she requested that the parties submit an explanation of which DPM version controls in this case and why.[7]

In its brief, Agency argued that it had cause to terminate Employee for neglect of duty. According to Agency, Employee's estimated response time to the dispatched location was two minutes. However, his ambulance took over ten minutes to arrive at the dispatched location because Employee drove his partner to pick up lunch. Employee's prolonged response time triggered an alert in Agency's system.[8] Agency contended that Employee and his partner had a

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.

[6] *D.C. Fire and Emergency Medical Services Department Answer to Employee's Petition for Appeal*, p. 10-15 (December 15, 2023).

[7] *Post Prehearing Conference Order* (March 26, 2024).

[8] Agency provided that its findings were supported by the I-Tracker data, the Ambulance 3 video surveillance, and Employee's own admission. The I-Tracker data is a software system that records the GPS coordinates of an ambulance's movements. The I-Tracker captured that Employee received a dispatch call to respond to a patient at Kaiser Permanente ("Kaiser") at 4:11 p.m. Instead of responding to the scene, Employee traveled eastbound on H Street NE towards Chick-fil-A. After he and his partner arrived at the restaurant, Ambulance 3 sat idle for four minutes. Ambulance 3 left the restaurant and headed towards Kaiser at 4:17 p.m. At 4:21 p.m., the video shows Employee arriving at Kaiser, more than ten minutes after the dispatch, and it shows the other ambulance dispatched for the medical emergency already at the scene.

two-hour break before the dispatch call in question.[9] As for the two DPM versions, Agency reasoned that its use of the 2012 and 2019 DPM versions are immaterial because the neglect of duty charges are substantively the same in both versions and include identical definitions in both versions of the Table of Penalties. Moreover, it provided that the FTB found that the *Douglas* factors were properly considered and that Employee's misconduct warranted his removal. Accordingly, Agency maintained that Employee's termination was taken in accordance with all applicable rules, laws, and regulations.[10]

In response, Employee denied Agency's assertion that he had a two-hour break. He explained that he and his partner had a busy day after receiving dispatches for several runs and that there was no delay in care to get food for his partner, who was feeling fatigued. Again, he argued that his unit was a BLS unit and would likely have been on standby until an ALS unit arrived to properly care for and offer additional services to the patient that his BLS unit was not equipped to handle. Therefore, Employee reasoned that his behavior did not rise to the level of neglect of duty. Regarding the penalty of removal, Employee opined that Agency failed to weigh the relevant *Douglas* factors and provided that the adverse action exceeded the limits of reasonableness.[11]

The AJ issued an Initial Decision on February 18, 2025. She found that Agency provided substantial evidence to support Employee's charges of Conduct Unbecoming an Employee and Driving Safety. The AJ opined that Employee's decision to delay an emergency response

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[9] Moreover, it argued that Employee violated Department policy by eating while driving, not wearing a seatbelt, disregarding stop signs on several occasions, and failing to wear the appropriate uniform shirt required by Order Book Article XXI. *Agency's Pinkard Brief*, p. 5-7 (May 8, 2024).
[10] *Agency's Pinkard Brief*, p. 5-13 (May 8, 2024).
[11] *Employee's Pinkard Brief*, p. 7-18 (June 14, 2024). Agency filed a sur-reply brief on June 28, 2024. It emphasized that Employee was required to respond immediately to dispatch even if he did not presume that his presence was important. Moreover, Agency reiterated its position that Employee neglected his duty by refusing to follow Agency's dispatch directives. *Agency's Reply Brief*, p. 1-6. (June 28, 2024).

adversely affected Agency's ability to perform effectively. She determined that the charges were supported by the video evidence and testimony offered during the FTB hearing. Moreover, the AJ found that Employee's claim that his partner was fatigued was inconsistent with the video footage of her talking on the phone and laughing. Additionally, she determined that, contrary to Employee's assertion that there was no delay in patient care, he was not the authority on whether a dispatch required an immediate response. Moreover, the AJ held that it was a violation of Agency policy to delay a response to the scene of an emergency.[12] She also found that Employee's removal was within the range of the Table of Penalties and that Agency appropriately considered the *Douglas* factors. As a result, the AJ held that Agency's termination action was taken in accordance with all applicable regulations.[13]

Employee filed a Petition for Review with the OEA Board on March 25, 2025. He maintains many of the same assertions made throughout his appeal. Employee claims that the Initial Decision was not supported by substantial evidence; was the result of harmful evidence; and did not address all the issues of law and fact properly raised in the appeal. Additionally, he argues that the *Douglas* factors analysis was inaccurate since he had no prior discipline before this incident. It is Employee's position that there was no delay in patient care; thus, his actions did not result in any harm or damage. Therefore, he requests that the Initial Decision be reversed.[14]

Agency filed its Opposition to Employee's Petition for Review. It reiterates that Employee's termination was appropriate and necessary given the circumstances. Agency submits that as a Firefighter/EMT, Employee was required to abide by the Order Book, which provides that emergency medical services providers shall immediately respond to an incident.

[12] She determined that there was no harmful procedural error because the neglect of duty charge is found in both the 2012 and 2019 DPM versions, with the same penalty for the first offense.
[13] *Initial Decision*, p. 25-32 (February 18, 2025).
[14] *Appellant's Petition for Review*, p. 7-19 (March 25, 2025).

Additionally, it maintains that it properly analyzed and outlined the relevant *Douglas* factors. Agency reasons that termination is consistent with the Table of Penalties based on the charges of neglect of duty and failure to follow driving safety standards. Finally, it disagrees with Employee's argument that he should not have been terminated because it was the first neglect of duty of his career, noting that neglect of duty is not excused under any circumstance. As result, Agency believes that the Initial Decision is supported by substantial evidence and requests that Employee's petition be denied.[15]

Substantial Evidence

According to OEA Rule 633.3(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 they 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.[16]

Cause

As provided in Agency's Initial Notification, Employee was charged with violation of Order Book, Article VII, Section 2(f), which is "any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include neglect of duty."[17] Agency also cited to DPM § 1603.3(f)(3), which similarly provides the following:

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[15] *Agency's Opposition to Employee's Petition for Review*, p. 7-14 (April 29, 2025).
[16] *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).
[17] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, Exhibit #10 (December 15, 2023).

> For purposes of this chapter, . . .cause for disciplinary action for all employees covered under this chapter is defined as follows: any on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include neglect of duty.

According to Agency, Employee violated its policy when he stopped at Chic-fil-A while on an emergency dispatch. As the AJ correctly held, Agency provided video footage, tracking data, and testimony during the Trial Board Hearing that established that Employee stopped at Chic-fil-A instead of proceeding directly to the dispatched location.[18] This Board agrees that the record is replete with evidence to support the neglect of duty charge.[19]

Penalty

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).[20] 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 D.C. Court of Appeals in *Stokes* reasoned that when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency, but it should ensure that "managerial discretion has been legitimately invoked and properly exercised." As a result, OEA has repeatedly held that the primary responsibility for

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[18] *Initial Decision*, p. 26 (February 18, 2025).
[19] *Fire Trial Board Hearing*, p. 31-35, 72; Exhibits # 2, 9 (video footage), 20, and 21 (September 7, 2023).
[20] *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01*, Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98*, Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review (*April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

managing and disciplining an agency's work force is a matter entrusted to the agency, not this Office.[21]

As it relates to the penalty, DPM § 1619.1 provides that the range of penalties for the first offense of Neglect of Duty is reprimand to removal. Accordingly, Agency's decision to terminate Employee was within the range allowed by the applicable Table of Penalties. Thus, the AJ's decision is based on substantial evidence.

As for the consideration of relevant factors, OEA has relied on *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), which provides the following:

> [OEA's] role in this process is not to insist that the balance be struck precisely where the [OEA] would choose to strike it if the [OEA] were in the agency's shoes in the first instance; such an approach would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness. (citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

Furthermore, in *Barry v. Department of Public Works*, OEA Matter No. 1601-0083-14, *Opinion and Order on Petition for Review* (July 11, 2017) (citing *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, *Opinion and Order on Petition for Review* (September 17, 2012), the OEA Board held that an Agency's penalty decision will not be reversed

[21] *Huntley v. Metropolitan Police Department*, OEA Matter No. 1601-0111-91, *Opinion and Order on Petition for Review* (March 18, 1994); *Hutchinson v. District of Columbia Fire Department and Emergency Medical Services*, OEA Matter No. 1601-0119-90, *Opinion and Order on Petition for Review* (July 2, 1994); *Butler v. Department of Motor Vehicles*, OEA Matter No. 1601-0199-09 (February 10, 2011); *Holland v. D.C. Department of Corrections*, OEA Matter No. 1601-0062-08 (April 25, 2011); and *Employee v. Department of Transportation*, OEA Matter No. 1601-0049-20, *Opinion and Order on Petition for Review* (May 30, 2024).

unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. The record clearly provides evidence that Agency considered relevant factors in this case. In its final decision, Agency outlined that it considered *Douglas* factors 1, 3, 4, 6, 8, 9, and 10.[22] Thus, all relevant factors were considered by Agency when imposing its penalty, and there was no clear error of judgment.

Conclusion

Agency had cause for the Neglect of Duty charge against Employee. Termination was within the range of penalty for the charge, and Agency considered all relevant factors before imposing the penalty. Accordingly, Employee's Petition for Review is denied.

[22] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, p. 13-16 (December 15, 2023).

**ORDER**

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

**FOR THE BOARD:**

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Dionna Maria Lewis, Chair

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Arrington L. Dixon

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Lashon Adams

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Jeanne Moorehead

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Pia Winston

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.