THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
EMPLOYEE,[1]	OEA Matter No. 1601-0036-23
v.	Date of Issuance: September 5, 2025
METROPOLITAN POLICE DEPARTMENT, Agency	MONICA DOHNJI, ESQ. Senior Administrative Judge

Employee, *Pro Se*[2]
Lauren Schwartz, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On March 21, 2023, Employee filed a Petition for Appeal with the D.C. Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("MPD" or "Agency") decision to terminate her from her position of Legal Instrument Examiner ("LIE") effective March 6, 2023. Employee was terminated for: (1) "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission"; (2) "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position"; and (3) "Unethical or improper use of official authority or credentials." On March 21, 2023, OEA issued a Request for Agency's Answer to Employee's Petition for Appeal. Agency submitted its Answer to Employee's Petition for Appeal on March 29, 2023.

This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on April 3, 2023. Thereafter, the undersigned issued an Order on April 24, 2023, convening a Status/Prehearing Conference for May 24, 2023. Both parties were present for the scheduled Conference. Subsequently, the undersigned issued a Post-Status/Prehearing Conference requiring the parties to submit written briefs. On June 8, 2023, Agency filed a Motion to Stay Pending the Resolution of Employee's Criminal Matter. On June 30, 2023, the undersigned issued an Order granting Agency's Motion and

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

[2] While Employee was represented by a Union representative during the May 19, 2025, Status Conference and Employee's Brief was submitted by the Union, Employee's Union never entered its appearance in this matter, despite being notified to do so during the Status Conference.

this matter was held in abeyance pending the outcome of the October 16, 2023, jury trial in the related criminal matter.

On October 20, 2023, Agency filed a Motion for Extension of Time noting that Employee's related criminal matter was continued to December 11, 2023. The undersigned issued an Order on November 6, 2023, granting Agency's Motion and requiring the parties to submit a status update of the criminal matter by December 29, 2023. Subsequently, on December 7, 2023, Agency filed a Second Motion for Extension of Time citing that Employee's criminal jury trial was continued to May 20, 2024. Agency requested therein that the deadline to submit a status update to OEA be extended to May 31, 2024. The undersigned issued an Order on December 12, 2023, granting Agency's Motion. On May 16, 2024, Agency filed a Third Motion for An Extension of Time noting that Employee's criminal matter had been continued to an undetermined date. The undersigned issued an Order on May 28, 2024, granting Agency's Motion. The Order also required the parties to submit a status update of Employee's related criminal matter fourteen (14) calendar days after the final disposition of the criminal matter.[3]

On February 4, 2025, Agency filed a Response to the May 28, 2024, Order and Update on Employee's Criminal Matter, noting therein that Employee's criminal matter was dismissed on January 27, 2025. The undersigned issued an Order on February 19, 2025, scheduling a Status/Prehearing Conference for March 19, 2025. On March 10, 2025, Agency filed a Motion to Reschedule Status/Prehearing Conference. On March 18, 2025, the undersigned issued an Order Rescheduling the Status/Prehearing Conference for April 15, 2025. Thereafter, on March 20, 2025, the undersigned issued another Order Rescheduling Status/Prehearing Conference for April 10, 2025. While Agency was present for the scheduled Conference, Employee was absent. The undersigned issued a Statement of Good Cause Order to Employee on April 10, 2025, requiring Employee to establish cause for her failure to attend the scheduled Conference, by April 24, 2025. Employee timely submitted her response to the Statement of Good Cause Order. On May 5, 2025, the undersigned issued an Order Rescheduling Status/Prehearing Conference for May 19, 2025. Both parties were present for the scheduled Conference. The undersigned issued a Second Post-Status/Prehearing Conference Order on May 21, 2025, requiring the parties to submit written briefs. Agency's brief was due by June 9, 2025; Employee's brief was due by June 30, 2025; and Agency had the option to submit a sur-reply brief by July 14, 2025. Both parties have submitted their respective briefs. The record is now closed.

JURISDICTION

OEA has jurisdiction in this matter pursuant to D.C. Official Code § 1-606.03 (2001).

ISSUE

1) Whether Agency had cause to take adverse action against Employee. And if so,

2) Whether the penalty of termination was appropriate under applicable rules and regulations.

[3] Due to personal extenuating circumstances requiring the undersigned's absence, on December 12, 2024, AJ Harris issued a Notice Regarding Temporary Abeyance of Proceedings to the parties until my return.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

According to the record, Employee was a Legal Instrument Examiner with Agency. On July 17, 2022, Employee was arrested by MPD's Violent Crime Impact Team ("VCIT"). A criminal complaint was filed against Employee on July 18, 2022, at the D.C. Superior Court, charging Employee with Carrying a Pistol Without a License (Outside Home or place of business) in violation of D.C. Code § 22-4504(a)(1). Following an investigation by the MPD Internal Affairs Division ("IAD")[4], on November 15, 2022, Agency issued a 15-day advance notice of termination to Employee, charging her with the following:[5]

Charge No. 1:

Conduct Prejudicial to the District Government - (3) Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission.

Your conduct is also described under D.C. Personnel Regulations, Chapter 16, Section 1605.5(a), An employee of the Department of Correction, Department of Youth Rehabilitation Services, or Metropolitan Police Department; an employee authorized to carry a firearm while on-duty; or a commissioned special police officer shall be deemed to have engaged in conduct prejudicial to the District of Columbia if:

(a) The employee engages in any act or omission that constitutes a criminal offense.

Specification No. 1:

On Sunday, July 17, 2022, you were arrested by members of the Violent Crime Impact Team (VCIT) in the 2300 block of 2nd Street, Northeast, for Carrying a Pistol Without a License (CPWL) outside of home or business, Possession of Unregistered Firearm (UF), Possession of Ammunition (UA) and Possession of a Large Capacity Ammunition Feeding Device (CCN# 22102272).

On July 18, 2022, you appeared before the Honorable Judith Pipe of the DC Superior Court for presentment of case #2022CF2004120. You were formally charged with Carrying a Pistol Without a License (Outside Home or Business) in violation of D.C. Code § 22-4504(a)(1). As an employee with a law enforcement agency, your actions on July 17th and the subsequent filing of formal charges against you demonstrates conduct that is in direct contravention with the goals and mission of the Metropolitan Police Department.

Charge No. 2:

Conduct Prejudicial to the District Government - (5) Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or

[4] Agency's Answer to the Petition at Tab 1 (March 29, 2023).
[5] *Id*. at Tab 2.

her agency's mission or has an otherwise identifiable nexus to the employee's position.

Specification No. 1:

On Sunday, July 17, 2022, you were off duty arrested for Carrying a Pistol Without a License (CPWL) outside of home or business, Possession of Unregistered Firearm (UF), Possession of Ammunition (UA) and Possession of a Large Capacity Ammunition Feeding Device. At the time of your arrest, you were a civilian employee of MPD, assigned to the Technical and Analytical Services Bureau, Records Division, Firearms Registration Section.

Charge No. 3:

Unethical or improper use of official authority or credentials.

Specification No. 1:

On Sunday, July 17, 2022, prior to your arrest, you advised MPD officers that you were going to "call [your] Captain." At the time of the arrest, you were a civilian employee of MPD. You made this statement in an apparent attempt to alert officers that you held a role in some capacity with law enforcement and anticipating that these officers would grant you some sort of courtesy and not take any further actions against you based on the initial traffic stop. This is a clear and improper abuse of your official credentials as an MPD employee.

On November 29, 2022, Employee's Union (NAGE) contacted Agency in response to the notice of proposed termination and the parties had a virtual meeting on December 8, 2022.[6] Thereafter, the assigned Hearing Officer issued her Notice of Hearing Officer's Administrative Review, sustaining Agency's decision to terminate Employee.[7] Subsequently, on March 6, 2023, Agency issued its Notice of Final Decision, terminating Employee from service.[8]

Agency's Position

Agency argued that it had cause to take adverse action against Employee and that its penalty of termination was reasonable and appropriate under the *Douglas* factors[9], applicable laws, rules, and regulations. Agency also requested an oral hearing on this matter.[10] Agency asserts that it is undisputable that Employee was arrested and indicted for a felony in the District. Citing to case law, Agency states that an employee's admission is sufficient to meet the agency's burden of proving cause for discipline.[11]

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[6] *Id*. at. Tab 3.
[7] *Id*. at Tab 4.
[8] *Id*. at Tab 5.
[9] *Citing Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981).
[10] Agency's Answer to the Petition, *supra*.
[11] Agency's Brief (June 9, 2025). *See also* Agency's Sur-Reply Brief (July 14, 2025).

Agency argues that Employee engaged in Conduct Prejudicial to the District Government when she engaged in criminal conduct related to her job duties and the Department's mission. Agency states that "it is undisputable that Employee was charged with the following felonies: (1) Carrying a Pistol Without a License outside of home or business; (2) Possession of an Unregistered Firearm; (3) Possession of Unregistered Ammunition; and (4) Possession of a Large Capacity Ammunition Feeding Device." Agency explains that its mission is to safeguard the District of Columbia and protect its residents and visitors with the highest regard for the sanctity of human life, however, Employee's conduct on July 17, 2022, directly conflicts with this mission as she was found with an unregistered firearm and ammunition in her vehicle. Agency notes that not only did Employee work for a law enforcement agency, but her specific position within Agency was in the Firearm Registration Section, "which makes her criminal conduct of possessing an unregistered firearm all the more egregious." Agency maintains that as an MPD employee, Employee knew or should have known that District laws require firearms to be registered, "but as an employee within the Firearm Registration Section, Employee had additional specialized awareness."[12]

Agency cites that pursuant to 6B DCMR § 1605.5, an employee engages in Conduct Prejudicial to the District Government if they are an employee of the Department and they engage in any act or omission that constitutes a criminal offense. Agency avers that it is undisputable that Employee was an employee of the Department, thus, this section of the DCMR is applicable to her. Agency also avers that there is overwhelming evidence that Employee engaged in an act that constitutes a crime, therefore, a court conviction is not necessary to uphold this charge. Agency cites that based on the detective's body worn camera ("BWC") of the traffic stop, Employee informed the detective that she was the owner of the vehicle and that everything in the vehicle, including a backpack in the backseat belonged to her. Agency states that it is also undisputed that the unregistered firearm was found in Employee's personal vehicle and that Employee did not have a license to carry a firearm in the District. Agency also avers that Employee does not dispute the DNA results that tied her to the unregistered firearm. Agency argues that Employee's focus on the drugs found in her vehicle during the traffic stop is misplaced as she was not indicted for drug offenses.[13]

Additionally, Agency contends that Employee engaged in Conduct Prejudicial to the District Government by engaging in conduct that adversely affected her job performance, trustworthiness and the Department's mission. Agency explains that Employee's position in the Department's Firearm Registration Section made her uniquely aware of the need for firearms in the District to be registered, yet she failed to register her firearm which was found during a routine traffic stop. Agency avers that "Employee brought discredit to the Department by violating the criminal laws of the District." Agency further states that Employee wasted Department resources by forcing sworn members to respond to her vehicle and potentially put themselves in danger while interacting with her and recovering her firearm.[14]

Agency asserts that Employee engaged in unethical and improper use of official authority or credentials when she attempted to use her connection at the Department to her advantage during the traffic stop in violation of 6B DCMR § 1607.1(a)(9). Agency cites that prior to exiting her vehicle during the traffic stop, "Employee spontaneously requested, "Can I call my Captain?"" Agency explains that Employee was asked by the detective if she was security, law enforcement, fire

[12] *Id.*
[13] *Id.*
[14] *Id.*

department or military, and why she had a captain, but Employee did not respond. Agency asserts that after Employee's civilian identification was found in her wallet, she admitted that she was a civilian Employee with Agency. Agency contends that it is clear from the BWC that when Employee requested to call her captain during the traffic stop, she was of the believe that her captain would be able to positively assist her to potentially avoid an arrest.[15]

Agency maintains that its penalty was appropriate for Employee's misconduct. It asserts that when assessing the appropriateness of penalty, OEA is not to substitute its judgement for that of Agency, but simply ensure that managerial discretion had been legitimately invoked. Agency further notes that it considered the *Douglas* factors and conducted a proper *Douglas* factor analysis. In addition, Agency explains that OEA has previously addressed an employee's termination for misconduct when they were acquitted in a related criminal matter. Agency argues that the fact that Employee's criminal matter was dismissed should not be dispositive of this matter. Agency cites that the penalty of termination was within the range allowed by the DCMR Table of Penalties, in accordance with comparable Department cases, and consistent with prior OEA decisions.[16]

Agency further argues in its Sur-Reply Brief that the traffic stop escalated when Employee refused to comply with the numerous lawful commands by the officers. Agency notes that Employee acknowledged that she was stopped for a window tint violation. Agency notes that as part of the traffic stop, the officers were legally permitted to give Employee certain commands. Agency cites that according to the BWC, Employee refused to comply on multiple occasions. Agency contends that while Employee asserts that she was nervous, she was still required to comply with the orders of the on-duty officers which Employee failed to do. Agency states that because of Employee's failure to comply with the orders, the officer properly ordered Employee to exit the vehicle and as she exited the vehicle, the officer observed a firearm under the front passenger seat in plain view.[17]

Agency states that Employee mistakenly believes that there needs to be a criminal conviction before she can be terminated. Agency avers that this is "blatantly untrue" and not supported by the DCMR. Agency avers that it is undisputed that Employee worked for the Department at the time of the misconduct and that her illegal possession of an unregistered firearm constituted a criminal offense regardless of the outcome of the criminal matter.[18]

Agency also contends that "Employee was not disciplined for failing to timely report her misconduct; instead, Employee was disciplined for the underlining criminal misconduct. Second, Employee cited to no authority to support her position that Department members are required to report misconduct within 10 days. Pursuant to Department General Orders, members are required to report misconduct without delay or by their next schedule tour of duty." Agency argues that Employee's request to call her 'Captain' was not made by Employee in an attempt to identify herself as a member of the Department, because Employee did not respond to the officer when he inquired if she was security, law enforcement, fire department, or military. Agency maintains that Employee's actual intent of referencing her captain was to either gain "favor with the officers she encountered

[15] *Id*.
[16] *Id*.
[17] Agency's Sur-Reply Brief, *supra*.
[18] *Id*.

who were of a lower rank in the department or hope that the reference captain would positively assist her in order to avoid arrest."[19]

Additionally, Agency asserts that despite Employee's assertion to the contrary, the Court did not find Employee's criminal case to be "unfounded". Agency states that following the "line-of-duty death of [the investigator] who recovered the firearm from Employee's Vehicle, the United States Attorney's Office requested dismissal of Employee's criminal case, which the Court granted on January 27, 2025." Agency highlights that there was never a finding by the Court that there was insufficient information to proceed with the criminal matter.[20]

Agency argues that except for *Douglas* factor # 6, Employee did not challenge its *Douglas* factors determination. Agency notes that Employee's reference to a Massachusetts criminal case is irrelevant to the current case. Agency further notes that Employee references a former Agency employee, without providing information about the employee's alleged misconduct such that it could compare to Employee's current misconduct. Regarding Employee's reference to a second Agency employee's misconduct of impersonating a police officer, Agency argues that no two (2) cases are identical and that the facts of the comparable employee's misconduct are vastly different from the facts in the current matter. Agency cites that Employee was found with a loaded firearm in her possession and arrested for criminal misconduct while the comparable employee was not.[21]

Agency argues that contrary to Employee's assertion, there is nothing in the Collective Bargaining Agreement ("CBA") between Employee's Union (NAGE) and Agency related to discipline, let alone progressive discipline. Agency states that discipline is guided by the DCMR, specifically 6B DCMR § 1607.2, and this is only a guide. Agency reiterates that its selected penalty of termination is within the range allowed by the DCMR Table of Penalties.[22]

Employee's Position

Employee argues in her Petition for Appeal to this Office that Agency "is making a wrong decision to terminate my employment because, my case have (sic) not been settled in court."[23] Employee argues that she was approached by an officer on July 17, 2022, because of a tinted window. She cites that she was nervous because she was approached by an officer unexpectedly and that no law or directive punishes a person for being nervous during a traffic stop. Employee asserts that the detective saw a small bag of marijuana through the back window during the traffic stop and asked her to roll down her windows. Employee contends that pursuant to the Mayor's Order which became effective on February 26, 2015, it is legal for a person over 21 to possess two (2) ounces or less of marijuana, and marijuana related drug paraphernalia. Employee argues that based on the BWC, there is no way the officer could determine how much weed or how many weed bags were in his sight of the vehicle. Employee avers that possessing a digital scale alone was not illegal and the VCIT was unable to test the white substance they found, as such, they did not have probable cause to

[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] Employee's Petition for Appeal (March 21, 2023).

charge her with narcotics violation. Employee notes that the premature actions of the VCIT led to the dismissal of the criminal case against her due to insufficient evidence in court.[24]

Employee also asserts that the detective asked her to produce her license, insurance and registration, and as she was providing the information to the detective, he called for assistance with no provocation, thereby escalating the situation to more than what it was, a simple window tint violation. Employee cites that she was terminated for a criminal matter which has since been dismissed and found to be "unfounded" by the Court. She notes that she was neither convicted nor found responsible for the alleged conduct that led to her termination. Employee avers that Agency took action against her prematurely based on incomplete information, and in doing so, deprived her of her due process guaranteed by both Agency policies and the CBA governing her employment. She asserts that this premature termination negatively impacted her life and contrary to the standards of just cause and progressive discipline required by the CBA.[25]

Employee argues that Agency has not been fair in terms of instituting discipline in the current matter. Employee referenced *United States v. John H. McHugh and Thomas Kuhn*, stating that the officer in that matter recently resigned from Agency. Employee also cites that an Agency employee who was charged with impersonating an officer was only suspended for the misconduct.[26]

Employee asserts that as a "member of the MPD it was always taught to us if one encounters any law enforcement agency member is to reveal that they are affiliated with the police department as well as report an incident off duty no later that 10 days after the incident." Employee states that "the contraction of using a reverse sanction against [Employee] is the same premise used to insight any member who doesn't reveal themselves or report an incident off-duty no later than 10 days."[27]

Employee notes that the only appropriate remedy is to return her to her position, restore her lost wages and benefits, and expunge any record of this wrongful disciplinary action. Employee asserts that this corrects the injustice she suffered, and upholds the principle of fairness, due process and the rights of all government workers.[28]

Analysis[29]

Pursuant to OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021), Agency has the burden of proving by a preponderance of the evidence that the proposed disciplinary action was taken for cause. Agency terminated Employee for (1) Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission; (2) Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable

[24] Employee's Brief (August 12, 2025).
[25] *Id*.
[26] *Id*.
[27] *Id*.
[28] *Id*.
[29] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. See *Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

nexus to the employee's position; and (3) Unethical or improper use of official authority or credentials.

Whether Agency had cause to take adverse action against Employee

Charge No. 1: *Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission*

Agency argues that it is undisputable that Employee was arrested and indicted for a felony in the District. Agency explains that Employee was charged with the following felonies: (1) Carrying a Pistol Without a License outside of home or business; (2) Possession of an Unregistered Firearm; (3) Possession of Unregistered Ammunition; and (4) Possession of a Large Capacity Ammunition Feeding Device. It further notes that its mission is to safeguard the District of Columbia and protect its residents and visitors with the highest regard for the sanctity of human life. However, Employee's conduct on July 17, 2022, directly conflicts with this mission as she was found with an unregistered firearm and ammunition in her vehicle. Additionally, Agency asserts that not only did Employee work for a law enforcement agency, but her specific position within Agency was in the Firearm Registration Section, "which makes her criminal conduct of possessing an unregistered firearm all the more egregious." Agency maintains that as an MPD employee, Employee knew or should have known that District laws require firearms to be registered, "but as an employee within the Firearm Registration Section, Employee had additional specialized awareness.

While Employee focuses her arguments on the drugs that were found in her vehicle on July 17, 2022, she fails to address the four (4) felony charges against her, and which are the basis of the current adverse action. Employee argues that she was terminated for a criminal matter which has since been dismissed and found to be "unfounded" by the Court. She notes that she was neither convicted nor found responsible for the alleged conduct that led to her termination. Agency on the other hand denies this assertion. Agency asserts that contrary to Employee's assertion, there was never a finding by the Court that there was insufficient information to proceed with the criminal matter. Agency explains that following the "line-of-duty death of [the investigator] who recovered the firearm from Employee's Vehicle, the United States Attorney's Office requested dismissal of Employee's criminal case, which the Court granted on January 27, 2025." Pursuant to the record, I find that the related criminal case was dismissed prior to the scheduled trial date, per request from the United States Attorney's Office ("USAO"). I further find that this cause of action does not require a conviction, rather, an indictment, charge of any felony or criminal offense is sufficient to satisfy this cause of action. Employee does not dispute that she was arrested, indicted, charged with four (4) felonies, nor that these charges were not related to her duties and Agency's mission as they directly conflicted with Agency's mission and Employee's duties at Agency. Accordingly, I find that Agency had cause to charge Employee with Charge No. 1, Specification No. 1.

Charge No. 2: Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position

Agency contends that Employee engaged in conduct that adversely affected her job performance, trustworthiness and the Department's mission because her position in the Department's Firearm Registration Section made her uniquely aware of the need for firearms in the District to be

registered, yet she failed to register her firearm which was found during a routine traffic stop. Agency avers that "Employee brought discredit to the Department by violating the criminal laws of the District." The record supports Agency's assertion that Employee's position was within the Firearm Registration Section and Employee does not dispute this assertion. Additionally, the VCIT team found an unregistered firearm and ammunition in Employee's vehicle on July 17, 2022. Again, Employee does not deny that the unregistered firearm belonged to her. Employee also does not dispute that she was aware that firearms in the District had to be registered. Consequently, I find that there exists an identifiable nexus between Employee's off-duty conduct on July 17, 2022, and her position at Agency. I further find that Employee's conduct on July 17, 2022, adversely affected Agency's mission to safeguard the District of Columbia and protect its residents and visitors. Thus, I conclude that Agency had cause to charge Employee with Charge No. 2, Specification No. 1.

Charge No. 3*: Unethical or improper use of official authority or credentials*

Agency asserts that Employee engaged in unethical and improper use of official authority or credential when she attempted to use her connection at the Department to her advantage during the traffic stop. Agency cites that prior to exiting her vehicle during the traffic stop, "Employee spontaneously requested, "Can I call my Captain?"" Agency explains that Employee was asked by the Detective if she was security, law enforcement, fire department or military, and why she had a captain, but Employee did not respond. Agency asserts that after Employee's civilian identification was found in her wallet, she admitted that she was a civilian employee with Agency. Agency contends that it is clear from the BWC that when Employee requested to call her captain during the traffic stop, she was of the belief that her captain would be able to positively assist her in order to potentially avoid an arrest.

Employee on the other hand argues that as a "member of the MPD it was always taught to us if one encounters any law enforcement agency member is to reveal that they are affiliated with the police department as well as report an incident off duty no later than 10 days after the incident." Agency does not dispute Employee's assertion. Instead, Agency explains that Employee was not disciplined for failing to timely report her misconduct; instead, Employee was disciplined for the underlining criminal misconduct. I find that Agency provided support for Employee's argument when it stated that "Pursuant to Department General Orders, *members are required to report misconduct without delay or* by their next schedule tour of duty." (Emphasis added). Furthermore, a review of the BWC shows that Employee was nervous during the stop. Also, when asked why she wanted to call her captain, Employee told the officers on the scene that she wanted to call her captain "because I don't know what's going on and I wanna let him know that I am in fear … I just wanna let him know that I am in fear." Based on the record, I conclude that there is no evidence in the record to support Agency's assertion that Employee's request to call her captain was because she believed that her captain would be able to positively assist her to potentially avoid an arrest.

Agency further argues that because Employee did not respond to the officer when he inquired if she was security, law enforcement, fire department, Employee's actual intent of referencing her captain was either to "curry favor with the officers she encountered who were of a lower rank in the department or hope that the reference captain would positively assist her in order to avoid arrest." Agency has failed to provide any credible and substantive evidence to support this argument. According to the BWC, after the officers found Employee's ID and identified her as a civilian MPD employee, she was asked who her captain was, and she responded that "I don't have a captain." The

officer stated that "I am trying to work with you and there's a process we have to go through. You are an employee…" To which Employee stated that "… there's no Captain…" I find that if Employee's intention was to "curry favor with the officers…or hope that the reference captain would positively assist her in order to avoid arrest," she would have provided them with her captain's information at this point. Further, there is no indication in the record that Employee would have received the alleged favor or avoided being arrested if she had been allowed to call her captain. Moreover, Employee was still arrested even after the officers found her civilian identification and it was disclosed that she worked for Agency. Therefore, I find that Agency has not met its burden of proof for Charge No. 3, Specification No. 1. As such, Agency cannot rely on this charge to discipline Employee.

Disparate Treatment

Employee argues that Agency has not been fair in terms of instituting discipline in the current matter. Employee referenced two former Agency employees as comparable employees, noting that these employee's received suspensions for similar misconduct. Regarding the first comparable employee, Agency notes that Employee is referencing a Massachusetts criminal case which is irrelevant to the current case. Regarding the second comparable employee, Agency notes that this employee's misconduct is vastly different from the facts in the current matter. Agency maintains that Employee was found with a loaded firearm in her possession and arrested for a criminal misconduct while the comparable employee was not

OEA has held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees (emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (emphasis added).[30] Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty."[31] (Emphasis added). An employee must show that there is "enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly-situated employees differently."[32] If a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.[33] Here, referencing two (2) former Agency employees, Employee made a blanket assertion that Agency has not been fair in terms of instituting discipline in the current matter. However, she did not offer any evidence in support of this allegation. Employee did not provide the nature of the misconduct, whether they were disciplined by the same supervisor for the same offense within the same general time period. Therefore, I find that Employee has not established a *prima facie* showing of disparate treatment and as such, I conclude that Employee has failed to prove that she was subjected to disparate treatment.

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[30] *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, Opinion and Order on Petition for Review (December 12, 2011), citing *Manning v. Department of Corrections*, OEA Matter No. 1601-0049-04 (January 7, 2005); *Ira Bell v. Department of Human Services*, OEA Matter No. 1601-0020-03, Opinion and Order on Petition for Review (May 6, 2009); *Frost v. Office of D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995); and *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 236 (D.C. 1998).

[31] *Metropolitan Police Department v. D.C. Office of Employee Appeals, et al.*, No. 2010 CA 002048 (D.C. Super. Ct July 23, 2012); citing *Social Sec. Admin. V. Mills*, 73 M.S.P.R. 463, 473 (1991).

[32] *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15, Opinion and Order on Petition for Review (January 30 ,2018) (citing *Boucher v. U.S. Postal Service*, 118 M.S.R.P. 640 (2012)).

[33] *Id*.

CBA violation

Employee asserts that her termination negatively impacted her life and was contrary to the standards of just cause and progressive discipline required by the CBA. Agency argues that contrary to Employee's assertion, there is nothing in the CBA between Employee's Union (NAGE) and Agency related to discipline, let alone progressive discipline. I find that Employee failed to cite to the applicable CBA provision. Therefore, the undersigned is unable to address the merits of this assertion.

Evidentiary Hearing

Agency requested an oral hearing in this matter. OEA Rule 627.1 provides that "[a] party may request the opportunity for an evidentiary hearing to adduce testimony to support or refute any fact alleged in a pleading." an Administrative Judge has the discretion to require an evidentiary hearing, if appropriate. OEA Rule 618.1 provides that "[t]he Administrative Judge may… render a summary disposition of the matter without further proceedings if, upon examination of the record in an appeal, it appears that… *there are no material and genuine issues of fact*…" (Emphasis added). Upon review of the record, I have decided that there are no material and genuine issues of fact in dispute in this matter, and as such, an Evidentiary Hearing is not required.

Whether the penalty of termination is appropriate

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).[34] According to *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties. Therefore when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.[35] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty

[34] *See also. 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 No. 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).

[35] *Love* also provided 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, it is appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of

undisturbed when the penalty is within the range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement."[36]

In the instant case, I find that Agency has met its burden of proof for Charge No. 1 "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission" and Charge No. 2 "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position." I further find that Agency did not meet its burden of proof for Charge No. 3 "Unethical or improper use of official authority or credentials" as such, Agency cannot discipline Employee under this charge."

With regard to Charge No. 1, "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission" the record shows that this was the first time Employee violated this cause of action. Pursuant to the Table of Illustrative Actions ("TIA"), 6B DCMR §1607.2(a)(3), the penalty for a first offense is Enforced leave pending criminal prosecution. Agency terminated Employee while the related criminal prosecution was pending. Employee was terminated effective March 6, 2023, and the related criminal matter was dismissed on January 27, 2025. Because Agency terminated Employee instead of placing her on enforce leave while the related criminal matter was pending, I find that Agency abused its discretion, and it did not comply with 6B DCMR §1607.2(a)(3), as termination is not within the penalty range under 6B DCMR §1607.2(a)(3).

With regard to Charge No. 2, "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position" the record shows that this was the first time Employee violated this cause of action. Pursuant to the TIA, 6B DCMR §1607.2(a)(5), the penalty for a first offense is Counseling to 30-day suspension. Agency terminated Employee for this cause of action. I find that the maximum penalty Agency could have levied against Employee for this cause of action was a '30-day suspension.' Therefore, Agency's chosen penalty of termination is not within the range of penalties allowed under 6B DCMR §1607.2(a)(5).

The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department*,[37] noted that:

> "Additionally, the D.C. Court of Appeals has consistently relied on the Table of Penalties when determining the appropriateness of an agency's penalty.[38] Furthermore, the OEA Board held in *Richard Hairston v. Department of Corrections,* OEA Matter No. 1601-0307-10, *Opinion and Order on Petition for Review* (September 16, 2014)(citing *Power v. United States*, 531 F.2d 505, 507-508, 209

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reasonableness. (Citing *Douglas v. Veterans Administration,* 5 M.S.P.R. 313, 5 M.S.P.R. 280 (1981)).

[36] *Id. See also. Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

[37] OEA Matter No. 1601-0039-13, *Opinion and Order on Petition for Review* (September 13, 2016).

[38] Citing *Department of Public Works v. Colbert,* 874 A.2d 353 (D.C. 2005); *Stokes v. District of Columbia,* 502 A.2d 1006 (D.C. 1985); *Brown v. Watts,* 993 A.2d 529 (D.C. 2010); *Hutchinson v. D.C. Office of Employee Appeals,* 710 A.2d 227 (D.C. 1998); and *District of Columbia v. Davis,* 685 A.2d 389 (D.C. 1996).

> Ct.Cl. 126 (1976) (citing *Daub v. United States*, 292 F.2d 895, 154 Ct.Cl. 434 (1961) and *Cuiffo v. United States*, 137 F.Supp. 944, 950, 131 Ct.Cl. 60, 68 (1955)), that there are two scenarios in which courts will not uphold the punishment imposed by the agency because of an invalid penalty. The first is where the sanction exceeds the range of permissible punishment specified by statute or regulation. The second scenario is where a court has determined that the discipline is so harsh and unconscionably disproportionate to the offense that it amounts to an abuse of discretion by the agency."[39]

The OEA Board found that the agency in *Edward Morgan v. Fire and Emergency Medical Services Department* abused its discretion when it terminated Morgan, although the maximum penalty for the first offense was a fifteen (15) day suspension. The OEA Board stated that "As the AJ held, Agency's penalty of removal exceeds the range of penalty outlined for the first offense of incompetence."

Similarly, I find that Agency's penalty of removal exceeds the range of penalty outlined for a first offense of "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission" and for a first offense of "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position." Agency concedes under *Douglas* factor # 7 that the maximum penalty for a first offense for Charge No. 1 is "enforced leave pending criminal prosecution" and the maximum penalty for Charge No. 2 is "thirty (30) days suspension." Accordingly, the undersigned finds that the penalty of termination must be modified.

Penalty Based on Consideration of Relevant Factors

An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[40] Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981), in reaching the decision to terminate Employee.[41] The *Douglas* factor analysis included in the record

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[39] The OEA Board in *Edward Morgan v. Fire and Emergency Medical Services Department, supra*, noted that although the decisions issued in federal circuit courts are not binding on the OEA Board, it found that they offered sound guidance regarding Table of Penalties.

[40] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C. Reg. 352 (1985).

[41] 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;

demonstrates that Agency considered all factors in imposing the penalty in this matter. However, for the reasons stated above, I find that Agency's penalty was not within the range allowed by law, regulation, and the applicable TIA, and as such, must be modified.

ORDER

Based on the foregoing, it is hereby ORDERED that:

1. Agency's adverse action of termination is hereby **REVERSED** and Employee shall be **REINSTATED** to her previous position of record.

2. Agency's penalty for "Conduct Prejudicial to the District Government - Indictment or charge of any felony or criminal offense that is related to the employee's duties or his or her agency's mission" **is MODIFIED to Enforced Leave from March 6, 2023, to January 27, 2025**.

3. Agency's penalty for "Conduct Prejudicial to the District Government - Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has an otherwise identifiable nexus to the employee's position" is **MODIFIED to a THIRTY (30) DAY SUSPENSION**.

4. Agency shall reimburse Employee all back-pay, benefits lost as a result of the adverse action.

5. Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

/s/ *Monica N. Dohnji*
MONICA DOHNJI, Esq.
Senior Administrative Judge

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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 in the future by the employee or others.