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THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,	)	
Employee	)	OEA Matter No. 1601-0021-24
	)	
v.	)	Date of Issuance: November 13, 2025
	)	
D.C. METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	ERIC T. ROBINSON, ESQ.
	)	SENIOR ADMINISTRATIVE JUDGE
	)	

Daniel McCartin, Esq., & Ryan Carter, Esq., Employee Representatives
Kelsey Penna, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On January 8, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or the “Office”) contesting the Metropolitan Police Department’s (“MPD” or the “Agency”) adverse action of suspending him from service without pay for 25 (twenty-five) workdays. MPD asserts that Employee violated MPD General Order 120.21, Attachment A, Part A-10¹ and MPD General Order 120.21, Attachment A, Part A-16². Employee has been a sworn member of the MPD since March 30, 2020. Employee’s position of record with MPD at the time of the adverse action was Officer. Also on January 8, 2024, the OEA’s Executive Director sent a letter to MPD’s Chief of Police requiring MPD to submit an Answer to Employee’s Petition for Appeal by February 7, 2024. MPD submitted its Answer on January 18, 2024. On January 23, 2024, this matter was assigned to the Undersigned. Thereafter, a Prehearing/Status Conference was held on February 27, 2024. After a delay primarily due to press of business between the parties and their witnesses, the Evidentiary Hearing was held on November 21, 2024. Thereafter, the parties were tasked with submitting written closing arguments, which after a consent motion for

¹ This General Order states, in pertinent part, as follows, “Using unnecessary and wanton force in arresting or imprisoning any person, or using unnecessary violence toward any person(s), or the public.”

² This General Order states, in pertinent part, as follows, “Failure to obey orders or directives issued by the Chief of Police.”

an extension of time was granted, were timely filed on February 13, 2025. After reviewing the documents of record, I have determined that no further proceedings are warranted. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 631.1, 6-B DCMR Ch. 600 (December 27, 2021) states:

The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:

That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 631.2 id. States:

For appeals filed under §604.1, the employee shall have the burden of proof as to issues of jurisdiction, including timeliness of filing. The agency shall have the burden of proof as to all other issues.

ISSUES

Whether the Agency's adverse action was taken for cause. If so, whether the penalty was appropriate given the circumstances.

Statement of the Charges

On September 19, 2023, Officer [Employee] was served with a Notice of Adverse Action ("NAA"). The NAA, which proposed a twenty-five (25) workday suspension, stated the following:

Charge No. 1:

Violation of General Order 120.21, Attachment A, Part A-10, which states, "Using unnecessary and wanton force in arresting or imprisoning any person, or using unnecessary violence toward any person(s), or the public."

Specification No. 1:

In that, on May 14, 2023, at approximately 1955 hours, in the rear of 3500 Stanton Road, Southeast, you escorted Mr. Felder to the transport vehicle. Ms. KL³ approached the transport vehicle and interfered with the police investigation. As Ms. KL attempted to get closer to the subject being loaded into the transport vehicle, you commanded her to move back. Ms. KL struck you in the right cheekbone. You then picked up Ms. KL over your shoulder and slammed her forcefully down to the ground. Ms. KL appeared to lose consciousness for about twenty (20) seconds. Ms. KL was later transported by members of MPD to United Medical Center. Your use of force optically appeared to go beyond the minimum amount of force necessary to detain as is not within the MPD defense tactic training guidelines. The “slamming” takedown and the Use of Force utilized were not within MPD guidelines.

Charge No. 2:

Violation of General Order Series 120.21, Attachment A, Part A-16, which states, “Failure to obey orders or directives issued by the Chief of Police.”

Specification No. 1:

In that, on May 14, 2023, at approximately 1955 hours, in the rear of 3500 Stanton Road, Southeast, you escorted Mr. Felder to the transport vehicle. Ms. KL approached the transport vehicle and interfered with the police investigation. As Ms. KL attempted to get closer to the subject being loaded into the transport vehicle, you commanded her to move back. Ms. KL struck you in the right cheekbone. You then picked up Ms. KL over your shoulder and slammed her forcefully down to the ground. Ms. KL appeared to lose consciousness for about twenty (20) seconds. Ms. KL was later transported by members of MPD to United Medical Center. Your use of force optically appeared to go beyond the minimum amount of force necessary to detain as is not within the MPD defense tactic training guidelines. The “slamming” takedown and the Use of Force utilized were not within MPD guidelines. The Use of Force was classified as Not Justified, by the Use of Force Review Board. This misconduct is described in General Order 901.07, Part (11) which states in part that, “Members of the Metropolitan Police Department shall value and preserve the sanctity of human life at all times, especially when lawfully exercising the use of force. In situations where the use of force is justified, the utmost restraint should be exercised. Members shall minimize the force that is used while protecting the lives of the member and or other persons and continuously reassess the perceived threat in order to select the reasonable use of force response that is proportional to the threat faced by him, her, or others.” This misconduct is further described in General Order 901.07, Use of Force, Part A, 4, which reads, “Members shall only use the amount of force that is proportionate to the circumstances. If de-escalation tactics are not effective or feasible, the member may use an increasing level of force to overcome the level of resistance, as long as the force response remains proportionate to the perceived threat,” and General Order 901. 07, Part 11, A, 7, which states in part, “Members shall not use techniques to apply force unless they have received the requisite training . . .”

³ The identity of the perpetrator that had the precipitous encounter with the Employee that is the subject of the instant matter is being withheld in order to protect their privacy.

SUMMARY OF MATERIAL TESTIMONY

Agency's Case-in-Chief

Dien-Long Tran ("Tran") Tr. 17-134

Tran worked as a Lieutenant with the Seventh District Patrol Division for the Metropolitan Police Department ("Agency"). He testified that he also served as a Watch Commander and that he was assigned to Sector 3 of the Seventh District ("7D"). Additionally, Tran worked in Patrol Service Area ("PSA") 706 during his evening tour of duty. He was responsible for supervising the rank of sergeants and officers within his PSA. Since becoming a Lieutenant in 2019, Tran testified that he has conducted over two hundred administrative investigations, and the majority of those investigations were in 7D. Tran concluded that 75 percent of the investigations involved use of force.⁴

Tran explained the process in completing a use of force investigation. He stated that a member should first contact the supervisor and the current on-duty supervisor at the rank of the sergeant is to respond to the scene and collect information on the scene. Tran explained that if the subject of force mentioned any injury that he or she may sustain, the sergeant had to fill out an administrative document and contact the medic to respond to the scene to be treated. Tran identified Exhibit 14 and testified that the document is Agency's General Order: Use of Force, serial number 901.07. He further explained that Agency's policy was to preserve the sanctity of human life at all times and to exercise lawful use of force. Tran stated that when a member encounters a situation, the member shall use the minimum amount of force by using de-escalation when feasible, follow department rules, regulations, the law of the United States, and the District of Columbia.⁵

Tran testified that according to the Fourth Amendment of the United States Constitution, the Constitution guarantees people the right to be secure in their person. He compared Agency's use of force standard to the 1989 Supreme Court case *Graham v. Connor*. Tran stated that Agency held a higher standard and put a restrictive guideline on top of what was allowed by the Supreme Court. He stated that all members were trained to use de-escalation techniques. Tran further explained that the force must be objective, reasonable, and within Agency's internal policy training standard. He stated that members must constantly assess and reassess the situation which he or she encounters. For example, the member must first perceive that they have been assaulted, struck, or punched by the threatening subject or assailant as a key part of a threatening assailant's assaultive behavior.⁶

If the condition has been met, the member is allowed to apply straight strike to the assailant using a baton, Oleoresin Capsicum spray ("OC"), and all level of force-except for deadly force. Tran reiterated that the member should continue to reassess the situation by using verbal de-

⁴ Tr. 19-20.

⁵ Tr. 20-23.

⁶ Tr. 23-25.

escalation. However, if de-escalation fails, the member may resort to the use of force only when necessary and proportionate to the circumstance in which the member encountered. With de-escalation, a member may encounter a situation in which the assailant is not complying with a member's verbal command and when the assailant does not abide by the order, the member can escalate to a higher use of force. Tran stated that an unjustified use of force is when a member uses unnecessary force against the subject. He stated that it is against Agency policy and training, except when a reasonable person is able to examine and assess the situation to determine whether use of force was high pertaining to Agency's guidelines.⁷

Tran stated that when an individual is confronted by Agency where they are subjected to force, and the degree of force used by a member is not appropriate given their interaction with that member, it indicates a deviation from policy. If the use of force does not align with the guidelines of the General Order: Use of Force indicating that it is not proportionate, reasonable, or in accordance with departmental standards and training, then it is excessive. According to Tran, when members are involved in a situation where force is required, they are trained to apply only the minimum amount of force necessary. He further stated that it is important to consider the safety of both the subject affected by the force and the member(s) to reduce potential risks, injuries, and harm. He also affirmed that, when training a new recruit member at the academy, part of the curriculum includes understanding the proper use of force, which involves familiarizing themselves with department policies, the laws of the United States regarding use of force, and the District of Columbia's regulations on how members are permitted to apply force. Tran explained that before recruits participate in any hands-on practice involving use of force, they must first go through relevant training materials and instruction. Additionally, they are required to grasp the legal guidelines and departmental policies before engaging in practical exercises under the supervision of training instructors at the academy.⁸

Tran testified that all personnel must regularly review Agency guidelines and the use of force, and they must participate in ongoing service training. If there are any changes to the Agency's policy concerning the use of force, members may be required to complete training before being authorized to use the newly permitted force by Agency. Tran explained that a takedown involves employing mechanical forces, such as a wrist slap, to bring the individual down to the ground using the least amount of force possible, while also considering the safety of the person being detained. He further explained that the goal is to control and restrain the individual by executing the takedown in a manner that minimizes any potential harm or injury to them during the process. Tran stated that the point of a takedown is to detain and apply a lawful arrest that is authorized by Agency policy. He declared that members have been trained by the instructor at the academy in terms of the proper uses of a takedown.⁹

Tran testified that he was assigned to complete the Incident Report involving Employee's use of force. He reviewed the body-worn camera of the officers involved as part of his investigation. Tran stated that officers Khanh Nguyen ("Nguyen") and Anel Salkanovic ("Salkanovic"), were on patrol in the back alley of the 3500 block of Stanton Road on Sunday, May 14, 2023. He explained that following standard patrol protocol, they came across a group of

⁷ Tr. 25-27.

⁸ Tr. 27-28.

⁹ Tr. 29-30.

people, including Mr. Raymond Felder (“Felder”). He stated that Felder separated from the group of people and threw a gun to the ground. The weapon was retrieved by Salkanovic. Tran testified that Felder was pursued by Nguyen in order to make an arrest for illegal firearm possession. Subsequently, Nguyen and Salkanovic were assaulted by Felder on the scene. As a result, the officers radioed for additional units to arrive at the scene to assist.¹⁰

According to Tran, Employee answered the radio call for a backup officer and responded to the scene. He further stated that Employee responded to the scene and escorted Felder to the transport vehicle waiting to be led away from the scene. Tran affirmed that there were at least a dozen police officers that responded to the scene. He identified Joint Exhibit 9, and provided that Officer Finn (“Finn”) was one of the officers on the scene the day of the incident. After viewing Finn’s body-worn camera on Joint Exhibit 9, Tran identified Employee, Officer Akile (“Akile”), Officer Yezzi (“Yezzi”), and Ms. Kyona KL (“KL”) on the video. He stated that after KL advised Employee not to touch her, Employee extended his arm out and pushed KL back. Upon viewing the video, Tran further provided that as KL expended her right arm out, she briefly made body contact with Employee around his left cheek.¹¹

Thereafter, KL held a phone pressed against her side and stated that Employee had a strong hold on KL’s right arm. Tran affirmed that Ms. KL was more of a passive resistor and was not actively engaging. He stated that she appeared to distance herself from Employee. Additionally, he affirmed that in this scenario, since Employee had already managed to subdue Ms. KL, if more assistance was required and if she was more resistant, using OC spray or gently guiding her to the ground in a controlled way could reduce injury for both her and Employee. In the video, Tran confirmed Finn deployed OC spray, which was an appropriate response at that moment.¹²

Tran stated that if Employee was able to restrain KL with handcuffs, then that would have sufficed if she provided no resistance. He further stated that there were additional officers on the scene if Employee needed help to control KL and that the officers surrounding the scene could have easily subdued and restrained KL. After Employee grabbed KL’s right arm, Tran provided that it appeared that Employee wrapped his arm around her torso and lifted her up. He further stated that Employee got KL off balance and off the ground before slamming her down. Tran testified that he heard a thud indicating that her head hit the ground surface first. He explained that the use of force that Employee executed on KL was comparable to a wrestling WWE move, which was not an approved technique that members are trained to use by Agency. Tran stated that the takedown technique he observed in the video footage did not comply with Agency training policy.¹³

Tran explained that Employee’s reaction of slamming KL to the ground was not justified by the degree KL engagement with him. Tran stated that when Employee first contacted KL and made physical contact, he should have employed a milder level of force instead of escalating it to a degree that could have led to possible harm to her. He attested that as an appropriate response,

¹⁰ Tr. 30-31.

¹¹ Tr. 32-36.

¹² Tr. 36-38.

¹³ Tr. 38-40.

Employee should have gently guided KL to the ground with control or call a nearby officer to assist to detain her.¹⁴

Tran stated that the technique that Employee used to detain KL was not appropriate. He further explained that the technique was not authorized by Agency or a part of training. Tran stated that the technique Employee executed was described as a defensive tactic. He explained that instead of Employee slamming KL to the ground, he could have used other de-escalation tactics such as giving a verbal command to KL to stop. Further, Employee could have distance himself away from KL while contacting another officer to assist with detainment. Tran identified in Joint Exhibit 9 video footage of KL lying on the cement ground between two police vehicles in fetal position. Upon viewing the video, Tran affirmed that Employee waited five seconds before attempting to handcuff KL.¹⁵

Tran testified that he observed KL's behavior before and after the takedown and that after the takedown, she struggled initially to maintain her composure and balance of standing upright while Finn and Employee attempted to handcuff her. He further stated that when Employee attempted to lift KL from the ground, she fell to the ground, and then Employee raised her up and escorted her to the transport vehicle. Tran attested that Ms. KL's speech was not fluid and that her voice appeared monotone and stumbled a little. It appeared to Tran that KL had difficulty reciting a phone number in the correct order.¹⁶

Tran stated that the supervisor interviewed KL regarding any medical treatment required or injuries she might have sustained during Employee's use of force. KL expressed that she was experiencing body pain related to Employee's takedown technique. Tran identified Joint Exhibit 1 is a Final Investigation for Incident Report ("Incident Report") regarding multiple members of the Agency that used force including Employee. Tran completed the report and further explained that Employee's use of force in defending himself against KL was unjustified.¹⁷

Tran confirmed that the 311 call made by the Officer was to request additional members to the location following the event where Felder was apprehended, restrained, and taken to a transport vehicle, primarily for crowd management purposes. Tran attested that Employee never stated that he was afraid that KL had possession of a firearm.¹⁸

Based on the circumstances in the investigation, Tran declared there is no indication that KL was in possession of a firearm. Tran explained that members are required by departmental guidelines to continuously evaluate and reevaluate the situation. Their level of response in terms of force should prioritize de-escalation. Furthermore, he stated that use of force by members should only be applied when necessary and must be proportional to the circumstances they are facing. The force applied must be trained and authorized by Agency, ensuring it is executed in a safe and effective manner to reduce injury to both the subject of the force and the members themselves.¹⁹

¹⁴ Tr. 41-42.

¹⁵ Tr. 42-44.

¹⁶ Tr. 45-48.

¹⁷ Tr. 48-50.

¹⁸ Tr. 59-61.

¹⁹ Tr. 62-64.

Tran admitted that in the Incident Report he did not include in the findings KL being a passive resistor in addition to lightly grazing Employee on his check while being detained. Tran testified that during his investigation, he did not interview the area witnesses or canvased the area where the incident occurred. Tran confirmed that while the officers at the scene were transporting Felder to the Agency transport vehicle, Employee provided a protective barrier around the transport vehicle to keep the crowd of people safe and away from the officers on the scene. He also confirmed that Employee gave several loud commands to KL to move away from the scene while she approached the transport vehicle interfering with the police operation of transporting Felder to the transport vehicle. Tran admitted that Employee did comply with Agency Use of Force General Order where officers are required at first attempt to diffuse a situation through warnings and verbal persuasion by him verbally commanding KL to move back from the scene.²⁰

Tran declared that while Employee commanded KL to move back from the scene as he used a soft empty hand technique to attempt to move her back, she then struck Employee in the face. Furthermore, he professed that Employee grabbed KL around the torso to detain her, she then tensed her arms and pulled away from him. Then, Employee executed a solo takedown on KL. Tran affirmed that KL's actions of pulling away from Employee during the arrest would meet the definition of an active resistor according to the Agency Use of Force General Order. In addition, the use of force techniques permitted by an officer for an active resistor include takedowns and OC spray.

According to Tran's term in the Agency's academy, members are instructed to apply the least amount of force necessary while ensuring the safety and well-being of the individual the members are dealing with. He further stated that when members need to use force, it's essential to consider their safety, the safety of the team members, and to minimize any potential harm to the Agency staff. Tran affirmed that the Internal Affairs Division ("IAD") did not take charge of the investigation due to the fact that the case involving Employee was not considered a serious use of force investigation. Tran admitted that he contacted Agent Selbach ("Selbach") at the IAD. Furthermore, Selbach confirmed that KL did not lose consciousness during the time she was taken down to the ground by Employee. During the course of his investigation, Tran affirmed that he did not formally interview Employee. Tran declared in the video, KL reported that Employee slammed her to ground however, she did not complain of any head injuries. In addition, there were no photos or evidence taken of KL's face or head revealing any injuries.²¹

Tran suggested improvements to Agency's academy training to ensure that members are informed that a similar use of force takedown technique employed by Employee are not permitted in field operations. Tran acknowledged that he did not conduct an interview with Employee because, when the case was assigned to him following the preliminary investigation, the IAD reviewed the situation and assessed the evidence supplied by Agency. They determined that the case fell within the scope of an administrative investigation. Furthermore, the IAD returned the case to Agency for a district-level chain of command investigation, which Tran then undertook. Tran explained that when Agency conducts a use of force investigation, part of their training from

²⁰ Tr. 73-78.

²¹ Tr. 95-100.

management or an official investigating the case is if the individual investigating the case perceives or detects that a subject loses consciousness during an arrest.²²

Tran stated that when the IAD handles a case involving an individual losing consciousness as a result of an officer's use of force, Agency's procedure is to inform the IAD agent to confirm whether what the agent witnessed in the video will remain under the district's jurisdiction or be referred to IAD as information that the Agency has shared. Tran confirmed that neither he nor the agent at IAD were present at the location when the incident involving Employee and KL took place. Furthermore, Tran stated that his investigation report was reviewed and approved by his chain of command at Agency at each stage of the investigation process. He mentioned that the chain of command concurred with his findings and the conclusion of his recommendation, which was that Employee's use of force was unwarranted and excessive. Tran indicated that as an official designated for the investigation, he examined all the evidence submitted, including documentation, forms, photographs, and the body-worn camera footage. Afterward, he forwarded the investigation to his superiors for evaluation.²³

Tran emphasized that when performing a takedown on an individual, the officer must recognize that if they are applying a lower level of force, they need to fully assess the surrounding circumstances. The level of force that an officer employ must correspond to the situation they faced or perceived. The manner in which the officer applies force must align with the standards set by Agency and adhere to the training they received at the academy, which has been approved. Additionally, Tran stated that once the officer has managed to stabilize and take control of the situation, they are prohibited from using force. Tran clarified that if an officer is under active assault, they are permitted to employ self-defense tactics, but the level of force used must be deemed objectively reasonable.²⁴

Tran verified that the investigative report concerning Employee was submitted to the use of force board, which concurred with his findings. Tran clarifies that the use of force board is comprised of command staff members designated to the committee. When an officer employs a use of force deemed disapproved by Agency, meaning the force is disproportionate, unreasonable, or subjective, the case is referred to the board for examination. Tran stated that Agency does not explicitly outline in its general order the specific type of takedown that Employee is forbidden to use, as each situation is fluid and dynamic, with no two scenarios being identical. Agency offers a framework for how members should handle situations and determine the appropriate level of force to apply, which has been reviewed.²⁵

Winkle Hong ("Hong") Tr. 135-176

Hong worked as a Director for the Disciplinary Review Division ("DRD") with Agency when Employee's case arrived in their department in 2023. Hong outlined his responsibilities as a Director include overseeing the receipt and intake of all ongoing investigations carried out by the departments, whether they pertain to the internal affairs division or investigations conducted

²² Tr. 110-111.

²³ Tr. 111-114.

²⁴ Tr. 120-123.

²⁵ Tr. 124-133.

through the chain of command. Furthermore, Hong mentioned that following the completion of the intake process, he and his office will review the investigations to determine the appropriate outcomes and the administrative charges that should be applied to each involved member, after which he issues the relevant notices of adverse action. Moreover, Hong holds a Commander's Resolution Conference for each individual involved in the current disciplinary procedure. During these meetings, he would meet with them along with their legal counsel or their representative from the Fraternal Order of Police ("FOP"), functioning more like a mediation session. In addition, Hong noted that his role includes overseeing the process of adverse action hearings, which mainly deal with cases where members face termination from Agency, and he also acts as the keeper of all disciplinary records within Agency.²⁶

Hong recognized Agency Exhibit 2 as a report from the Use of Force Review Board ("UFRB"). He identified Agency Exhibit 3 as the report from the UFRB that includes the board's conclusions. Hong indicated that the UFRB determined that Employee's actions, which involved the use of force, were not justified, and they upheld the charge of excessive force. Hong agreed that the review involved the investigative report, the findings of the UFRB and the pertinent body-worn camera footage, all of which contributed to the disciplinary measures taken against Employee. Hong recognized Agency Exhibit 4 and stated that it is the Notice of Adverse Action issued by the DRD to Employee. On the first page of Exhibit 4, Hong confirms the allegations against Employee as Charge One: Breach of General Order 120.21(a)(10), which pertains to utilizing unnecessary and excessive force while arresting or detaining an individual, or employing unnecessary violence towards any individual or the public, and Charge Two: Breach of General Order 120.21(a)(16), which involves failing to comply with orders and directives given by the Chief of Police.²⁷

Hong clarified that a Use of Force Violation refers to a breach of Agency's use of force policy. In the situation concerning Employee, the allegation of employing unnecessary and violent force constitutes a violation of the policy; however, the conduct would be so severe that it would demonstrate a reckless disregard for the individual involved. Hong explained that the term "unjustified use of force" in relation to the investigation involving Employee indicates that the force employed by Employee was considered unjustified, not only by the investigator but also by the review board made up of Agency's command officials. Hong expressed that the behavior of Employee outlined in Charge one, Specification one qualifies as a Use of Force Violation.

Hong identified Agency Exhibit 13 as the Table of Penalties General Order 120.21 pertaining to Sworn Member Discipline. He outlined the range of penalties for a Use of Force Violation in the investigation concerning Employee, explaining four tier levels of possible offenses. He stated that the four tier levels of potential offenses are just a few representative examples that would classify as the respective tier offense. Furthermore, in this case in the matter of use of force involving Employee, it would qualify as a Tier Three offense, with a presumptive penalty ranging from an eleven to thirty-day suspension for an unjustified use of force resulting in no or minor injuries. Hong affirmed that the evidence supported the charges against Employee,

²⁶ Tr. 135-138.

²⁷ Tr. 139-141.

following the review of the final investigative report and the findings and recommendations from the UFRB.²⁸

Additionally, he explained that the investigation included an analysis of the Douglas Factors. Hong indicated that the Douglas Factors were evaluated according to the case's specifics, how the situation unfolded, and those findings were matched against each respective Douglas Factor to assess whether they should be classified as aggravating, neutral, or if there were mitigating circumstances present. Hong indicates that after reviewing and combining all relevant factors, DRD concluded through an assessment that the suspension of Employee mentioned in the Notice of Adverse Action was justified. According to the Twelve Douglas Factors, Factor One, as discussed by Hong, Employee's use of force tactic was classified as aggravating pertaining to the investigation. Hong stated that the use of force was considered aggravating since it was identified as unjustified. Furthermore, he noted that after reviewing Agency's body-camera footage, Employee's use of force was seen as excessive, especially since the incident was also observed by community members. As a result, the DRD determined that this factor should be classified as aggravating.²⁹

Hong testified that, as per Douglas Factor Two, the behavior of Employee was seen as aggravating because the incident took place in public, where community members witnessed the use of force that was enacted. Furthermore, the situation affected how the community perceived law enforcement overall, given what transpired. Hong stated that the Employee's actions were deemed aggravating under Douglas Factor Four because he did not comply with Agency's policy. Additionally, Hong noted that under Douglas Factor Five, Employee's conduct was considered aggravating as the investigation was conducted through the chain of command for Employee's element. Moreover, this investigation was evaluated by the UFRB, made up of Agency command officials, all of whom concurred that the behavior represented an unwarranted use of force.³⁰

Hong indicated that, based on Douglas Factors Eight and Nine, Employee's behavior was viewed as aggravating because, at the time of the incident, Employee had been a member of Agency for three years. He added that every member of Agency is required to adhere to all Agency rules and regulations, and they have all received adequate training, particularly concerning the appropriate use of force. Hong stated that according to Douglas Factor Six, Employee's behavior was regarded as a neutral factor based on Agency's Disciplinary General Order 122.1 Table of Penalties, which outlines the corresponding administrative charge, tier level, and the recommended penalty. He further indicated that under Douglas Factor Twelve, Employee's actions were also considered a neutral factor, as he found the 25-day suspension mentioned in Agency Notice of Adverse Action to be appropriate, noting that this suspension fits within the tier three penalty category.³¹

Hong noted that a conference for resolving commander issues occurred in November 2023 concerning the case involving Employee, which he claimed to have attended. He mentioned that there were no opinions offered regarding Employee's case at the conference. Hong recognized

²⁸ Tr. 144-147.

²⁹ Tr. 148-150.

³⁰ Tr. 150-152.

³¹ Tr. 153-157.

Agency Exhibit 5 as Employee's appeal submitted to the Chief of Police. Furthermore, he identified Agency Exhibit 6 as the chief's letter, also referred to as a final Agency action letter, representing the chief's definitive decision on the issue. He explained that following the appeal, the chief partially granted it, determining that Douglas Factor 4 was a mitigating factor rather than an aggravating one, which resulted in a twenty-five-day suspension with three days held in abeyance for one year. This essentially means that Employee would serve a twenty-two-day suspension, with the three days held in abeyance for one year. If Employee avoids any further issues during the year from the date of this letter, those three days would not need to be served.³²

Hong affirmed Agency's decrease in penalty for Employee aligns with what has been done in comparable cases to his knowledge, considering the unique circumstances of this situation. Additionally, he mentioned that the reduction was justified, particularly because the 25-day suspension was effectively upheld and one of the Douglas Factors was overturned upon the chief's review.³³

Hong testified that the Notice of Adverse Action did not mention any complaint from KL regarding a head injury, as indicated in Douglas Factor 1, which noted that KL had complained of back pain and was taken to United Medical Center for medical care. Hong acknowledged that in the preparation of the Notice of Adverse Action, he did not communicate with any of Employee's supervisors, nor did any supervisor inform him that they had lost trust in Employee's ability to fulfill their responsibilities.³⁴

During the redirect examination, Hong testified that he was not the one who composed the investigative report for Employee's case; however, he did conduct a thorough review of the report before issuing the Notice of Adverse Action. Hong acknowledged that the administrative allegations against Employee, including the violations of orders and directives as well as the charges of unnecessary and wanton force, were appropriately categorized in relation to the investigation.³⁵

Employee's Case-in-Chief

Officer Matthew Finn ("Finn") Tr. 178-208

Finn served as an Officer in the Special Missions division of 7D for Agency. After completing his training at the police academy, Finn mentioned that he was assigned to 7D and later transferred to the Special Institute division within the same district. He indicated that he met Employee during their time at the police academy when they first began their studies and that the two of them were classmates. Finn noted that he and Employee partnered up for over a year. Throughout that year, Finn remarked that he and Employee collaborated as partners in 7D. Finn stated that he did answer a call for assistance on May 14, 2023, at the 3500 block of Stanton Road to help an officer in trouble while on duty. On May 14, 2023, Finn mentioned that he had regular

³² Tr. 158-160.

³³ Tr. 161.

³⁴ Tr. 168-172.

³⁵ Tr. 174-176.

patrol responsibilities throughout 7D and worked the evening shift. Finn confirmed that he and Employee were partners on duty that day.³⁶

Finn explained that when an officer finds themselves in danger, they activate the emergency tone on their radio and send out a ten-thirty-three code, indicating an officer is in distress. At that moment, the alert tone is broadcasted to all radios within 7D, and all communications are cut off except for that of the distressed officer. Finn recounted that when he and Employee reached the location on May 14, 2023, numerous officers were engaged in trying to apprehend an armed suspect while several community members were arriving to disrupt the arrest. He described the crowd as hostile, as they were shouting, screaming, and attempting to physically intervene with the arrest in progress. Finn confirmed that the individual being apprehended was charged with carrying a firearm without a permit. Finn stated that he did have an interaction with KL. He also mentioned that while he and Employee were helping the other officers in getting the original arrestee, Felder, secured in a transport vehicle, KL came up to the transport vehicle and tried to disrupt their efforts by speaking to Felder.³⁷

Finn recounted that when he and Employee first encountered KL at the transport vehicle, she was trying to communicate with Felder while approaching the officers who were attempting to place Felder in the transport vehicle, forcing her way into the situation. In reaction to this, Finn mentioned that Employee made multiple verbal commands for KL to step back and move away from the scene, but KL did not comply with the order. While Finn was handing Felder's firearm to the arresting officer, he observed KL striking Employee in the face, prompting him to immediately deploy OC spray in her direction. Finn testified that Employee executed a use of force takedown technique on KL in an effort to place her in handcuffs and effectuate an arrest. He confirmed that the takedown technique used by Employee was appropriate. Based on his observations, Finn stated that KL showed no signs of injury and did not appear to be unconscious following the takedown, nor did she report any head pain or injury. He affirmed that there were no visible injuries to her face or head.³⁸

Finn mentioned that during his time at the police academy, he was neither educated on what a takedown technique entails nor trained in the methods to execute a takedown. Additionally, Finn stated he is unaware of any general order or document from Agency that defines a takedown, or outlines prohibited methods for performing takedowns. He characterized Employee as a competent and respectful officer who strives to treat everyone with as much compassion as possible when they are working together at a scene. He also noted that Employee is always prepared to make decisions at a scene when he is uncertain about the appropriate course of action. Finn described Employee's work ethic as exceptionally dedicated, as he consistently responds to numerous service calls each day, even when other officers are unwilling to do so.³⁹

Based on his experience collaborating with Employee while engaging with the public, Finn would characterize Employee's behavior as both respectful and compassionate, always striving to be as helpful as possible in every situation he encounters. He also notes that in his interactions

³⁶ Tr. 179-182.

³⁷ Tr. 182-184.

³⁸ Tr. 184-187.

³⁹ Tr. 188-190.

with colleagues, Employee manages to get along well with nearly everyone he meets at work, and he has never observed any significant conflicts involving Employee and his coworkers. Finn highlights that Employee's strengths, which make him a valuable member of the department, include his extensive knowledge and proficiency across all job-related areas, along with his respectful demeanor.⁴⁰

During cross examination, Finn testified that his body-worn camera was activated on the day of the incident that took place on May 14, 2023, between Employee and KL. He stated that he has not reviewed the footage from his body camera since the incident on May 14, 2023. Finn confirmed that he witnessed Employee lifting KL, throwing her over his shoulder and taking her to the ground in an attempt to arrest her. He further established that KL was brought down onto the cement ground by Employee. Once KL was on the ground, he confirmed that no officers were immediately touching her. He stated that after the deployment of the OC spray, both he and Employee took a few seconds to figure out their next steps while KL remained on the ground. At that time, he confirmed that KL was making noises as he tried to contact her to put handcuffs on her to begin the arrest process. Finn acknowledged that KL had trouble sitting up on her own and that he and Employee lifted her off the ground while attempting to handcuff her.⁴¹

Finn acknowledges that, as a sworn officer, he is required to follow Agency policies and procedures. He states that he received training at the academy regarding the use of force policy, but he admits that he was not instructed on any particular takedown methods during his training. Finn reiterates that according to the general Agency guidelines, if an officer has not been specifically taught a technique within Agency, they are not authorized to use it. He confirms that Employee underwent the same training as he did at the academy. Additionally, he asserts that they were not taught that throwing someone over one's shoulder and slamming them to the ground qualifies as a takedown technique.⁴² In the recross examination, Finn asserted that based on his experience as a police officer, he has conducted a takedown and that officers are prohibited from using a particular technique like a takedown unless they have received proper training for it.⁴³

Employee Transcript Tr. 209-269

Employee began his role as an Officer with Agency on March 30, 2020. Employee attended the police academy from March 30, 2020, until October 31, 2020, graduating on that date. After graduating, Employee was assigned to 7D on November 1, 2020, and stayed there until mid-February, at which point he was transferred to the first district and continued his duties as a patrol officer in the PSA 106 Navy Yard district. Employee recalled joining the academy under COVID-related protocols, noting that the initial two months involved remote learning, except for the first week. The first week included in-person training at the academy, but once D.C. implemented lockdown measures, they were sent home to complete online coursework about the basic D.C. criminal code and general orders through Zoom and Teams meetings. Additionally, Employee shared that the training class met in the Job Corps parking lot across from the academy for outdoor

⁴⁰ Tr. 191.

⁴¹ Tr. 192-204.

⁴² Tr. 205-206.

⁴³ Tr. 206-208.

runs in the heat of the D.C. summer while wearing N95 masks, and they later returned to the academy for twelve-hour shifts from 4:00 p.m. to 4:00 a.m. to assist with the mass processing of protester arrests.⁴⁴

Employee testified that during his training at the academy, there was a point when they were taught in-person use of force techniques, which took place in the gym while maintaining social distancing during defensive tactics practice. He indicated that the defensive tactics training included hand controls and wrist locks, requiring interaction with fellow classmates. Employee testified that throughout his time at the academy, he was never instructed on how to properly execute a takedown due to social distancing protocols, as the academy was concerned about the potential for injuries that could prevent graduation. Furthermore, Employee indicated that while attending the academy, they were not shown examples of prohibited takedown techniques. Additionally, Employee noted that Agency never instructed them against using any takedown techniques in the field and provided information about the general orders, clarifying that a takedown is described as bringing an individual down to the ground through an officer's physical force.⁴⁵

Employee acknowledged that he had participated in other use of force applications in 7D aside from the incident on May 14, 2023. He asserts that his previous takedowns were all justified and consistent with his experiences. Employee clarifies that each takedown technique varies and emphasizes that he has never received written directives outlining the specifics of a takedown. He mentions that during the incident on May 14, 2023, he was responding to a ten-thirty-three alert indicating that an officer required help with a combative individual armed with a firearm. Additionally, he explains that a ten-thirty-three alert is issued in scenarios where an officer is being attacked, is unable to control the subject, or needs to detain someone at risk of fleeing arrest.⁴⁶

On May 14, 2023, Employee reported that upon arriving at the scene, he encountered an officer who was detaining a subject, and he subsequently called for a transport vehicle for that individual. Employee also mentioned that he proceeded to the rear of the 3500 block of Stanton Rd to assist officers who were still on the radio expressing difficulty in controlling the subject. He confirmed that the area he responded to during the incident is known for frequent shootings. Additionally, Employee stated that when an arrest involves a community member who is well-regarded, a crowd of approximately thirty to forty-five people typically gathers outside to try to prevent the officers from apprehending the suspect. He explained that at the moment he first interacted with KL at the scene, she was positioned near the officers who were struggling to get a resisting suspect, Felder, into the transport vehicle. Employee further clarified that the officers had their backs turned to KL, creating a potential concern based on academy training regarding individuals approaching from the side where they could access the officers' firearm or OC spray, as she was only an arm's length away from it.⁴⁷

Employee reported that KL did not respond to his request for her to step back from the suspect while they were attempting to detain him in the transport vehicle. He described KL as a

⁴⁴ Tr. 209-211.

⁴⁵ Tr. 211-212.

⁴⁶ Tr. 213-216.

⁴⁷ Tr. 217-219.

passive resistor during the incident. In the body camera footage, he stated that he employed an open-handed, or soft-handed, control technique on KL, which he explained was intended to guide a passive individual in the direction that was needed. Additionally, Employee noted that he required KL to move out of the officers' personal space while they attempted to place a combative subject into the transport vehicle for arrest. At that time, he confirmed that in the body camera footage, KL's attitude and tone escalated to a more aggressive level as she attempted to rush past him toward the open door where they were still trying to load Felder into the transport vehicle, who was resisting their efforts to close the door. He stated that he then tried to push KL away with his hand by redirecting her from the area where they needed her to not be.⁴⁸

Employee referenced the body camera footage where he pushed KL away with his hand in an effort to redirect her from the scene; KL then struck Employee on the right side of his cheek. He asserts that anyone who strikes an officer is viewed as a threatening assailant, which grants the officer the authority to utilize force against that individual. Employee indicates that when KL hit him in the face, he attempted to seize her arm to initiate an arrest, but she resisted and tried to pull away as she attempted to flee. He then proceeded to execute a solo takedown, applying force to bring KL down to the ground. Employee confirms that his use of the takedown technique on KL was in line with the training he received from Agency across various training modules, incorporating de-escalation efforts that would entail using a lower level of force. He additionally points out that deploying OC spray and utilizing takedown techniques are regarded as equivalent levels of force. Employee states that he was unable to use his OC spray on KL because it was still holstered on his duty belt at the time of the incident, and he was too close to the suspect, which prevented him from deploying the OC spray without risking blinding KL, as he was within three feet of her, so he opted for the takedown technique as his method of use of force instead.⁴⁹

Employee indicated that when he applied the takedown technique on KL, his purpose was not to harm her, but rather to restrain her in order to place her under arrest for assaulting a police officer. He also mentioned that he was never informed that if a subject being taken down leaves the ground, it is considered an improper takedown. Employee stated that after implementing the use of force on KL, while she was on the ground, he delayed for a moment before putting handcuffs on her because several individuals approached KL, and he feared they might interfere with the arrest, so he waited for them to disperse. He then conducted a quick equipment check to ensure that nothing was missing since he wanted to avoid losing a magazine at the scene before proceeding to arrest KL.⁵⁰

He confirmed that during the arrest, KL did not report any injuries and that the only discomfort she mentioned occurred while they were en route to 7D in the transport vehicle, where she stated her eyes were burning, was a reaction to the OC spray; medical assistance was provided to KL right after the arrest. Employee affirmed that he followed the Agency Use of Force General Order's principles, which indicate that officers should attempt to de-escalate situations prior to using force, and he did in fact utilize de-escalation techniques in this case with KL, such as issuing loud commands and employing open hand controls in an attempt to have her step back from where officers were detaining Felder, but these efforts were ultimately unsuccessful. Employee confirms

⁴⁸ Tr. 220-222.

⁴⁹ Tr. 222-225.

⁵⁰ Tr. 225-228.

that he previously conducted a takedown while assigned to 7D, recounting an incident at a 7-Eleven where he had to subdue an individual upon discovering that the person had a firearm in his backpack. He emphasized that he acted as necessary to apprehend the armed suspect. Employee also noted that when he was initially designated as a Field Training Officer in 2022 in 7D, he submitted requests for several types of training to the training coordinator after becoming certified. These requested trainings included M4 rifle training, SFST field sobriety training, Intoximeter training which is the second phase of field sobriety training for operating breathalyzers along with Tint Meter, LIDAR training, RADAR training, and mountain bike training. He mentioned that, to date, he has not yet received any of this training.⁵¹

During cross-examination, Employee states that while reviewing the body camera footage from the incident on May 14, 2023, he observed that when he executed a takedown on KL, her legs were lifted off the ground and her feet were raised above his head as she fell, impacting the ground from her head to her shoulder area. He confirms that the takedown technique he used on KL effectively prevented her from assaulting him. He adds that he was unsteady during KL's attack and was attempting to detain her, which is the reason he lifted KL to perform the takedown. During the redirect examination, Employee reiterated that there is always a brief delay between an officer being struck and their immediate engagement in a takedown when facing an assault from a subject. He notes that, according to the body camera footage, he began the takedown on KL two seconds after she hit him in the face, a response time he believes is reasonable for such a situation. Employee testifies that based on the body camera footage, he successfully applied handcuffs to KL within ten seconds after executing the takedown.⁵²

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The following findings of fact, analysis, and conclusions of law are based on the testimonial and documentary evidence presented by the parties during the course of Employee's appeal process with OEA. It is uncontroverted that on May 14, 2023, Employee responded to a "10-33" officer in trouble, emergency radio notification. A "10-33" notification is an emergency alert that is activated when an officer presses the emergency alert tone button on his or her radio, which cuts off all radio transmissions except the transmission coming from the officer who activated the alert.⁵³ The May 14, 2023 "10-33" alert that Employee responded to was for multiple officers being assaulted and the presence of an unsecured individual with a handgun.⁵⁴

MPD submits that the sanction imposed for the aforementioned alleged violations of its General Orders was an appropriate use of its discretion. Given the instant circumstances, it further contends that Employee's use of force by using a takedown of KL was improper and in violation of its regulations particularly since it posits that Employee's reaction to KL was unwarranted given her size (relative to Employee) and alleged training that was (or should have been) provided to Employee.

⁵¹ Tr. 239-244.

⁵² Tr. 251-269.

⁵³ Tr. at 182, 216.

⁵⁴ Tr. pp. 69 – 71.

Employee disagrees with MPD's sanction and notes that the situation that presented itself was very tense given that the 10-33 alert was used. Employee further notes the following:

1. Prior to responding to the 10-33, MPD officers were warned that the arrestee had a firearm.
2. Employee was made aware that his colleagues used OC spray on the unruly growing crowd prior to his arrival on the scene.
3. On arrival, Employee was tasked with creating and maintaining a protective human barrier around the officers effectuating the arrest.
4. Just prior to the takedown, KL disobeyed direct verbal orders to vacate the area, and she then proceeded to physically assault Employee by striking him on his face.
5. Due to the perceived threat, Employee conducted a takedown to protect himself, his colleagues, and the public.
6. Employee asserts that his use of a takedown was an appropriate use of force in order to stabilize the situation given that he first used clear commands and "soft empty" hand controls, which were disregarded by KL during which she tried to physically disrupt the arrest.
7. So that order could be restored, the takedown was effectuated and Employee's colleague used OC spray on KL in order to secure the area.

The Use of Force Framework in General Order 901.07 provides as follows:

Category of Perceived Threat		Force Response
Passive Resister	Subject displays a low level of noncompliant, passive resistance. Subject does not respond to the member's lawful requests or commands and may be argumentative. Noncompliance offers no physical (i.e., caused by the body) or mechanical (i.e., produced by tools or machines) energy.	Control Holds Low-level physical tactics to gain control and cooperation (examples include soft empty hand controls, leaning on a subject's legs to hold them down, and firm grip).
Active Resister	Subject is uncooperative and will not comply with member's requests or commands. <u>Subject exhibits physical and mechanical defiance</u> or behaves in such a way that causes the member to believe that subject may be armed with a weapon, including evasive movements to defeat member's attempt at control, <i>including bracing, tensing</i> , pushing, or verbally signaling an intention not to be held in custody, provided that the intent to resist has been clearly manifested.	Compliance Techniques Actions that may induce pain or cause discomfort to the subject who is actively resisting until control is achieved, but will not generally cause an injury when used in accordance with department training and standards. Examples include oleoresin capicum (OC) spray, wrist locks, <u>takedowns</u> , ASP baton arm extractions, use of an ASP baton to conduct a wrist lock, and use of a patrol shield to pin a subject down.

Threatening Assailant	Subject has gone beyond the level of simple non-cooperativeness, and is actively and aggressively <u>assaulting</u> (e.g., <u>striking</u>, kicking) <u>the member</u>, themselves, or others, or the threat of an aggressive assault is imminent. Subject has demonstrated a lack of concern for the member's safety; however, subject does not pose an imminent threat of death or serious bodily injury to member or others.	Defensive Tactics <u>All force options other than deadly force.</u> Although a range of force options are generally available, members shall adhere to policy requirements governing the use of specific force options and less lethal weapons. Defensive tactics are employed to forcibly render the subject into submission; however, these actions are not likely nor designed to cause death or serious bodily injury. Defensive tactics are primarily used to ensure the safety of the member and others [examples include strikes, ASP baton strikes, use of a police mountain bike as an impact weapon, electronic control devices (ECDs), and 40mm extended impact weapons in accordance with department training and standards].
Active Assailant	Subject poses an imminent danger of death or serious bodily injury to member or another person (other than the subject). Subject's actions demonstrate subject's intent to inflict imminent death or serious bodily injury upon member or another person.	Deadly Force All force options. Deadly force shall only be used if the member actually and reasonably believes that deadly force is immediately necessary to protect the member or another person (other than the subject of the use of deadly force) from the threat of serious bodily injury or death, the member's actions are reasonable given the totality of the circumstances, and all other options have been exhausted or do not reasonably lend themselves to the circumstances (examples include the use of a firearm or a strike to the head with a hard object).

See Officer's Hearing Exhibit 2 at p. 4. See also Employee's Closing Argument pp. 8 – 9.

Employee strongly contends that his actions in the takedown of KL were consistent with responding to either an Active Resister or Threatening Assailant. Either scenario authorizes member use of a takedown in order to regain control of what has been predetermined to be a dire situation. Agency agrees that at various points in the interaction that KL fluctuated between being an “active resistor” and “threatening assailant”.⁵⁵ Inexplicably, Agency still contends that Employee's use of a takedown was inappropriate in this matter.⁵⁶

During the hearing, I noted that Tran reluctantly confirmed that Employee followed General Order 901.07 by giving clear verbal commands to KL telling her to move away from the cordoned off section. KL blatantly disobeyed this order. Employee then used “soft empty hands”

⁵⁵ Agency Closing Brief pp. 10 – 12 (February 13, 2025).

⁵⁶ *Id.*

and continued verbal commands in an attempt to redirect KL to a safe distance. Again, KL did not follow direction.⁵⁷ Employee only utilized the takedown after being struck across his face by KL.⁵⁸ He further explained that other techniques authorized for an active resistor were considered options⁵⁹ but he felt that they would have unnecessarily escalated the tense situation.⁶⁰ During cross examination, Tran reluctantly admitted that after reviewing the statements of those present and the body worn camera footage from the assembled officers that KL's action could deem her as an active resistor. The following exchange with Tran during the evidentiary hearing clearly illustrates this point:

Q: Okay. Now, again, going back to the use of force framework. If you look at the definition of an active resistor, an active resistor is someone who's uncooperative, will not comply with the member's requests or commands. Do you agree that [KL] was uncooperative and would not comply with Employee's commands?

A: She verbally not adheres to his command to back up, yes.

Q: Okay. Well, let's look at the language that you used in your report. You state, she struck [Employee] in the face;" right?

A: Yes.

Q: So that's more than just verbal. You state, when [Employee] grabbed her around the torso, she tensed her arms and pulled away from him, right?

A: Yes.

Q: Now if you look at active resistor, the definition of an active resistor states, subject may be armed with a weapon and including evasive movements to defeat a member's attempt at control, including bracing, tensing, pushing or verbally signaling an intention not to be held in custody. That's the language you used in your report, right, tensing?

A: Yes.

Q: And so she would meet the definition of an active resistor even when he has a hold of her; right?

A: Yes.

Q: Well, the techniques that are permitted for an active resistor include takedowns; correct?

⁵⁷ Tr. pp. 76 – 82.

⁵⁸ Tr. pp. 222 – 226.

⁵⁹ For example, using his ASP baton, OC spray (too close) or performing a "straight strike" (punch).

⁶⁰ Tr. pp. 222- 226.

A: Yes.⁶¹

Tran further admitted that KL met the definition of a Threatening Assailant under the Use of Force Framework in General Order 901.07, and that all uses of force (*i.e.*, more severe than a takedown) other than deadly force were justified as follows:

Q: A threatening assailant is someone who has gone beyond the level of non-cooperativeness, is actively aggressively assaulting, e.g., striking, kicking the member themselves. And that's the terminology you used, strike. [Employee] was struck in the face. That's what your report says, right?

A: Yes.

Q: And when we look at the appropriate force response under the department's general order, all force options other than deadly force;" correct?

A: Yes, sir.

Q: And defensive tactics are employed to forcibly render the subject into submission;" correct?

A: Yes.

Q: And that would include a strike. A strike meaning punching someone; right?

A: Yes.

Q: That would include an ASP baton strike, taking out an ASP and striking someone with the baton; right?

A: Yes, sir.

Q: Using a mountain bike as an impact weapon; correct?

A: Yes, sir.

Q: An ECD device, is that a – what is an ECD device?

A: Layman term is a Taser.

⁶¹ *Id.* pp. 83 – 85.

Q: Okay. So that's the – those are the defensive tactics and the force response for someone who has struck an officer; right?

A: Yes, sir.⁶²

Employee also asserts that he did not use unnecessary and wanton force when he executed KL's takedown. This directly contradicts MPD's assertion that his actions violated the aforementioned General Orders. Employee correctly notes that MPD merely found that Employee's use of force "optically appeared to go beyond the minimum amount of force necessary to detain [KL]."⁶³ What is further concerning is that Employee credibly testified that MPD did not provide him any training or guidance on how to execute a takedown.⁶⁴ During cross examination, Tran admitted that MPD academy training does not specifically prohibit member use of a takedown.⁶⁵ Tran then testified that takedowns are permissible under certain circumstances.⁶⁶ Tran was unable to note or locate the section of MPD's General Order that describes the different version(s) of a takedown that are permissible or impermissible.⁶⁷

Taking all of the relevant evidence into consideration, I find that Employee's takedown of KL was permissible given the instant circumstances. What is most telling is that Employee repeatedly gave clear verbal commands to KL for her to back away, she did not comply. Employee was responding to a tense/dangerous situation where his colleagues had raised an all-hands-on deck alarm for immediate assistance. There was an ever-present threat that the situation could dangerously escalate and against this backdrop, KL defiantly struck Employee across his face. In a split moment, Employee had to weigh his options for providing for the safety of himself and others in the immediate area. During examination, Employee gave a clear and convincing rendition of events that readily corresponded to the BWC footage that was shared. He further explained why other means of maintaining control were not the best options at the moment that he was struck (e.g. pepper spray would have caused more lasting physical damage given the spacing between himself and KL). Accordingly, I find that Employee did not violate MPD General Order 120.21, Attachment A, Part A-10 and MPD General Order 120.21, Attachment A, Part A-16.

Considering the findings of facts *supra*, MPD did not establish that Employee's conduct constituted cause for an adverse action. Most notably, its presentation of evidence surrounding what is (or is not) a takedown; its lack of candor regarding whether a takedown is permissible (or impermissible); MPD's inability to denote what training (if any) Employee has been given regarding a takedown; and, Agency's inability to give any credence to its General Orders where a takedown is permissible in a number of foreseeable encounters. MPD's seeming mission to make an example of Employee by second guessing his split-second decision in order to provide a teachable moment for the rest of its members is inexplicable. Given the gravity of the conduct and

⁶² *Id.* pp. 85 – 87.

⁶³ Employee Closing Argument pp. 16 – 18 (February 13, 2025)

⁶⁴ *See*, Tr. pp 260 – 265.

⁶⁵ Tr. pp. 100 – 108.

⁶⁶ *Id.* pp. 109 – 112.

⁶⁷ *Id.* 127 – 134.

the procedural safeguards of due process that Agency undertook, I find that Agency did not prove by a preponderance of the evidence that it had proper cause to suspend Employee.

Although the OEA has a “marginally greater latitude of review” than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.⁶⁸ The “primary discretion” in selecting a penalty “has been entrusted to agency management, not to the OEA.”⁶⁹ Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case. 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 MPD’s shoes in the first instance; such an approach would fail to make 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 ensure that MPD conscientiously considered 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 MPD’s judgment clearly exceeded the limits of reasonableness, is it appropriate for the OEA then to specify how the MPD’s decision should be corrected to bring the penalty within the parameters of reasonableness.⁷⁰ Based on my findings of facts above, I find that the evidence established Agency did in fact exceed that limits of reasonableness when it sanctioned Employee for the act of conducting a takedown of KL. I further find that that the penalty of a twenty-five (25) day suspension constituted an abuse of discretion and is unwarranted given the instant circumstances.

CONCLUSION

As noted above, I CONCLUDE that MPD did not meet its burden of proof for either charge (or its attendant specification) in this matter. Considering as much, I further CONCLUDE that Employee was improperly suspended from service.⁷¹

ORDER

Based on the foregoing, it is hereby **ORDERED** that:

1. Agency’s action of suspending Employee from service for 25 (twenty-five) days is **REVERSED**; and
2. Agency shall reimburse Employee all back-pay and benefits lost as a result of the suspension; and

⁶⁸ See, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981)(Federal Merit Protection Board case); *Raphael* 740 A. 2d 945).

⁶⁹ *Id.*

⁷⁰ *Raphel* 740 A. 2d at 945.

⁷¹ 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”).

3. 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/ Eric T. Robinson

ERIC T. ROBINSON, Esq.
Senior Administrative Judge