THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0042-24
EMPLOYEE[1],	)	
Employee	)	
	)	Date of Issuance: August 19, 2025
v.	)	
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	Michelle R. Harris, Esq.
Agency	)	Senior Administrative Judge
	)	

Daniel J. McCartin, Esq., Employee Representative
Kelsey Penna, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 17, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the D.C. Metropolitan Police Department's ("Agency" or "MPD") action to place him on Indefinite Suspension, pursuant to a letter from the Chief of Police dated March 29, 2024, citing that it constituted a final agency action in this matter. On April 18, 2024, OEA issued a letter requesting that Agency file an Answer by May 18, 2024. Agency filed its Answer to Employee's Petition for Appeal on May 15, 2024. This matter was assigned to the undersigned on May 17, 2024. On May 21, 2024, I issued an Order Convening a Prehearing Conference for June 27, 2024, virtually via Webex. Prehearing Statements were due on or before June 20, 2024. Employee submitted his Prehearing Statement on June 18, 2024. On June 24, 2024[2], Agency filed a Motion for an Extension of time to submit Prehearing Statements and reschedule the Prehearing Conference. Agency requested an additional 30 days. Employee filed a Motion Opposing Agency's Motion on June 20, 2024, citing that Agency was trying to complete its administrative investigation of Employee. As a result of the parties' submission, I determined that the Prehearing Conference scheduled for June 27, 2024, should be converted to a Status Conference so that next steps could be determined. I issued an Order converting the June 27, 2024, Prehearing Conference to a Status Conference.

Both parties appeared for the Status Conference as required. Thereafter, I issued a Post Status Conference Order on June 27, 2024. That Order denied Agency's request for a 30-day extension and granted a two-week extension for Agency to submit its Prehearing Statement. Further, that Order scheduled a Prehearing Conference for July 23, 2024. Both parties appeared for the Prehearing Conference as required. During that Conference, the undersigned determined that briefs were

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Agency submitted a courtesy copy via email; however, the official copy was received at OEA on June 24, 2024.

warranted. Accordingly, I issued an Order requiring the parties to submit briefs.[3] Agency's brief was due by or before August 23, 2024, Employee's Brief was due by September 23, 2024, and Agency had the option to submit a sur-reply brief by or before October 4, 2024. The parties filed their respective briefs as required. On October 4, 2024, Employee filed a Motion for Leave to File a Reply to Agency's sur-reply/opposition brief.[4] Employee asserted therein that on October 1, 2024, he was found not guilty of all charges in D.C. Superior Court. Further, Employee asserted that Agency's Opposition (Sur-Reply) brief discussed new facts and new arguments which show its action of indefinite suspension was unwarranted. By and through email correspondence on October 16, 2024, Agency notified the undersigned that it would not file a response to Employee's Motion.

On February 18, 2025, Employee filed a Supplement in Support of his Opposition. Employee noted therein that following his not guilty finding, Agency had not yet restored his backpay, despite it being required to do so. On this same day, the undersigned reached out to Agency to ascertain who their new representative was.[5] Following this, the parties entered into settlement negotiations. Upon receiving notification from the parties that the settlement negotiations were unsuccessful, on March 24, 2025, I issued an Order scheduling a Status Conference for April 2, 2025. During that Status Conference, the parties agreed that they would rely upon what was already submitted on the record. Accordingly, the undersigned advise the parties that the matter would be under review, and an Initial Decision would be issued. On June 27, 2025, Employee filed a Motion in Support of Opposition contemporaneously with a request to file a notice of authority. Employee cited that a decision issued by Senior Administrative Judge Dohnji in another matter was "substantially similar" and thus warranted the undersigned's consideration.[6] On July 8, 2025, Agency filed its Opposition to Employee's Motion citing that the Initial Decision referenced in Employee's Motion was not final and that the facts in that matter are "clearly distinguishable" from Employee's matter. Considering the parties' arguments as presented in their submissions to this Office, I have determined that an Evidentiary Hearing is not required. The record is now closed.

JURISDICTION

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

ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. If so, whether the penalty of Indefinite Suspension was appropriate under the circumstances and administered in accordance with all applicable laws, rules and regulations.

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[3] The parties were required to address the following in their briefs based upon arguments presented in the record and made during the Prehearing Conference.: 1) Whether Agency had cause for adverse action in this matter[3]; (2) Whether Agency, in indefinitely suspending Employee from service, followed all applicable District of Columbia statutes, regulations, and laws; and 3) Whether the penalty of 'indefinite suspension' was appropriate. Further, the parties were also required to address an issue raised by Employe regarding the applicability of Chapter 16 of the DPM. In his Prehearing Statement, Employee asserted that Chapter 16 is not applicable to sworn members of the force. Employee averred that DPM Chapter 16 provisions cited by Agency are not applicable in this matter. In addressing this issue, the parties were required to provide any information regarding OEA's jurisdiction over this matter based upon their positions with regard to DPM Chapter 16. Lastly, the parties were also required to address the issue regarding Agency's position denying Employee the right to work during the indefinite suspension. Employee asserted that this was violative of his constitutional rights and Agency's action is unfair.

[4] Employee's Motion for Leave to file is hereby granted.

[5] The prior representative was Anna Kent; Esq. Ms. Penna entered her appearance on behalf of Agency.

[6] Employee's representative also represented the employee in the matter that was before SAJ Dohnji.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (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:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[7]

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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee is an Officer with Agency. The following is a relevant timeline narrative leading up to Employee's filing of his Petition for Appeal on April 17, 2024. In and around May 2023, the Internal Affairs Division (IAD) at Agency was notified that Employee might be working as a security officer at Giant Food Store, while simultaneously on duty as a 7D patrol officer. Following an investigation, on January 29, 2024, an affidavit was filed for Employee's arrest for a charge of first-degree felony fraud. Employee was arrested and appeared in the Superior Court for the District of Columbia on January 30, 2024. On January 30, 2024, Agency's Human Resources ("MPD HR") served Employee with a notice for Proposed Indefinite Suspension without Pay. The charge in the proposed notice was:

> **Charge #1**: "Violation of General Order Series 120.21, Number 21, Attachment "A," Number 6: Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or any offense which the member either pleads guilty receives a verdict of guilty or a conviction following a plea of nolo contender, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction. This misconduct is further defined as cause in the District Personnel Manual, Chapter 16 § 1605.4 (a)(3)(4) and 1617.4."
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> **Specification #1**: "On January 30, 2024, you were arrested and charged with First Degree Felony Fraud for commencing on or about August 27, 2021, and continuing thereafter to on or about June 7, 2023, within the District of Columbia, you engaged in a scheme of systematic course of conduct with intent to defraud and to obtain property of the District of Columbia Government by means of false or fraudulent pretense, representation, and promise and thereby obtained property of value of $1000 or more

[7] OEA Rule § 699.1.

or caused loss of the property of value of $1000 or more belonging to the District of Columbia Government in violation of DC Code §22.3221 (a), 22.33222(a)(1)."

On February 20, 2024, Employee filed a written response to the proposed notice with the MPD HR. On February 23, 2024, MPD HR issued a final notice of indefinite suspension. On March 8, 2024, Employee filed an appeal to the Chief of Police. On March 29, 2024, the Chief of Police issued a letter denying Employee's appeal and noted that that letter constituted the final agency action in this matter.

Jurisdiction

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1[8], this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or *suspension for 10 days or more; or*
(c) A reduction-in-force; or
(d) A placement on indefinite suspension for ten (10) days or more. (Emphasis added).

Agency's Position

Agency asserts that its action of placing Employee on indefinite suspension was warranted and appropriate following Employee's arrest. Further, Agency maintains that it followed all applicable laws, rules and regulations and that its action of placing Employee on indefinite suspension was for cause and warranted in the circumstances. Agency avers that it actions were appropriate because the Employee was charged and arrested for a crime that was a serious criminal offense that could result in imprisonment.[9] Additionally, Agency maintains that's its actions were in accordance with the parties' CBA, specifical Article 15, Section 7. Agency argues that it "had reasonable cause to indefinitely suspend Employee, based on his arrest warrant and the supporting evidence that was considered prior to his suspension."[10] To support this contention, Agency cited that the D.C. Court of Appeals in *District of Columbia v. Green*, held that "MPD established reasonable cause for an officer's indefinite suspension based on his arrest pursuant to warrant, together with consideration by police officials of the investigative documents underlying the warrant."[11] Agency asserts that similar to *Green,* Employee's indefinite suspension was based upon review of the supporting materials in the arrest warrant, MPD's time and attendance records, payroll and other documents.

Agency further avers that it considered and weighed "the seriousness of Employee's charged offense, the supporting evidence and the obvious bearing Employee's criminal conduct had on his

[8] *See also.* Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[9] Agency's Motion for Summary Disposition at Page 4 (August 22, 2024).
[10] *Id*. at Page 5.
[11] *Id*. citing to *District of Columbia v Green*, 687 A.2d 220 (D.C. 1996).

fitness to remain in a pay status as a police officer."[12] Agency contends that "allowing Employee to remain in a pay status after he had allegedly defrauded the District Government of over $46,000 would [have] both impeded MPD's ability to carry out its mission and tarnish the agency's reputation."[13] Agency also contends that the Court of Appeals Decision in *Green*, counters Employee's argument that "MPD lacked the authority for this indefinite suspension because Article 15, Section 7 refers to the resolution of a criminal indictment".[14] Agency maintains that the arrest warrant constitutes reasonable cause as provided in Green and that an indictment is not necessary for an indefinite suspension. Agency further avers that its actions also align with factors approved and weighed by the Merit Systems Protection Board (MSPB). Agency asserts that the MSPB has found that to establish cause for an indefinite suspension, the federal agencies "must prove that 1) there is reasonable cause to believe the employee committed a crime punishable by imprisonment pending the outcome of the criminal proceeding or any subsequent agency action following the conclusion of the criminal process; 2) the suspension has an ascertainable end; 3) there is a nexus between the basis for the suspension and the efficiency of the service; and 4) the penalty is reasonable."[15] To this end, Agency maintains that the action of indefinite suspension of Employee also meets the MSPB factors for consideration. As such Agency contends its action was reasonable and justifiable based on cause and it has complied with the CBA.[16]

Agency also maintains that it had reasonable cause based on Employee's arrest pursuant to a warrant. Agency asserts that Employee is mistaken in his argument that MPD cannot "rely upon any documentation or evidence that were not specifically referenced in MPD's suspension notices."[17] Agency asserts that "prior to proposing Employee's suspension, MPD's Internal Affairs Division ("IAD") conducted a criminal investigation and obtained a warrant for Employee's arrest." Agency further notes that "[b]ased on the information that was before MPD at that time and having considered Employee's written appeal, Chief Smith issued the final decision on March 29, 2024, which placed Employee on indefinite suspension."[18] Further, Agency cites that "to be sure, MPD relied on the information that had been obtained *as of that time* to assure itself that the surrounding facts [were] sufficient to justify Employee's indefinite suspension."[19] Agency also notes that it continued to "monitor Employee's criminal case to ensure that the process set forth in Article 15, Section 7 of the CBA would be followed." Agency cites that Employee's case was heard by a jury and on October 1, 2024, "the jury found Employee not guilty on all counts." Agency further notes that "given that Employee's criminal [case] has been resolved, under Article 15, Section 7 of the CBA, MPD had thirty business days to return Employee to a pay status or issue a notice of proposed adverse action."[20]

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[12] *Id*. at Page 6.
[13] *Id*. Agency also asserted that at the time of the submission of its brief, Employee's criminal case had not yet been resolved, so they were under no obligation to return Employee to a pay status or issue him a notice of proposed adverse action pursuant to the CBA Article 15 Section 7 which states:

> "If the Employer suspends an officer without pay during the resolution of a criminal indictment and the criminal indictment is dropped, or in any way resolved, then the Employer agrees to return the officer to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date the indictment was dropped or resolved. Likewise, if the Employer suspends an officer without pay after the officer has been convicted of criminal charges, the Employer agrees to either return the officer to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date it removed the officer from pay status."

[14] *Id.* at Page 7.
[15] *Id*. at Pages 7-8. Citing to Exhibit 11.
[16] *Id.*
[17] Agency's Opposition at Page 2 (October 2, 2024)
[18] *Id.*
[19] *Id.*
[20] *Id*. at Page 3.

Agency asserts that it returned Employee to "non-contact paid status on October 2, 2024."As such, Agency contends that "Employee's interpretation of the *Green* decision should be unavailing." Agency asserts that the *Green* decision adopted the *Broadus*[21] decision in noting that "an indictment is sufficient but not necessary to place an officer on an indefinite suspension without pay." Agency further cite that the "*Green* court went on to hold that an arrest warrant coupled with a review of the underlying documents was also sufficient to establish reasonable cause."[22]

Agency agrees with Employee's argument that the provisions in the District Personnel Manual (DPM) related to "enforced leave" are not applicable to sworn members of the MPD.[23] However, MPD maintains that it "does not contend that OEA lacks jurisdiction over this matter entirely, because Employee's appeal challenges a suspension for 10 days or more which is within OEA's jurisdiction pursuant to D.C. Code § 1-606.03(a) and 6-B DCMR § 604.1 (d)."[24] Agency also avers that Employee's claim to be able to work while on indefinite suspension is not within this Office's jurisdiction.[25] Agency argues that this is an employment claim not conferred within OEA's jurisdiction and as such this tribunal has no authority over those claims.[26]

Regarding Employee's Motion to Supplement, Agency argues that Employee's Motion should be denied. Agency asserts that the initial decision cited in Employee's motion "is not final and is clearly distinguishable" from Employee's matter.[27] Agency avers that it is "undisputed that an employee can only appeal *a final agency* decision to OEA." Agency further notes that "in the instant matter the final agency decision that Employee appealed was the Chief's letter, issued March 29, 2024, denying his appeal and placing him on indefinite suspension effective April 4, 2024."[28] Agency contends that "at the time the Department took the final agency action, the Chief considered all relevant information available, including the IAD investigation, Employee's arrest and his pending criminal charges, which satisfied the threshold for reasonable cause…"[29] Agency reiterates that while the initial decision Employee references is not final, it is distinguishable from this matter because the ruling in that matter hinged upon that AJ's finding that "Agency prematurely placed Employee on Indefinite Suspension Without Pay because Employee *was not facing any criminal charges* on July 9, 2024, when Agency issued the Notice of Proposed Indefinite suspension Without Pay."[30] Agency avers that in this matter, " Employee was proposed for indefinite suspension on January 30, 2024, after he had already been *arrested and charged* with criminal misconduct in D.C. Superior Court."[31] Wherefore, Agency maintains that its actions were appropriate and in accordance with all applicable laws, rules and regulations. As such, Agency avers that its action of placing Employee on Indefinite Suspension should be upheld.

Employee's Position

Employee argues that Agency's actions of placing him on Indefinite Suspension should be reversed. Employee asserts that "as an initial matter, the MPD's Motion for Summary Judgement

[21] Citing to *District of Columbia Metro. Police Dept. v Broadus*, 560 A.2d 501 502 (D.C. 1989)
[22] *Id.*
[23] *Id*. at Page 3.
[24] Agency's Motion for Summary Disposition at Page 9 footnote 3.
[25] Agency's Opposition (October 2, 2024).
[26] *Id*.
[27] Agency's Opposition July 8, 2025.
[28] *Id*. at Page 4.
[29] *Id*
[30] I*d*.
[31] *Id*.

improperly relies upon documents that are not apart of the record in this matter…[s]pecfically MPD Exhibit 1 contains an Affidavit in Support of an Arrest Warrant never previously provided to [Employee] when the MPD was proposing to suspend him without pay, and the Affidavit in Support of an Arrest Warrant was also never referenced by MPD when it suspended [Employee] without pay."[32] Employee also asserts that Agency included the indictment from Superior Court which was filed on August 14, 2024 and that "MPD never previously referenced or relied on the indictment" when it suspended Employee.

Employee asserts that he submitted an appeal of his proposed suspension. Employee avers that he raised "several legal challenges to the Proposed Suspension" in his appeal. Employee cites that he raised the issue that DPM Chapter 16 does not apply to sworn members and "therefore cannot be the basis for his suspension without pay." Further, Employee also restates that "MPD is precluded by the parties Collective Bargaining Agreement ("CBA") from indefinitely suspending officers without pay who have not been criminal indicted or convicted of any criminal charges."[33] To this end, Employee argues that Article 15, Section 7 cites to suspension without pay "during the resolution of a criminal indictment" and "after the officer has been convicted of criminal charges." Employee maintains that he was "neither criminally indicted nor convicted of any criminal charges." To support this claim, Employee notes that the specification in his Proposed Suspension notice "did not assert that [Employee] had been indicted or convicted of any crimes." Employee avers that "Specification No. 1 stated that [Employee] was "arrested and charged" with violation [of] certain DC Code sections."[34] Employee contends that "nowhere in the CBA does the MPD have the authority to indefinitely suspend an officer without pay simply for being arrested and/or charged with a crime."[35]

Employee further avers that Agency's action was not in accordance with the MPD General Orders, specifically General Order 120.21, Part II (C)(2). Employee asserts that in consideration of this provision, there was nothing in the proposed suspension notice noting "any contention that [Employee's] alleged conduct threated the MPD's operations or comprised the MPD's public safety mission."[36] Employee also argued that Agency denied his request to work "non-security" outside employment while he was suspended. Employee contends that the denial of this request was "unwarranted and in violation of the law."[37] Employee avers that the MPD did not meaningfully consider his appeal and request to work non-security jobs while he was suspended.

Employee maintains that Agency's actions were done without cause. Employee argues that the CBA only allows for a suspension without pay "during the resolution of a criminal indictment or after the officer has been convicted of criminal charges."[38] Employee further maintains that MPD inappropriately relied "on facts that were unavailable when it proposed suspending [Employee] without pay to retroactively attempt to justify its unwarranted decision."[39] Employee further maintains that he was neither indicted or convicted, thus evincing Agency's action was without cause. To this end, Employee also asserts he was "charged with violation of General Order 120.21, Number 21,

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[32] Employee' Brief and Opposition at Page 1 September 23, 2024.
[33] *Id*.
[34] *Id*.
[35] *Id*. at Page 4.
[36] *Id.* The General Order cited provides: In cases where the alleged misconduct threatens the integrity of department operations, the department may use an enforced leave/suspension pending removal action. Such action may be taken following arrest or indictment, where the member's conduct compromises the departments safety mission."
[37] *Id*. at Page 5.
[38] *Id*. at Page 5.
[39] *Id*. at Page 7.

Attachment A-7, which states "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense."[40] Again, Employee avers that he was not convicted of a crime, so Agency had no cause. Employee disagrees with Agency's argument regarding the Court of Appeals Decision in *Green*. Employee cites that "in any event, the Court of Appeals' decision in *Green* does not support suspending [Employee] without pay in this matter." Employee cites that "in *Green*, unlike in this matter, Officer *Green* was "indicted in the Circuit Court for Prince George's County on six counts including assault with intent to rape and assault and battery."[41] Employee also avers that in *District of Columbia Metro. Police Dept. v Broadus*, 560 A.2d 501 502 (D.C. 1989), that the "Court of Appeals held that a criminal indictment provided sufficient cause for a suspension without pay based upon the proof required for a criminal indictment."[42] Employee asserts that "likely in recognition of this higher standard proof necessary for a criminal indictment, Article 15 Section 7, allows for a suspension without pay when an officer has been criminal indicted, but does not allow for suspensions without pay with officers are simply arrested."[43]

Employee also contends that Agency's citation to MSPB factors "are not binding and are inapplicable to the instant matter." Further, Employee avers that "even if the MSPB's factors could be applied, MPD cannot satisfy any of the four factors in this instant matter." Employee also asserts that his "indefinite suspension does not have an ascertainable end" and "there is not a clear nexus between the criminal charge and the efficiency of the service, which is evidenced by the fact that nowhere in the proposed suspension was there **any** contention that [Employee's] conduct threatened the MPD's operations or compromised the MPD's public safety mission."[44] Employee also cites that the DPM Chapter 16 does not apply to sworn members. However, Employee asserts that "MPD explicitly referenced sections 1605.4(a)(3), (4) and 1617.3 of the District Personnel Manual ("DPM")"[45] Employee asserts that Agency "now concedes that Chapter 16 of the District of Columbia Municipal Regulations does not apply to sworn MPD members."[46] To this same end, Employee asserts that "contrary to the MPD's argument, the MPD's denial of [Employee's] request to work non-security related outside employment arises out of and is inextricably intertwined with the MPD's indefinite suspension without pay, which has greatly exceeded ten (10) days."[47] As such, Employee avers that "there is not a specific statute that conflicts with OEA's jurisdiction and OEA is the most appropriate tribunal to hear this claim because [Employee's] appeal regarding the MPD's denial of his request to work non-security related outside employment is inextricably intertwined with the MPD's overall punishment when it suspended him without pay in excess of ten (10) days."[48]

Employee also avers that it is significant that MPD did not raise General Order 120.21 in the proposed or final notices of suspension in this matter and Agency failed to follow General Order 120.24. Further, Employee avers that the proposed and final notices were issued by Human Resources and that there is "no indication that the Assistant Chief of Internal Affairs made the requisite determination pursuant to 120.24 prior to the issuance of the proposed indefinite suspension."[49] Employee argues that this is not a "non-issue" as Agency describes, but is "highly relevant" that "after this alleged review by IAD agents the Internal Affairs Division was not the division that issued the

[40] *Id*. at Page 8.
[41] *Id*.
[42] *Id*. at Page 9.
[43] *Id*.
[44] *Id*. at Pages 11-12.
[45] *Id*. at Page 12.
[46] *Id.*
[47] *Id*. at Page 14.
[48] *Id*.
[49] *Id*. at Pages 15-16.

notices of suspension without pay, as explicated required by General Order 120.24."[50] Employee also argue that his due process rights were violated to have a "meaningful" opportunity to be heard at the Agency level because both Commander Dickerson and Chief Smith failed to actually consider the substance of [Employee's] appeals.[51] Employee further asserts that he was suspended for over five (5) months and that Agency's actions were unconstitutional, particularly in its denial to allow Employee to work outside work.[52] Employee asserts that Agency failed to offer any reason for the denial to work while suspended, which "renders the disciplinary system unconstitutional and impermissibly unfair by forcing officers to make the Hobson's choice of choosing between invoking their right to contest disciplinary matters and face financial ruin or resigning from the Department before they can contest the underlying discipline because they must secure another source of income to support themselves."[53]

Employee also cites that on October 1, 2024, he was found not guilty on all charges.[54] He also asserts that he was returned to work on October 2, 2024, but "Agency's Opposition Brief extensively discusses these new facts and presents new arguments based upon these new facts which had not occurred at the time [Employee] filed his brief in this matter…"[55] Employee reiterates that contrary to Agency's arguments, MPD did not comply with the CBA in his matter. Employee avers that he appealed and "repeatedly pleaded" with MPD to "not rush to judgment and to instead afford him his Constitutional due process rights." Employee also reiterates that MPD relied upon facts not available when it proposed suspending Employee and maintains that while he was "arrested and charged" he was not indicted nor convicted at the time of his suspension. [56] Employee further asserts that Agency's reinstatement of him to duty status following his not guilty finding, does not cure Agency of its failures in the administration of the indefinite suspension. Further, Employee avers that as of February 19, 2025, he had not received his backpay as required.[57] Employee also asserts that an Initial Decision issued by SAJ Dohnji on June 20, 2025, is substantially similar to his matter and thus is representative of a notice of authority. Employee asserts that SAJ Dohnji found that "Agency did not comply with Article 15, Section 7 of the CBA", and asserts that the same is true for Agency's actions in his matter.[58] Because of this and for the other reasons, Employee contends that Agency's action of indefinite suspension was done without cause and Agency failed to follow applicable regulations. As a result, Employee avers that the adverse action should not be upheld.

ANALYSIS[59]

As has been previously described, Employee was placed on indefinite suspension pursuant to the Chief of Police's letter dated March 29, 2024. This follows an initial proposed suspension and Employee's subsequent appeal to the Agency regarding this action. Agency asserts that its action was for cause and completed in accordance with all applicable laws, rules and regulations. Further, Agency avers that Employee's claim to the Office requesting that he be allowed to work non-security related

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[50] *Id*. at Page 16.
[51] I*d*.
[52] *Id*. at Page 18.
[53] *Id*. at Page 19.
[54] Employee's Motion for Leave to File Reply to Agency Opposition (October 4, 2024).
[55] *Id*.
[56] *Id*. at Page 3.
[57] Employee's Supplement (February 19, 2025).
[58] Employee's Supplemental Motion (June 27, 2025).
[59] 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").

positions while suspended is not within this Office's jurisdiction. Employee contends that Agency failed to follow applicable laws, specifically Article 15 Section 7 of the CBA, MPD General Orders and violated his constitutional due process rights in its administration of the instant action. Further, Employee avers that his claims related to working while suspended are "inextricably intertwined" with the suspension action, and as such there is no statute precluding this tribunal's review of his claim. The parties concede in this matter that the DPM Chapter 16 does not apply here because Employee is a sworn officer. As such the undersigned adopts the parties' position as related to the DPM. Accordingly, given that the parties concede that the DPM is inapplicable here, the undersigned's analysis will proceed within the context of the General Order for which Employee's adverse action was based.

Indefinite Suspension - General Order 120.21

Employee was served with a proposed notice of indefinite suspension without pay in a letter dated January 30, 2024. Therein, Employee was charged for violation of MPD General Order Series 120.21, Number 21, Attachment "A", Number 6 which states:

> "Violation of General Order Series 120.21, Number 21, Attachment "A," Number 6: Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or any offense which the member either pleads guilty receives a verdict of guilty or a conviction following a plea of nolo contender, or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction.

Employee asserts that he was never convicted nor indicted at the time of this notice, and as such, Agency's action is without cause. Agency avers that an arrest is sufficient cause to proceed with an indefinite suspension. Agency avers that the Court of Appeals in *Green*[60], cited that an arrest and consideration of related materials was sufficient to support cause. Agency avers that there was an affidavit for Employee's arrest and that he was arrested on January 30, 2024, for charges of First-Degree Felony Fraud. Employee avers that *Green* is distinguishable from his matter, because in *Green*, that employee had been indicted in Prince George's county, thus an indictment was sufficient cause. It is undisputed that Employee was arrested and charged in the Superior Court for D.C. on January 30, 2024. Employee contends that Agency did not present an affidavit for arrest that it referenced in its Motion for Summary Judgment before this Office nor was it included with the material in his proposed notice.[61] This noted, the undersigned would note that Employee does not dispute that he was arrested and charged on January 30, 2024. Thus, I find that he would have known that an affidavit warrant was present and was likely presented with such when he was arrested. Consequently, while I find that Agency should have included the affidavit for arrest with the proposed notice, I do not find that Employee was prejudiced given the circumstances.

In consideration of Employee's arrest and upon a review of the entirety of the General Order, and in consideration of the Court of Appeals' ruling in *Green*, I find that Employee's arrest and charge was sufficient to warrant the action. Specifically, the General Order notes that a violation is considered when there is conviction; however, this G.O. also says "***or is deemed to have been involved in the commission of any act which would constitute a crime whether or not a court record reflects a conviction…" (Emphasis added).*** As such, I find that Employee's arrest, meets this prong of "deemed

[60] Previously cited.
[61] Employee's Brief (September 23, 2024).

to be involved in the commission of any act which would constitute a crime…" Further, that provision specifically cites that this violation occurs "whether or not a court record reflects a conviction." As a result, I find that while Employee was not indicted at the time of the proposed indefinite suspension, the arrest was sufficient cause for Agency to find violation of this aforementioned General Order. Employee also asserted that the OEA decision (OEA Matter No. 1601-0006-25) is substantially similar to his matter and should have been considered as authority. The undersigned finds that the case cited by Employee was not final and thus cannot be authoritative in this matter.[62] Employee also argued that Agency failed to follow General Orders 120.24 regarding notice and the issuance from IAD. For the same reasons stated above, the record does not reflect where Employee was prejudiced by the notice being issued by MPD Human Resources.

Collective Bargaining Agreement (CBA)

As it relates to the CBA argument presented by the parties, typically, OEA does not review matters that are under the guidance of a Collective Bargaining Agreement. However, the District of Columbia Court of Appeals held in *Brown v. Watts*, 933 A.2d 529 (April 15, 2010*),* that this Office is not "jurisdictionally barred from considering claims that at termination violated the express terms of an applicable collective bargaining agreement."[63] The Court went on to explain that the "Comprehensive Merit Personnel Act ("CMPA') gives this Office broad authority to decide and hear cases involving adverse actions that result in removal, including matters covered under subchapter [D.C. Code § 1-616] that also fall within the coverage of a negotiated grievance procedure." Based on the holding in *Watts*, I find that this Office may interpret the relevant provisions of the CBA related to the adverse action at issue in this matter.

In the instant matter, Employee maintains that Agency violated the CBA in its action of indefinite suspension. Employee avers that Article 15, Section 7 of the CBA cites to suspension without pay "during the resolution of a criminal indictment" and "after the officer has been convicted of criminal charges." Employee maintains that in his appeal, he noted that he was "neither criminally indicted nor convicted of any criminal charges." To support this claim, Employee notes that the specification in his Proposed Suspension notice "did not assert that [Employee] had been indicted or convicted of any crimes." Employee avers that "Specification No. 1 stated that [Employee] was "arrested and charged" with violating certain DC Code sections."[64] Employee contends that "nowhere in the CBA does the MPD have the authority to indefinitely suspend an officer without pay simply for being arrested and/or charged with a crime."[65]Agency avers that its actions were in accordance with the CBA between the parties. Agency argues that it "had reasonable cause to indefinitely suspend Employee, based on his arrest warrant and the supporting evidence that was considered prior to his suspension."[66] To support this contention, Agency cite that the D.C. Court of Appeals in *Green*, *supra*, held that "MPD established reasonable cause for an officer's indefinite suspension based on his arrest pursuant to warrant, together with consideration by police officials of the investigative documents underlying the warrant."[67]

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[62] For these reasons, Employee's Motion (June 27, 2025) is DENIED.
[63] *Shands v. District of Columbia Public Schools*, OEA Matter No. 1601-0239-12 (May 7, 2014); See also *Robbins v District of Columbia Public Schools*, OEA Matter No. 1601-0213-11 (June 6, 2014).
[64] Employee's Brief.
[65] *Id*. at Page 4.
[66] Agency Motion for Summary Disposition. at Page 5.
[67] *Id*. citing to *District of Columbia v Green*, 687 A.2d 220 (D.C. 1996).

Agency asserts that similar to *Green,* Employee's indefinite suspension was based upon review of the supporting materials in the arrest warrant, MPD's time and attendance records, payroll and other documents. Further, Agency argues that to be sure, MPD relied on the information that had been obtained *as of that time* to assure itself that the surrounding facts [were] sufficient to justify Employee's indefinite suspension."[68] Agency also notes that it continued to "monitor Employee's criminal case to ensure that the process set forth in Article 15, Section 7 of the CBA would be followed." CBA Article 15, Section 7 states:

> "If the Employer suspends an officer without pay during the resolution of a criminal indictment and the criminal indictment is dropped, or in any way resolved, then the Employer agrees to return the officer to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date the indictment was dropped or resolved. Likewise, if the Employer suspends an officer without pay after the officer has been convicted of criminal charges, the Employer agrees to either return the officer to a pay status or issue notification of the charges and proposed action within thirty (30) business days of the date it removed the officer from pay status."

For the same reasons described regarding the General Order, I also find that Agency followed the CBA. Employee avers that this provision cites to the "resolution of criminal indictment" and because he was not indicted, Agency failed to follow the CBA because he was not subject to indictment at the time of the proposed suspension. However, as previously described, I find that Agency had reasonable cause based upon Employee's arrest, thus the indefinite suspension was within the realm. Further, both parties note that following Employee's not guilty finding after a jury trial, he was returned to work on October 2, 2024. Thus, this action exhibit compliance with Article 15, Section 7. Employee also asserts that Agency should have allowed him to work while suspended and that a denial of this infringed upon his due process and constitutional rights. Agency asserts that OEA does not have jurisdiction over this claim to work. Employee avers that because the request to work is based upon the indefinite suspension, then OEA may rule. Given the circumstances regarding Employee's not guilty finding, and subsequent reinstatement, I find that this is a moot argument and thus will not be addressed this in this decision. For the aforementioned reasons, the undersigned finds that Agency had cause to place Employee on indefinite suspension without pay and followed all applicable laws, rules, and regulations in the administration of the instant adverse action.

Whether the penalty of indefinite suspension without pay 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).[69] 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."

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[68] Agency's Opposition (October 2, 2024).

[69] *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).

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.[70] Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty 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."[71] Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Consequently, the undersigned concludes that the Agency's action should be upheld.

ORDER

It is hereby **ORDERED** that Agency's action of placing Employee on Indefinite suspension is **UPHELD**.

FOR THE OFFICE:

/s/ Michelle R. Harris
MICHELLE R. HARRIS, Esq.
Senior Administrative Judge

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

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