Notice: This decision may be formally revised before it is published in the *District of Columbia Register* and the Office of Employee Appeals' website. Parties should promptly notify the Office of any formal errors so that this Office can correct them before publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1]	)	OEA Matter No. 1601-0044-24
	)	
v.	)	Date of Issuance: November 5, 2026
	)	
D.C. DEPARTMENT OF CORRECTIONS, Agency	)	
	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Correctional Officer with the D.C. Department of Corrections ("Agency"). On March 14, 2024, Agency issued a final notice of separation informing Employee that he would be removed from his position in accordance with 6-B District of Columbia Municipal Regulations ("DCMR") § 1607.2(d)(2) Failure/Refusal to Follow Instructions – deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions and § 1607.2 (f)(4) Attendance Related Offenses – an unauthorized absence of five (5) workdays or more. According to Agency, Employee was placed on paid administrative leave in 2021, pending the outcome of an investigation by the Department of Justice ("DOJ"). On October 28, 2021, Agency sent Employee a Notice of Administrative Leave which provided that

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

while he was on paid administrative leave, Employee was required to check-in with the Major's Office Monday through Friday between 8:30 and 9:00 a.m. Agency asserted that Employee failed to make the required calls from September 25, 2023, through October 6, 2023. Accordingly, Agency notified Employee that he had five days to explain why he failed to check in. Employee failed to respond within the deadline. As a result, Agency terminated Employee.[2]

On April 22, 2024, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He contended that he was unable to make the required calls to the Major's Office because of the death of his aunt and an automobile accident in which he sustained injuries that required physical therapy. Additionally, Employee argued that the *Douglas*[3] factors were not properly considered and that Agency's removal action was not supported by substantial evidence. As a result, he requested that he be reinstated to his position of record.[4]

Agency filed its Answer to Employee's Petition for Appeal on May 21, 2024. It argued

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[2] *Petition for Appeal*, p. 8-12 (April 22, 2024).

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

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

[4] *Petition for Appeal*, p. 2 and 7 (April 22, 2024).

that Employee failed to follow the instructions that were provided in its Administrative Leave Notice, which required him to contact the Major's Office between the hours of 8:30 a.m. and 9:00 a.m., Monday through Friday. According to Agency, Employe failed to make the required daily calls during the period of September 25, 2023, through October 6, 2023. Agency explained that Employee was instructed to provide an explanation for his failure to make the required daily calls on the dates specified. According to Agency, Employee submitted his explanation via email on November 1, 2023, several days after the October 26, 2023, deadline. Agency asserted that it had cause to remove Employee and that pursuant to the Table of Illustrative Actions, removal was an appropriate penalty for Employee's unauthorized absences of five days. Accordingly, it requested that Employee's removal be upheld.[5]

On June 24, 2025, OEA Administrative Judge ("AJ") Harris issued an Order notifying the parties that the matter had been reassigned to her.[6] On July 8, 2025, she issued a Post-Status Conference Order directing the parties to submit briefs addressing (1) whether Agency had cause for adverse action in this matter; (2) whether Agency, in terminating Employee from service, followed all applicable District of Columbia statutes, regulations, and laws; and (3) whether the penalty of termination was appropriate under the circumstances.[7]

In its brief, Agency asserted that it was permitted to place Employee on indefinite paid administrative leave pending the outcome of the DOJ investigation involving Employee. It opined that it had discretion to require Employee to call the Major's Office daily to record his attendance while on paid administrative leave. Additionally, Agency argued that it had cause to discipline Employee pursuant to 6-B DCMR §§ 1602.2, 1607.2(d), and 1607.2(f)(4). Specifically, Agency

[5] *The District of Columbia, Department of Corrections' Answer*, p. 2-5 (May 21, 2024).
[6] This matter was initially assigned to Administrative Judge Lois Hochauser in or around June of 2024.
[7] *Post-Status Conference Order* (July 8, 2025).

maintained that Employee failed to contact the Major's Office from September 25th through October 19, 2023. Agency acknowledged Employee's explanation that the death of his aunt and injuries sustained from an accident prevented him from making the required calls. However, it noted that Employee did not identify the date of his aunt's death and that his medical documentation did not establish that he was incapacitated and unable to make a telephone call. Moreover, Agency contended that Employee was absent for nineteen days, and even if eight of those days were medically excused, it still had cause to discipline him because he was still absent for more than five days, as required under DCMR § 1607.2(f)(4). Finally, Agency maintained that removal was appropriate because it properly considered the *Douglas* factors, and the penalty fell within the range of the Table of Illustrative Actions.[8]

In response, Employee argued that Agency lacked cause for its removal action. He explained that his failure to contact the Major's Office for daily roll call was unintentional and excused because of the death of his aunt and his automobile accident. Employee asserted that his absences were not deliberate and should have been excused. He further argued that Agency's analysis of the *Douglas* factors was flawed. Consequently, Employee asserted that Agency should have considered a lesser penalty.[9]

The AJ issued her Initial Decision on May 29, 2026. She found that Agency failed to meet its burden of proof for the charge of 6-B DCMR § 1607.2(d) – Failure/Refusal to Follow Instructions because the evidence did not establish that Employee deliberately or maliciously failed to make the required calls. The AJ noted that Employee had complied with the daily call-in requirement for approximately two years while on administrative leave and determined that his failure to call during the aforementioned time frame was the result of personal circumstances rather

[8] *Agency's Brief*, p. 5-10 (August 15, 2025).
[9] *Employee's Reply Brief* (September 15, 2025).

than deliberate or malicious misconduct.[10]

Next, the AJ addressed the charge pursuant to DCMR § 1607.2 (f)(4) – Attendance Related Offenses – an unauthorized absence of five (5) workdays or more. She found that Agency failed to consider pictures of the accident provided by Employee, as well as the medical documentation which included doctor's visits and physical therapy consultations. The AJ noted that Agency did not consider Employee's medical documentation without obtaining an alternative medical review or examination. As a result, the AJ determined that Agency failed to properly consider whether Employee's time should have been retroactively applied to sick leave instead of unauthorized absences.[11]

Finally, as it related to the *Douglas* factors, the AJ found that Agency failed to consider Employee's mitigating circumstances. She explained that Agency should have considered it a mitigating factor that Employee was on administrative leave for approximately two years during an ongoing investigation and called in every day. The AJ further noted that Agency did not reach out to Employee during the time it considered him absent. Thus, she found that Agency's penalty of termination was excessive because it was within Agency's discretion to assign September 25, 2023, through October 6, 2023, as leave without pay instead of absences. Consequently, the AJ ordered that Agency's removal action be reversed and that Agency reimburse Employee all back pay and benefits lost as a result of his termination.[12]

Agency disagreed with the Initial Decision and filed a Petition for Review with the OEA Board on July 6, 2026. It asserts that the AJ erred by failing to find that it had cause to discipline Employee for his absences from September 25 through October 6, 2023, and October 19, 2023.

[10] *Initial Decision*, p. 7-8 (May 29, 2026).
[11] *Id*., 8-9.
[12] *Id*., 10-13.

Agency argues that Employee did not provide clear and complete medical evidence establishing that he was medically incapacitated to make one daily call to the Major during the period he was changed with absences from work. It also notes that the medical documents provided by Employee indicate his work duties in cyber security IT and not as a Department of Corrections employee. Additionally, Agency reiterates that Employee did not provide any documentation indicating when his aunt died. According to Agency, she could have died weeks or months before or after the absences in question. Moreover, it provides that Employee did not provide any of his medical documentation prior to his appeal at OEA.[13] Finally, Agency argues that the AJ improperly determined that it could have considered the absences as leave without pay. According to Agency, the AJ improperly reweighed its consideration of mitigating circumstances. Therefore, it requests that its Petition for Review be granted and the Initial Decision be reversed.[14]

Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then it must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[15]

Cause

As it relates to charge to 6-B DCMR § 1607.2(d), this Board agrees with the AJ's

[13] It further contends that an evidentiary hearing was warranted because it did not receive Employee's medical records or photographs of his damaged vehicle prior to the OEA proceedings. However, the AJ opted not to hold an evidentiary hearing.
[14] *Agency's Petition for Review*, p. 8-18 (July 6, 2026).
[15] *Black's Law Dictionary*, Eighth Edition; *Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003); and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

assessment that the record does not support that Employee engaged in a deliberate or malicious refusal to comply with rules, regulations, written procedures, or proper supervisory instructions. Thus, this Board will focus on the charge of Attendance Related Offenses – an unauthorized absence of five (5) workdays or more pursuant to 6-B DCMR § 1607.2(f)(4).

Agency contends that while Employee was on paid administrative leave, he was required to check-in with the Major's Office on Monday through Friday between 8:30 a.m. and 9:00 a.m. It asserts that Employee failed to make the required calls from September 25, 2023, through October 6, 2023.[16] Agency provided the Major's daily check-in log, which indicated that Employee "failed to check in" during the period in question.[17] The Notice of Administrative Leave clearly provides that Employee was placed on administrative leave pending an investigation, and he was "directed to contact the Major's Office . . . between the hours of 8:30-9 a.m. each day, Monday through Friday, during this period of Administrative Leave."[18] As provided in the notice, Employee was only required to call in to the Major's office during a 30-minute window on Monday through Friday. Employee does not dispute that he did not call into the Major's office during the period outlined by Agency, and he acknowledged that he understood that "not checking in with the Major's office . . . was a violation of the directive of [his] administrative leave notice. . . ."[19] His failure to make the required call violated Agency's only administrative leave request. This was outlined in Agency's October 19, 2023, letter regarding Employee's administrative leave. Agency provided that from September 25, 2023, he failed to follow the directive outlined in his

[16] *Agency's Brief*, p. 5-10 (August 15, 2025).
[17] This Board notes that the log indicates that Employee failed to call in from September 18-22, 2023; September 26-29, 2023; and October 2-6, 2023. *Agency's Brief*, Exhibit #3 (August 15, 2025). However, Agency clarified the record in its Motion for Summary Disposition and provided that the Operations Supervisor completed the timesheets incorrectly by inputting Employee's hours as his regular schedule of Saturday through Wednesday, instead of coding the time sheets as Monday through Friday as reflected on his administrative leave schedule. *Agency's Motion for Summary Disposition*, p. 6 (March 12, 2025).
[18] *District of Columbia Department of Corrections' Answer*, p. 63 (May 21, 2024).
[19] *Id*., 158-159.

administrative leave notice, and his failure to check-in put him in an unauthorized absence status.[20] Accordingly, Agency had cause pursuant to 6-B DCMR § 1607.2(f)(4).

However, OEA has consistently held that when an employee offers a legitimate excuse, such as illness, for being absent without leave, the absence is justified and therefore excusable.[21] Employee asserts that he did not call in because his aunt passed away, and he was in a car accident during September and October of 2023.[22] As it relates to Employee's aunt, the record provides a funeral program, which only lists the year of 2023 that his aunt passed away. The program outlines a vigil and wake on November 23, 2023; the body lying in state on November 24, 2023; and a Thanksgiving Mass on November 26, 2023.[23] This is the only documentation provided in the record related to his aunt's passing. This Board must note that the dates provided in the program do not support Employee's assertion that he failed to call in from September 25, 2023, through October 6, 2023, because of his aunt's death because the dates provided of the aunt's services were from November 23, 2023, through November 26, 2023. As previously provided, there is no month and day listed on the funeral program, only the year of 2023, to establish when his aunt passed away.

Similarly, there a several documents in the record that show that the car accident occurred after the days that Employee was charged with an adverse action. According to a Maryland State

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[20] *Id.*, 66-67. This is consistent with Agency's Standard Operating Procedure 3490.7B(12)(d) which provides that "[w]hen it is otherwise determined that an absence is not properly chargeable to sick leave, the Major or Department Head, shall determine the appropriate action which may range from allowing the employee to use other applicable leave to charging the employee with an unauthorized absence and initiating disciplinary action." *Id.*, 107-108.
[21] *Clarence Sykes v. D.C. Department of Transportation,* OEA Matter No. 1601-0044-22 (June 16, 2023); *Murchinson v. Department of Public Works*, OEA Matter No. 1601-0257-95R03 (October 4, 2005)(citing *Employee v. Agency*, OEA Matter No. 1601-0137-82 (1985); and *Tolbert v. Department of Public Works*, OEA Matter No. 1601-0317-94 (July 13, 1995)); and *Frances Wade v. Department of Behavioral Health*, OEA Matter No. 1601-0067-15R19, *Opinion and Order on Remand* (October 23, 2019).
[22] *Petition for Appeal*, p. 2 (April 22, 2024).
[23] *Employee's Response on Order Requesting Documents Related to Health and Death in Family*, p. 26-27 (February 18, 2025).

Police report, the accident occurred on October 8, 2023.[24] There are also several medical documents which list the accident as October 8, 2023, with treatment starting on October 25, 2023.[25]

The medical documents provided by Employee also create some reliability issues regarding his accident and injuries. The October 8, 2023, police report provides that Employee was "not ejected" from the vehicle and that the front airbag was deployed.[26] However, the medical documents submitted by Employee provide that on October 25, 2023, Employee informed the physician that "he was thrown on the road and all airbags deployed upon impact."[27] A subsequent medical document from a November 13, 2023, visit offered that Employee informed the physician that his vehicle "struck a barrier and rolled over multiple times into a ditch."[28]

The medical documents also reflect that at the time of the October 25, 2023, appointment, Employee was "working . . . as a cyber security IT."[29] Additionally, a November 13, 2023, medical document provides that Employee informed the physician that he "works in IT."[30] Therefore, these documents could not reasonably be used to excuse Employee from calling in for his Correctional Officer position at the Department of Corrections.

Based on the record, the dates for Employee's aunt's passing and his car accident appear to have occurred after September 25, 2023, through October 6, 2023. Thus, there is not substantial evidence to support the AJ's ruling that these incidents legitimately excused Employee's absences. Consequently, this Board grants Agency's Petition for Review. Consequently, the Initial Decision is reversed, and Employee's termination is upheld.

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[24] *Id.*, 2-4.
[25] *Id*., 6-12.
[26] *Id*. at 4.
[27] *Id*. at 6.
[28] *Id*. at 9.
[29] *Id*. at 6.
[30] *Id*. at 9.

Accordingly, it is hereby **ORDERED** that Agency's Petition for Review is **GRANTED**. The Initial Decision is **REVERSED**, and Employee's termination is **UPHELD**.

FOR THE BOARD:

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Pia Winston, Chair

_____
LaShon Adams

_____
Jeanne Moorehead

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Lafayette Barnes

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.