THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1]	)	
	)	OEA Matter No. 1601-0082-22
v.	)	
	)	Date of Issuance: January 16, 2025
DISTRICT OF COLUMBIA FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT,	)	
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Firefighter/Technician for the District of Columbia Fire and Emergency Medical Services Department ("Agency"). Agency issued its Notice of Proposed Adverse Action to Employee on December 28, 2021. The notice proposed to demote Employee to the rank of a Firefighter/Emergency Medical Technician. Employee was charged with: (1) Violation of [Agency] Order Book, Article VI, § 6, Conduct Unbecoming an Employee; (2) [Agency] Bulletin No. 33, Social Media Policy, § II; and (3) [Agency] Bulletin No. 24, Anti-Hazing Policy. The proposed action notice explained that these violations amounted to neglect of duty as defined in [Agency's] Order Book Article VII, Section 2(f)(3) and an on-

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

duty/employment-related reason for corrective or adverse action as defined in [Agency's] Order Book Article VII, § 2(g). According to Agency, on September 7, 2021, while on duty, Employee made disparaging comments in a chat on an Agency-wide virtual town hall meeting alleging that a colleague attempted to have sexual relations with a minor. On July 28, 2022, Agency issued its Final Notice of Adverse Action against Employee, demoting him from Firefighter/Technician to the rank of Firefighter/Emergency Medical Technician. The effective date of Employee's demotion was August 28, 2022.[2]

On September 27, 2022, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He asserted that his remarks about his colleague were made as a private citizen on a matter of public concern; thus, he posited that he did not violate Agency's Anti-Hazing and Social Media policies.[3] Additionally, Employee argued that his demotion was unwarranted and violated his First Amendment rights. As a result, he requested that the demotion be reversed and that he receive back pay and benefits lost as a result of the adverse action.[4]

Agency filed its Answer to the Petition for Appeal on October 27, 2022. It contended that its penalty for Employee's misconduct was warranted based on his inappropriate comments made about a colleague at an Agency virtual town hall meeting. Agency argued that Employee's remarks violated its Social Media and Anti-Hazing policies by bullying, harassing, and publicly shaming a colleague on social media. As it relates to Employee's First Amendment assertion, Agency argued that the free speech claim could not be protected in this instance because Employee did not speak as a private citizen, and his comments were not related to a matter of public concern. Additionally,

---

[2] *Petition for Appeal*, p. 23-29 (September 27, 2022).
[3] Employee alleged that a colleague was involved in a sex-traffic sting and should not have been able to hold a Department of Health Emergency Medical Technician card. It was his position that his colleague should have been removed from Agency.
[4] *Id.* at 42.

it opined that it considered the *Douglas*[5] factors before reaching its decision to demote Employee. Therefore, Agency requested that Employee's disciplinary action be upheld.[6]

The OEA Administrative Judge ("AJ") issued an order requesting the parties to submit briefs addressing whether the Fire Trial Board's ("FTB") decision was supported by substantial evidence; whether there was harmful procedural error; and whether Agency's action was done in accordance with applicable laws or regulations.[7] In its brief, Agency asserted many of the same arguments presented in its Answer to the Petition for Appeal. It explained that this was Employee's fourth disciplinary action for misconduct within the past three years. Agency further opined that Employee exhibited a brazen attitude regarding the incident and showed no remorse for the inappropriate comments made against his colleague. Moreover, it contended that Employee's disparaging comments impacted Agency's operations.[8]

---

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

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

[6] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, p. 6-15 (October 27, 2022).
[7] *Order on Briefs* (February 16, 2023).
[8] *Agency's Brief*, p. 17-24 (March 31, 2023).

In his brief, Employee argued that Agency failed to provide substantial evidence to support any findings of fact. He asserted that the comments posted in the chat during the virtual town hall meeting were not negative or disparaging towards his colleague but were posed as a question of public concern. Thus, Employee reasoned that the comments did not invalidate his right to engage in constitutionally protected speech.[9]

The AJ issued an Initial Decision on April 15, 2024. He found that Employee failed to provide substantial evidence that his First Amendment rights were violated or that his assertions were a mere personal complaint. The AJ held that Agency did not commit harmless error, and it afforded Employee due process in the matter. Furthermore, he determined that Employee's demotion was within the range of the Table of Penalties and that Agency appropriately considered the *Douglas* factors. Consequently, the AJ ruled that Agency's action of demoting Employee be upheld.[10]

Employee filed a Petition for Review with the OEA Board on May 21, 2024. He maintains many of the same assertions made throughout his appeal. Employee argues that there is no evidence that he had a history of hazing. Additionally, he claims that the Initial Decision was issued past the 120-business day deadline, as required in D.C. Code § 1-606.03. According to Employee, five hundred and sixty-seven (567) days passed before he received the Initial Decision. As a result, he requests that the Initial Decision be reversed.[11]

On June 25, 2024, Agency filed its Opposition to Employee's Petition for Review. It asserts that Employee filed his petition beyond the 35-calander day deadline; thus, the petition should be considered untimely. Agency also argues that the 35-day filing period is a mandatory

[9] *Employees Response to Agency's Brief*, p.1-12 (May 30, 2023).
[10] *Initial Decision*, p. 5-9 (April 15, 2024).
[11] *Petition for Review*, p. 8-9 (May 21, 2024).

claim processing rule, and Employee's Petition for Review is not subject to equitable tolling. As it related to Employee's assertions that the AJ did not issue the decision within 120 business days, Agency contends that the District of Columbia Court of Appeals held that the 120-business day timeframe is directory, not mandatory. It cites to *Anjuwan v. D.C. Department of Public Works*, 729 A.2d 883, 886 (D.C. 1998), in which the D.C. Court of Appeals ruled that OEA's failure to comply with the 120-buisiness day requirement was not grounds for a reversal. Agency also notes that Employee contributed to the delay of the decision being issued when he filed his brief past the prescribed deadline.[12] Accordingly, it requests that Employee's Petition for Review be denied.[13]

Substantial Evidence

According to OEA Rule 633.3(c), the Board may grant a Petition for Review when the AJ's findings are not based on substantial evidence. The Court in *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987), found that if administrative findings are supported by substantial evidence, then they must be accepted even if there is substantial evidence in the record to support a contrary finding. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[14] After a review of the record, this Board believes that the AJ's ruling was based on substantial evidence.

120-Business Day Deadline

Employee requests that the Board reverse the Initial Decision because it was issued beyond the120-day deadline. D.C. Code § 1–606.03(c) provides that ". . . any decision by a Hearing

[12] Agency provided that OEA's February 16, 2023, order set a May 16, 2023, deadline for Employee's brief to be filed. Employee filed his brief two weeks late on May 30, 2023, without filing a motion for an extension. In turn, Agency filed a Motion to Strike and delayed the completion of briefing to August 21, 2023, instead of June 12, 2023, the initial scheduled deadline pursuant to the February 16, 2023, order.
[13] *Agency's Opposition to Employee's Petition for Review*, p. 12-23 (June 25, 2024).
[14] *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).

Examiner shall be made within 120 days, excluding Saturdays, Sundays, and legal holidays, from the date of the appellant's filing of the appeal with the Office." To provide some historical context, the 120 business-day deadline was first introduced by the D.C. City Council on February 13, 1990. According to the Council, the following was the rationale provided for the 120-day period:

> . . . an absolute requirement for all appeals to be decided within 120 days of filing will hamstring the office in the case of appeals which require the gathering and review of extraordinary amounts of information, or in which the issues are complex and require a greater amount of research. This amendment will allow the Office . . . to have more time to decide appeals in extraordinary circumstances.[15]

Thus, the legislative intent was never to make the 120 business-day deadline an absolute or mandatory requirement for all cases.

As Agency argued, the Court of Appeals in *Anjuwan v. D.C. Department of Public Works*, 729 A.2d 883, 886 (D.C. 1998), ruled that ". . . the statutory timeframe is directory rather than mandatory." Moreover, it found that OEA's failure to comply with the 120-buisiness day requirement does not render the personnel action invalid. To further illustrate the point that the 120 business-day deadline is not mandatory, in *Baldwin v. D.C. Office of Employee Appeals and D.C. Department of Youth Rehabilitation Services*, 226 A.3d 1140 (D.C. 2020), the D.C. Court of Appeals held that it is not enough that legislatures articulate a deadline using mandatory language but that the legislature must plainly mean for noncompliance to have consequences.[16] Similarly, in *Teamsters Local Union 1714 v. Public Employee Relations Board*, 579 A.2d 706 (D.C. 1990), the D.C. Court of Appeals held that the general rule is that a statutory time period is not mandatory

[15] *See* p. 7-8 of Amendment #2 to Bill 8-482 at https://lims.dccouncil.gov/downloads/LIMS/379/Other/B8-0482-HANDWRITTENVOTESHEETSANDAMENDMENTS.pdf?Id=85945.
[16] *Mathis v. District of Columbia Housing Authority*, 124 A.3d 1089 (D.C. 2015).

unless it expressly requires agency to act within a particular time period and specifies a consequence for failure to comply.[17]

D.C. Code § 1-606.03(c) does provide that OEA Administrative Judges issue decisions within 120 business days. However, the statute is void of any mention of consequences if the deadline is not met. Therefore, contrary to Employee's assertion, the statute is directory and not mandatory.[18]

Petition for Review Filing Deadline

As for the 35-day deadline in which to file a Petition for Review with the OEA Board, D.C. Code § 1-606.03(c) also provides that ". . . the initial decision . . . shall become final 35 days after issuance, unless a party files a petition for review of the initial decision with the Office within the 35-day filing period." However, in *Kevin Baldwin v. D.C. Office of Employee Appeals,* No. 18-CV-1134 Mem. Op. & J. (May 7, 2020) (citing *Mathis v. D.C. Housing Authority* 124 A.3d 1089 (D.C. 2015)), the D.C. Court of Appeals held that filing deadlines generally do not have jurisdictional force. It found that deadlines have a jurisdictional force only if the legislature has clearly stated as much i.e., if the legislature plainly meant for noncompliance with the deadline to have jurisdictional consequences. Furthermore, the Court found that it is not enough that the deadline codified in the statute uses mandatory language. Thus, the Court held that because the 35-day deadline is not found in the authority of OEA, as highlighted in D.C. Code § 1-606.02, but is instead provided in D.C. Code § 1-606.03, which pertains to appeal procedures, this establishes

[17] OEA has consistently relied on *Teamsters Local Union 1714*, as evidenced in *Employee v. Department of Corrections, Opinion and Order on Petition for Review*, OEA Matter Number 1601-0034-22 (September 7, 2023); *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter Number 1601-0025-22 (January 10, 2023); and *Employee v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0055-17, *Opinion and Order on Petition for Review* (April 9, 2019).

[18] Citing *Vann v. District of Columbia Board of Funeral Directors & Embalmers*, 441 A.2d 246 (D.C.1982); *Wisconsin Avenue Nursing Home v. District of Columbia Comm'n on Human Rights*, 527 A.2d 282 (D.C.1987); and *JBG Properties, Inc. v. D.C. Office of Human Rights*, 364 A.2d 1183 (D.C.1976).

that the deadline is not jurisdictional but is a claims-processing rule. The Court found that in accordance with the *Mathis* holding, claims-processing rules may be tolled (or relaxed or waived) if equity compels such a result.[19] Accordingly, this Board will consider the merits of Employee's Petition for Review.

Cause

Agency accused Employee of violating D.C. Fire and Emergency Medical Services Department Order Book, Article VI, § 6 – Conduct Unbecoming; D.C. Fire and Emergency Medical Services Department, Bulletin No. 33, § II – Social Media Policy; and Bulletin No. 24 – Anti-hazing Policy. In its notice for termination, Agency provided that Employee exhibited conduct unbecoming when he violated Agency's social media policy by engaging in hazing during a virtual townhall meeting.[20] Agency found that Employee bullied, harassed, and publicly shamed his co-worker on social media.[21]

Agency's Bulletin No. 33, Social Media Policy, § II provides the following:

> Inappropriate electronic communication that may include discriminatory remarks, harassment, retaliation, sexual innuendo, threats of violence, or similarly inappropriate or unlawful content will not be tolerated and may result in disciplinary action up to and including termination.

According to Agency, its Trial Board Panel found that Employee admitted to posting several negative and harassing comments about his co-worker[22] during an Agency virtual town hall meeting. Additionally, it claimed that Employee admitted to posting comments during the

[19] *See Neill v. District of Columbia Public Employee Relations Bd.,* 93 A.3d 229, 238 (D.C. 2014), explaining that claim-processing rules "may be relaxed or waived."
[20] *Petition for Appeal*, p. 23-33 (September 27, 2022).
[21] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, Exhibit 21 (October 27, 2022).
[22] Employee's co-worker will be referred to as WM to protect his identity.

town hall that were not relevant to the purpose of the meeting. This Board agrees with Agency's assessment. The record is replete with examples that Employee violated Agency's social media policy. During the Agency Trial Board hearing, the chat from the town hall was submitted and showed that Employee asked five times a variation of why Agency would not "take away a members [emergency medical technician]'s card after they [were] caught in a sting trying to meet an underaged child for sex. . . ."[23] Moreover, Battalion Fire Chief Thomas Thornhill testified that Employee admitted to him that he made the comments against WM.[24] Furthermore, Employee testified that his comments were "100 percent" related to WM.[25]

Additionally, Lieutenant Carman provided that WM informed him that Employee made indirect statements accusing him of trying to have sex with a minor. Lieutenant Carman offered that WM said that he felt ashamed and embarrassed.[26] Furthermore, Sergeant Perry testified that he believed that Employee's comments were about WM because he heard accusations about WM around the firehouse. He also provided that WM was "emotionally upset" about the comments.[27]

Moreover, in 2019, Employee wrote to the Department of Health's EMS Program Director, regarding his accusations that WM engaged in attempting to have sex with a minor. Subsequently, the Department of Health's Director forwarded Employee's complaint to the Inspector General.[28] Employee also sent an email with a complaint of the allegations against WM in September of 2021

---

[23] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, Exhibit #16, Trial Board Transcript, Agency Exhibit #2 (October 27, 2022).
[24] *OEA Hearing Transcript*, p. 39 (May 25, 2022). Lieutenant Carman also testified that Employee admitted to typing the text and that his comments were directed to WM. *Id.,* 122 and 137.
[25] *OEA Hearing Transcript*, p. 186 (May 25, 2022). In Employee's April 25, 2022, written statement to Agency's Trial Board, he reasoned that his comments were against permitting someone who "attempted to meet children for sex from possessing a . . . license." He asserts that his speech was a matter of public concern and a legitimate news interest." *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal*, Agency Exhibit #9 (October 27, 2022).
[26] *Id.*, Agency Exhibit #4.
[27] *Id.*, 97-98.
[28] *Id.,* Employee Exhibit #6 (May 25, 2022).

to the Inspector General, D.C. Council Members, and Agency leadership.[29] Thus, this Board believes that Agency proved that over the course of several years, Employee engaged in inappropriate electronic communication that included harassment through the five messages he sent via the chat during the town hall and by emailing allegations to the above-mentioned D.C. government leadership.

According to Agency's Department Order Book, Article VI, § 6 – Conduct Unbecoming ". . . includes conduct detrimental to good discipline, conduct that would adversely affect the employee's or agency's ability to perform effectively, or any conduct that violates public trust or law of the United States, any law, municipal ordinance, or regulation of the District of Columbia committed while on-duty or off-duty." As a consequence of Employee's conduct, Chief Thornhill testified that Employee was detailed to another truck to ensure that he and WM were separated to diffuse the situation.[30] It was his position that Employee's comments interfered with the efficiency and integrity of government operations.[31] This Board agrees; the record reflects that Employee was detailed to another truck until a decision was made regarding his conduct.[32]

As it relates to hazing, Agency Bulletin 24 – Anti-hazing Policy provides the following:

> Hazing is any intentional, knowing, or reckless act committed by an individual, whether individually or in concert with other persons, against another employee, in which *both* of the following apply (emphasis added):
>
> 1. The act was committed in connection with an initiation into a work group, station, shift, or division in or affiliated with the Department.
> 2. The act contributes to a substantial risk of potential physical injury, mental harm, or degradation, or causes physical injury, mental harm, or personal degradation.

[29] *Id.,* Employee Exhibit #7.
[30] *OEA Hearing Transcript*, p. 38-41 (May 25, 2022).
[31] *Id.* at 71.
[32] *Id.,* 87-88.

Agency was able to prove that Employee engaged in intentional, knowing, or reckless actions which caused substantial risk of and actual mental harm. Lieutenant Thornhill testified that immediately after the town hall, Lieutenant Carman informed him that WM was "crying" and "emotionally distraught" about the comments that Employee typed during the town hall meeting.[33] According to Thornhill, WM admitted to him that he was distraught and upset about what was written about him and that he felt disrespected and bullied. He testified that he could tell that WM had been crying because his eyes were red, and he talked in a hushed tone. Thorton decided that as a result of the incident, his best course of action was to separate Employee and WM.[34] Additionally, Lieutenant Carman provided that WM informed him that Employee had a history of hazing him about the allegations of him attempting to have sex with a minor and made comments prior to the town hall.[35] Carman also testified to actually hearing Employee make innuendos about the allegations against WM.[36] Furthermore, Employee testified that prior to the town hall, there were members, including him, who did not want to work with WM based on the allegations against him.[37] Therefore, Agency did prove that Employee engaged in intentional, knowing, or reckless actions which caused substantial risk of and actual mental harm.

However, this Board does not believe that Agency proved that the first element of hazing which is that "the act was committed in connection with an initiation into a work group, station, shift, or division in or affiliated with the Department." There is no evidence offered, nor were any Agency witnesses able to testify that any initiation occurred in this case. Therefore, both of the

[33] *OEA Hearing Transcript*, p. 32 (May 25, 2022). According to Carman's testimony, Employee seemed depressed and was not acting like his usual self after the townhall. *Id.* at 119.
[34] *Id.*, 34-39.
[35] *Id.*, Agency Exhibit #4.
[36] *Id.* at 118.
[37] *Id.,* 208-209.

elements of hazing were not met in this case. Consequently, this charge was not established.

Penalty

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia,* 502 A.2d 1006 (D.C. 1985).[38] According to the Court in *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties; whether the penalty is based on relevant factors; and whether there is clear error of judgment by the agency. Because this Board is of the conclusion that Agency failed to prove the charge of hazing, it will only address the penalties for the other causes of action. In Agency's final decision, it indicated that it relied on Agency Bulletin No. 33 and Agency Order Book, Articles VI and VII for the charges of Conduct Unbecoming and Social Media Policy.

As it relates to penalties for the Social Media charge, Bulletin No. 33 provides that "inappropriate electronic communication . . . may result in disciplinary action up to and including termination." Moreover, Agency Order Book, Article VII, § 8 provides that the penalty for Conduct Unbecoming shall be "any appropriate remedy from reprimand to removal. . . ." Demotion is within the range of penalties up to termination and within the range from reprimand to removal; therefore, the penalty was appropriate.

As it relates to Agency's consideration of relevant factors, OEA held the following in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011):

---

[38] *Anthony Payne v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0054-01*, Opinion and Order on Petition for Review* (May 23, 2008); *Dana Washington v. D.C. Department of Corrections*, OEA Matter 1601-0006-06, *Opinion and Order on Petition for Review* (April 3, 2009), *Ernest Taylor v. D.C. Emergency Medical Services*, OEA Matter No. 1601-0101-02, *Opinion and Order on Petition for Review* (July 21, 2007); *Larry Corbett v. D.C. Department of Corrections*, OEA Matter No.1601-0211-98*, Opinion and Order on Petition for Review* (September 5, 2007); *Monica Fenton v. D.C. Public Schools*, OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review (*April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department*, OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).

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

Furthermore, in *Barry v. Department of Public Works*, OEA Matter No. 1601-0083-14, *Opinion and Order on Petition for Review* (July 11, 2017) (citing *Holland v. Department of Corrections*, OEA Matter No. 1601-0062-08, *Opinion and Order on Petition for Review* (September 17, 2012), the OEA Board held that an Agency's penalty decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. The record clearly provides evidence that Agency considered relevant factors in this case. In its final decision, Agency outlined that it considered *Douglas* Factors 1, 3, 4, 5, 6, 7, 9, 10, and 12.[39] Thus, all relevant factors were considered by Agency when imposing its penalty, and there was no clear error of judgment.

Conclusion

Agency had cause for the Conduct Unbecoming and Social Media charges against Employee. Demotion was within the range of penalties for both charges, and Agency considered all relevant factors before imposing the demotion. Accordingly, Employee's Petition for Review is denied.

---

[39] *Petition for Appeal*, p. 30-33 (September 27, 2022).

ORDER

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

FOR THE BOARD:

_____
Dionna Maria Lewis, Chair

_____
Arrington L. Dixon

_____
LaShon Adams

_____
Jeanne Moorehead

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.