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## THE DISTRICT OF COLUMBIA

### BEFORE

### THE OFFICE OF EMPLOYEE APPEALS

|                                                 |   |                                      |
|-------------------------------------------------|---|--------------------------------------|
| In the Matter of:                               | ) |                                      |
|                                                 | ) |                                      |
| EMPLOYEE <sup>1</sup> ,                         | ) | OEA Matter No. 1601-0013-26          |
|                                                 | ) |                                      |
| v.                                              | ) | Date of Issuance: September 29, 2026 |
|                                                 | ) |                                      |
| METROPOLITAN POLICE DEPARTMENT,                 | ) | MONICA DOHNJI, Esq.                  |
| Agency                                          | ) | Senior Administrative Judge          |
|                                                 | ) |                                      |
| <hr/>                                           |   |                                      |
| Marc L. Wilhite, Esq., Employee Representative  |   |                                      |
| Lawrence Corbeille, Esq., Agency Representative |   |                                      |

### INITIAL DECISION

#### INTRODUCTION AND PROCEDURAL HISTORY

On December 1, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA” or “Office”) contesting the Metropolitan Police Department’s (“Agency” or “MPD”) decision to terminate him from his position as a Police Officer, effective November 12, 2025. Employee was terminated pursuant to: (1) General Order (“GO”) 120.21, Attachment A, Part A-6; (2) G.O. 120.21, Attachment A, Part A-5; (3) G.O. 120.21, Attachment A, A-11; (4) G.O. Series 120.21, Attachment A, Part A-16; and (5) G.O. 120.21, Attachment A, A-24.<sup>2</sup> OEA issued a Request for Agency Answer to Petition for Appeal on December 2, 2025. On December 8, 2025, Agency emailed OEA’s Executive Director a Motion to Extend Time to File Agency’s Answer. OEA’s Executive Director, Sheila Barfield, (“Director Barfield”), responded to Agency via email on the same day requesting that Agency “... resubmit your request to me in the form of a simple email.” Subsequently, on December 9, 2025, Agency emailed Director Barfield requesting a two-week extension of the deadline to file its Answer. Director Barfield granted Agency’s request via email on the same day. Agency submitted its Answer to Employee’s Petition for Appeal on January 15, 2026. This matter was assigned to the undersigned Senior Administrative Judge (“SAJ”) on January 15, 2026.

Thereafter, upon review of the record, the undersigned determined that this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). Consequently, on that day, the undersigned issued an Order requiring the parties to submit written briefs addressing the following: (1) whether Agency’s decision to take adverse action against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with

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<sup>1</sup> Employee’s name was removed from this decision for the purposes of publication on the Office of Employee Appeals’ website.

<sup>2</sup> See Petition for Appeal. See also. Agency Answer to the Petition (January 15, 2026).

the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations. Agency's brief was due by or before February 11, 2026; Employee's brief was due by March 4, 2026; and Agency had the option to file a sur-reply brief by March 18, 2026. On February 10, 2026, Agency filed a Consent Motion to Extend Briefing Schedule. In an Order dated February 27, 2026, the undersigned granted Agency's motion. The briefing schedule was modified to the following schedule: Agency's brief was now due by March 4, 2026; Employee's brief was due by March 25, 2026; and Agency's sur-reply brief was due by April 15, 2026. On March 6, 2026, Agency filed a Consent Motion to Late File Opening Brief by two (2) days, along with its brief. Subsequently, on March 25, 2026, Employee filed a Consent Motion to Extend Briefing Schedule Deadline by fourteen (14) days. On March 27, 2026, the undersigned issued an Order Granting Employee's Consent Motion to Extend Briefing Schedule Deadline. Employee's brief was now due April 8, 2026, and Agency's sur-reply brief due by April 29, 2026. Both parties have submitted their respective briefs. 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 the Trial Board's decision was supported by substantial evidence.
- 2) Whether there was harmful procedural error.
- 3) Whether Agency's action was done in accordance with applicable laws or regulations.

### 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.<sup>3</sup>

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.

### STATEMENT OF THE CHARGE(S)

According to Agency's Answer to Employee's Petition for Appeal, Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

**Charge No. 1:** Violation of General Order 120.21, Attachment A, Part A-6, which states,

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<sup>3</sup> OEA Rule § 699.1.

*"Engaging in conduct that constitutes a crime."*

**Specification No. 1:** Specifically, on November 22, 2023, you were placed under arrest for violation of Virginia Code 46.2-817 *Disregarding signal by law-enforcement officer to stop; eluding police, which is a felony charge.*"

**Specification No. 2:** Specifically, on February 12, 2024, a Grand Jury in the Circuit Court of the City of Alexandria, Virginia, indicted you on one (1) count of violation of Virginia Code 46-2-817 (B)<sup>4</sup> *Disregarding signal by law-enforcement officer to stop; eluding police*, and one (1) count of violation of Virginia Code 46.2-852<sup>5</sup> *Reckless driving*. Consequently, a warrant for your arrest was issued.

**Specification No. 3:** Specifically, on February 20, 2024, you responded to the Magistrate's Office in Alexandria, Virginia, and were arrested for the outstanding arrest warrant for violation of Virginia Code 46.2-852, *Reckless driving*.

**Specification No. 4:** Specifically, on November 25, 2024, in a jury trial presided by Judge Rebecca Wade of the Circuit Court for the City of Alexandria, you were found guilty of violation of Virginia Code 46.2-852 *Reckless Driving* and were scheduled to be sentenced on January 16, 2025.

**Charge No. 2:** Violation of General Order 120.21, Attachment A, A-5, *which states, "Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making an untruthful statement before any court or any hearing."*

**Specification No. 1:** In that during your IAD interview, you asserted that on November 22, 2023, when the Virginia State Police (VSP) attempted to stop you while you were driving your vehicle, you did not see the VSP Trooper behind you, did not see the emergency blue lights, and did not hear the audible sirens. However, the dash camera mounted in Trooper Chatman's Vehicle clearly showed that after trooper Chatman activated his emergency blue lights, you dramatically accelerated your speed while making rapid lane changes in an apparent attempt to flee. Trooper Chatman was within three to four car lengths behind you when he activated his blue lights. In Officer [A.G.'s] statement to IAD, she stated she was scared because of your driving behavior, which caused her to close her eyes for the duration of the commute. A preponderance of the evidence clearly indicates that you were aware of the trooper's attempt to stop

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<sup>4</sup> VA Code 46-2-817 B. Any person who, having received a visible or audible signal from any law-enforcement officer to bring his motor vehicle to a stop, drives such motor vehicle in a willful and wanton disregard of such signal so as to interfere with or endanger the operation of the law-enforcement vehicle or endanger a person is guilty of a Class 6 felony. It shall be an affirmative defense to a charge of a violation of this subsection if the defendant shows he reasonably believed he was being pursued by a person other than a law-enforcement officer.

<sup>5</sup> VA Code 46.2-856 (Reckless Driving) provided that: Irrespective of the maximum speeds permitted by law, any person who drives a vehicle on any highway recklessly or at a speed or in a manner so as to endanger the life, limb, or property of any person shall be guilty of reckless driving.

you, and that you did in fact attempt to elude Trooper Chatman and flee from the traffic stop. Additionally, you willfully and knowingly made false statements to the investigating agent regarding your conduct.

**Charge No. 3:** Violation of General Order 120.21, Attachment A, A-11, which states, *"Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia."*

**Specification No. 1:** In that, on November 22, 2023, your reckless and irresponsible conduct resulted in a serious traffic crash, which caused extensive property damage and injuries to Ms. Wiggins and Officer [A.G.].

**Specification No. 2:** In that, on November 22, 2023, you operated your vehicle in a reckless and negligent manner with no regard for the safety of other motorists, your passenger Officer [A.G.], Ms. Wiggins, and Trooper Chatman.

**Specification No. 3:** In that, on November 22, 2023, without permission or authorization, you left your overtime assignment with the MPD early and were involved in a vehicle pursuit which resulted in a traffic crash in Virginia. While you were engaged in said misconduct, you were still being compensated by the MPD.

**Charge No. 4:** Violation of General Order Series 120.21, Attachment A, Part A-16, which states, *"Failure to obey orders or directives issued by the Chief of Police."*

**Specification No. 1:** In that on November 22, 2023, by your own admission, you carried your MPD issued pistol in a non-issued and unauthorized holster. This misconduct is described in G.O. 901.02, Part I, Section A, 2, which states, *"Members, while in an off-duty status and carrying their department-issued or authorized off-duty pistol in another jurisdiction shall carry said pistol in an issued or authorized off-duty holster at all times, except, when removing it for official use, to clean the weapon, or for the purpose of inspection. In addition, members shall ensure that they are in compliance with all applicable rules, regulations and laws of that jurisdiction."*

**Charge No. 5:** Violation of General Order 120.21, Attachment A, A-24, which states: *"Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."*

**Specification No. 1:** In that on November 23, 2023, and the days following, the details of your misconduct garnered significant media attention and were widely publicized in more than ten (10) major media outlets, as well as social media. The published information included your photograph and revealed that you were employed as an MPD officer, bringing discredit not only to yourself, but to the department as well, causing irreparable damage to your reputation as a

law enforcement officer, and undermining the trust of the community in the MPD.

**Specification No. 2:** In that, on November 22, 2023, you willfully and intentionally engaged in criminal conduct when you attempted to flee from the VSP after they attempted to stop you for speeding. You intentionally put everyone in your driving radius at risk, including yourself and your passenger, Officer [A.G]. Your criminal and irresponsible behavior resulted in a serious traffic crash, causing damage to Ms. Wiggins' property and injuries to Ms. Wiggins and Officer [A.G]. Your actions jeopardized the safety of the community and endangered members of the Virginia State Police. Your actions were egregious and inexcusable for a law enforcement officer and brought discredit to the agency.

On August 20, 2025, and May 2, 2025, Employee appeared before a Trial Board Panel. He was represented by counsel and pleaded to these charges as follows:<sup>6</sup>

Charge No. 1, Specification No. 1; Not Guilty  
 Charge No. 1, Specification No. 2; Not Guilty  
 Charge No. 1, Specification No. 3; Not Guilty  
 Charge No. 1, Specification No. 4; Guilty  
 Charge No. 2, Specification No. 1; Not Guilty  
 Charge No. 3, Specification No. 1; Not Guilty  
 Charge No. 3, Specification No. 2; Not Guilty  
 Charge No. 3, Specification No. 3; Not Guilty  
 Charge No. 4, Specification No. 1; Guilty  
 Charge No. 5, Specification No. 1; Not Guilty  
 Charge No. 5, Specification No. 2; Not Guilty

### SUMMARY OF THE TESTIMONY<sup>7</sup>

On August 20, 2025, and August 25, 2025, Agency held a Trial Board Hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as “Tr.”), generated and reproduced as part of the Trial Board Hearing.

#### *Agency’s Case-in-Chief*

##### 1) Sergeant Joseph Labun (“Sgt. Labun”)– Tr. Vol. I. pgs. 35- 175

Sgt. Labun works as an agent with MPD and has been employed with Agency for thirteen (13) years. He has been an agent with Internal Affairs Division (“IAD”) since December of 2023. Sgt. Labun stated that he has conducted approximately three (3) motor vehicle investigations and he has been a lead investigator in approximately 35 investigations. Tr. Vol. I. pgs. 36 -37.

<sup>6</sup> See Agency’s Answer at Tabs. 11 and 12.

<sup>7</sup> Agency’s Answer to the Petition at Tab 5a. and 5b (January 15, 2026).

Sgt. Labun confirmed that he was assigned by Commander John Knutsen of the IAD to investigate the incident involving Employee on December 4, 2024. He stated that he was not the original agent assigned to this incident. He identified Agency's Exhibit 2 as the Final Investigative Report he submitted for the allegations of misconduct against Employee. Sgt. Labun asserted that Agency was notified of Employee's November 22nd and 23rd, 2023 arrest by Trooper Jermell Chatman of the Virginia State Police of Officer. Tr. Vol. I. pgs. 37-38, 40.

Sgt. Labun recounted that on November 22, 2023, Employee and Officer A.G.<sup>8</sup> both of the Fourth District ("4D"), were working an overtime assignment from 1500 to midnight. They left together in Employee's car. He stated that while in Virginia on Southbound Interstate 395, Trooper Chatman of the Virginia State Police observed Employee's car driving at a high rate of speed. Trooper Chatman followed Employee for a short distance as Employee's driving was not too egregious. However, Trooper Chatman later observed that Employee's driving behavior changed to the point where he decided he was going to make a traffic stop. According to Sgt. Labun, when Trooper Chatman activated his emergency lights, Employee's vehicle continued at a high speed, weaving in and out of traffic, eventually getting off on Seminary Road. Sgt. Labun stated that Trooper Chatman continued to follow Employee's vehicle and that when he got off on Seminary Road, he observed a traffic crash involving Employee's vehicle and a citizen. Sgt. Labun asserted that due to those circumstances, Trooper Chatman placed Employee under arrest for fleeing and eluding, and Officer A.G. and the driver of the other vehicle involved in the accident were both transported to the hospital. Tr. Vol. I. pgs. 39-40, 160-161.

Sgt. Labun testified that when he was assigned Employee's case, he reviewed the record to see what evidence was included. He stated that the main part of that evidence was the dashcam video from Virginia State Police, which he reviewed. Then he reviewed the traffic camera footage which showed part of the vehicle crash, as well as the statements made by the Virginia State Police Troopers and all the other documents they collected. Sgt. Labun cited that he interviewed Employee on December 18, 2024, and December 23, 2024. He stated that he interviewed Ms. Wiggins, who was the driver of the other vehicle that was involved in the traffic crash with Employee. Tr. Vol. I. pgs. 41-44.

Sgt. Labun identified the dash camera video from Trooper Chatman's Virginia State Police car as it was played during the Trial Board Hearing, and confirmed that it was the same footage he reviewed to prepare his report. While reviewing the video footage, Sgt. Labun identified Employee's vehicle as a dark blue vehicle on Southbound Interstate 395 and he stated that there was a bit of a distance between Trooper Chatman and Employee's vehicle. He stated that at some point, Trooper Chatman is directly behind Employee's vehicle, "... maybe two or three car lengths behind him." Sgt. Labun testified that when Employee's vehicle made a lane change between two cars in close proximity, Trooper Chatman "activated his overhead emergency lights, which begins the audio. And he begins to make radio transmissions describing what he's seeing and what he's about to do." Sgt. Labun stated that the speed of Employee's vehicle "dramatically increased" when Trooper Chatman activated his lights. He stated that Trooper Chatman informed dispatch that Employee's vehicle was continuing and that it got off on Seminary Road. He also stated that Trooper Chatman told dispatch that he was chasing Employee's vehicle. Tr. Vol. I. pgs. 45-51.

Sgt. Labun testified that at some point during the pursuit of Employee's vehicle, Trooper Chatman informed dispatch that there was a vehicle crash and that medical assistance was needed. Sgt. Labun asserted that Trooper Chatman approached Employee's vehicle with his firearm drawn and

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<sup>8</sup> For privacy reasons, the other Officer's initials will be used when referring to her.

pointed in Employee's direction, and he gave Employee a loud command to show his hands, to which Employee complied. Sgt. Labun identified Officer A.G. getting out of the passenger seat of Employee's vehicle, "walks herself to the jersey wall and I believe she ends up laying down." He testified that Employee was handcuffed by Trooper Chatman in the presence of another Virginia State Trooper standing with him. Tr. Vol. I. pgs. 51- 53.

Sgt. Labun stated that when Trooper Chatman asked Employee why as a cop he did not stop, Employee responded that "... I didn't see you, I'm just trying to get home." Sgt. Labun stated that Employee was arrested for criminal activity. Tr. Vol. I. pgs. 54-55. Sgt. Labun asserted that after Employee was arrested, another Virginia Trooper asked him why he did not stop and that Employee responded that "I'm just trying to get home, sir." Sgt. Labun noted that Employee did not mention to this Trooper that he didn't notice the pursuing vehicle. He stated that Trooper Chatman notified 4th District Watch Commander, Lieutenant Sesay, of the incident. Sgt. Labun asserted that a radar detector was found in Employee's vehicle. He explained that a radar detector alerts drivers of the presence of some sort of radar/lidar device or law enforcement speed traps. Sgt. Labun confirmed that radar detectors are illegal in Virginia. Sgt. Labun stated that Trooper Chatman is heard telling another officer on the scene "that he, Trooper Chatman, was going 119 miles an hour but was unable to close the distance between his car and Officer [Employee's] car." Tr. Vol. I. pgs. 57-61, 76, 170-171.

Sgt. Labun testified that what stood out to him the most during his investigation into the current matter "was just the impact that it had on the victim and the other officer that was in the vehicle with [Employee]." Regarding the detrimental nature of Employee's conduct, Sgt. Labun stated that when Ms. Wiggins, the citizen, found out that Employee was in fact a police officer, "she said that upset her even more because ... officers are supposed to protect and serve. And [Employee] did neither." Sgt. Labun asserted that Ms. Wiggins also stated that the "accident impacted her life financially and ... professionally. It stopped her from working. She had to seek physical therapy. And it impacted her daily life." He stated Ms. Wiggins was injured in the accident, and she was transported to the hospital. Sgt. Labun cited that Officer A.G. was also injured in the accident. Tr. Vol. I. pgs. 61-64, 110-112, 116-118. He stated that Ms. Wiggins' car had sustained serious damage and was totaled. Tr. Vol. I. pg. 75.

Sgt. Labun testified that according to Employee's overtime sheet referred to as an "1130", on November 22, 2023, Employee worked overtime from 1500 to midnight on Kennedy Street, in the Fourth District. He stated that the motor vehicle incident involving Employee occurred before midnight, at approximately 23:55 hours. When asked if based on Employee's location at the time of the motor vehicle incident, Employee could have been performing his overtime at the assignment at that Kennedy Street location, Sgt. Labun said "No." He explained that Employee "was no longer within the 4th District or the District of Columbia." Tr. Vol. I. pgs. 65- 66, 105-106. Sgt. Labun asserted that he interviewed Employee's supervisor who signed off on his 1130 on the night of the incident, Lieutenant deRoo, but "she stated she did not recall the specifics. She said she remembered signing their 1130s I believe by the back door of the 4th District. But she couldn't remember the exact scenario. I asked her if she authorized them to leave their overtime assignment early, she said no. I asked her if she authorized [Employee] and [Officer A.G.] to leave the District of Columbia prior to the end of their tour, and she stated she had not." Sgt. Labun stated that as an MPD officer, they cannot leave the District of Columbia during a shift without authorization from the Watch Commander. He cited that based on his investigation, Employee and Officer A.G. were not authorized to leave the District of Columbia during their shift. Tr. Vol. I. pgs. 69-71, 106-108. Sgt. Labun noted that there was no camera footage at the station that captured when Employee and Officer A.G. entered Employee's vehicle and left their post. Tr. Vol. I. pgs. 108-110.

Sgt. Labun identified two (2) PD 854s - report of investigation, constituting a summary of the recorded interview with Employee, as well as a summary of the recorded supplemental interview of Employee. Sgt. Labun asserted that "I believe that there were some portions of [Employee's] statement that downplayed his conduct and weren't accurate representations of what actually happened that night." He cited that Employee said, "he was not aware [of Trooper Chatman pursuing him], [and] that he did not hear the audible sirens or see [Trooper Chatman's] overhead emergency lights." Sgt. Labun stated that he did not find this statement by Employee to be truthful. He explained that "based on the dash camera footage and Officer [AG's] statement, that it's more likely than not that [Employee], based on his driving behavior and that distinct change of driving behavior as seen on the video, that [Employee] as in fact aware that Trooper Chatman was behind him." Sgt. Labun asserted that based on Officer AG's interview, "it is more likely than not that something was causing that additional reckless behavior [in Employee's driving]. And in this case, again, with the dash camera footage, that other thing that night was Trooper Chatman. Tr. Vol. I. pgs. 71- 74.

Sgt. Labun identified the traffic camera footage showing portions of Employee's driving, as well as the traffic crash which was provided to IAD by the Virginia State Police. He identified the traffic crash between Employee's vehicle and Ms. Wiggins' vehicle on the traffic camera footage. He cited that the rear passenger side of Employee's Tesla was hit and the front end of Ms. Wiggins' vehicle was hit. Sgt. Labun also identified a series of public news articles regarding Employee's traffic crash and arrest. He stated that he found the news articles by doing a 'google search' of Employee's first and last name. He noted that the first article was published on November 24, 2023, one day after the incident. Sgt. Labun noted that "I sampled ten different news outlets." He also asserted that there were several news articles with Employee's arrest booking image, his driving speed, the crash and his connection to MPD. Tr. Vol. I. pgs. 76-83.

Sgt. Labun noted that Charge No. 1 - Violation of General Order 120.21, Attachment A, Part A(6) - *engaging in conduct that constitutes a crime* did not require a conviction. Sgt. Labun noted that this charge did not require a conviction. He explained that the only requirement for this charge is whether the conduct at the time of the allegation could be a criminal charge or could constitute a criminal act. Sgt. Labun testified that Specification No. 1 under this charge is supported by "the dash camera video showing the distinct change of ... driving behavior, once Trooper Chatman signals his intent to stop [Employee] with both audible sirens and visible emergency lights." He also cited to Employee's failure to stop and increase in Employee's speed and increase his speed and maneuvers "to increase the distance between himself and Trooper Chatman." Sgt. Labun testified that Specification No. 2 under this charge is supported by Employee's February 12, 2024, Grand Jury indictment "for disregarding the signal by a law enforcement officer. And ... a warrant was subsequently put out for his arrest, which ... his additional arrest was processed." Sgt. Labun asserted that Specification No. 3 of this charge is supported by Employee's arrest on February 20, 2024, for an outstanding warrant for violation of Virginia Code 46.2-852, reckless driving when Employee responded to the Magistrate's office. Tr. Vol. I. pgs. 84-87. Sgt. Labun confirmed that simply being arrested does not necessarily mean the individual engaged in a crime. Tr. Vol. I. pgs. 166-168.

For charge No. 2 - violation of General Order 120.21, Attachment A, Number 5, which is *'willfully and knowingly making untruthful statement of any kind, written or verbal, pertaining to your duties as a Metropolitan Police Officer, or in the presence of any superior officer, or intended for the information of any superior officer, or making any untruthful statement for any court or hearing'*; Sgt. Labun testified that Specification No. 1 is supported by the dash camera video from Trooper Chatman which showed a change in behavior in Employee's driving, as well as Officer AG's statement. Sgt.

Labun noted that it was “more likely than not, [that Employee] did in fact see and ... or hear the emergency blue lights and audible sirens and disregarded them and continued to drive.” Tr. Vol. I. pgs. 88-89.

Sgt. Labun confirmed that Officer AG noted during the interview that prior to the crash, she did not hear Trooper Chatman’s sirens as they proceeded on the highway. He confirmed that Trooper Chatman was not directly behind Employee or directly in the same lane when his lights went on. Sgt. Labun affirmed that Trooper Chatman stated during his interview that when he activated his emergency lights, Employee was less than a fourth of a mile distance from his police cruiser. Sgt. Labun confirmed that Employee told Trooper Chatman after the crash that he did not stop because he did not see Trooper Chatman’s lights and that he just wanted to go home. When asked if after the crash, Employee gave any of the officers on the scene the impression that he knew he was being followed by law enforcement prior to the crash, Sgt Labun stated that “No, he just states that he continually states that he ... was trying to get home.” Sgt. Labun cited that Employee stated the same during his interview with Employee. Sgt. Labun confirmed that Employee’s rapid lane changes without signaling happened before and after Trooper Chatman’s lights were activated. He asserted that the Virginia Court did not find Employee guilty of the criminal fleeing and eluding charge. Tr. Vol. I. pgs. 118-134, 169-170. Sgt. Labun confirmed that he was aware that the charge of felony fleeing and eluding was dismissed, while Employee pled guilty to the reckless driving charge. Tr. Vol. I. pg. 146.

Regarding Charge No. 3 - violation of General Order 120.21, Attachment A, Number 11, which is ‘conduct unbecoming of an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee or the agency's ability to perform effectively, or violations of any law of the United States, any law or municipal ordinance or regulation of the District of Columbia’; Sgt. Labun testified that the dash camera footage, the traffic camera footage, Officer A.G.’s statement and Ms. Wiggins’ statement support this charge. Sgt. Labun testified that Specification No. 3 under this charge is supported by “both the dash camera video ... and the radio transmissions, which give you the time markers for when these events were actually happening. And the 1130 that [Employee] submitted, which indicated that he ... should have been at work until midnight, but was in fact not.” Tr. Vol. I. pgs. 89-91.

Sgt. Labun testified that Charge No. 5, Specification No. 1 is supported by “The social media and major media outlets' coverage of the incident.” He explained this this was problematic because “with just a simple Google search of Employee’s name, everything was related to his career as a law enforcement officer. Of course ... it being publicized that a MPD police officer was engaged in a vehicle pursuit and then a crash that injured a citizen and another officer discredits ... the service the MPD provides, can make it harder for us ... it can undermine our authority when engaging with the public. And overall could open ... MPD up to... further lawsuits or just general negative public perception.” Tr. Vol. I. pgs. 91-92.

Sgt. Labun asserted that Specification No. 2 of Charge No. 5 is supported by the dash camera which highlights how Employee’s behavior endangered the public and the life of Trooper Chatman. He stated that “As far as the serious risk towards the public ... Ms. Wiggins' statement was particularly impactful when she made that comment about, you know, officers are supposed to protect and serve, and [Employee] did quite the opposite.” Sgt. Labun testified that Officer AG’s statement also highlights that she was essentially trying to stop Employee’s reckless and irresponsible behavior. Sgt. Labun cited to Employee’s “disregard not of only the law enforcement officer following him, but also another police officer in the car with him, one that was a significant other at the time.” Tr. Vol. I, pgs. 92-93.

Sgt. Labun testified that Employee's conduct could "impact the community in different ways. This particular incident, as we saw over ten 10 media outlets at the least ... that's where I stopped with ten, and it's a negative impact. Officers endangering the lives of not only other law enforcement officers, themselves, co-workers, injuring the community. It's only going to have 15 a negative impact. It can create distrust, just the day-to-day activities that you have with citizens, especially when responding to calls for service. It's a negative impact." Tr. Vol. I. pg. 93.

Sgt. Labun stated that during his interview with Employee, Employee outlined "the steps that he took to make sure this conduct would not happen again." He also noted that he "believe[d] that there was some downplaying of [Employee's] conduct, as I said. And also leading to the charges of untruthful statements. And I think what stuck out the most was the ... kind of the nonchalance after the fact, immediately after in the car with Trooper Chatman. To his credit, [Employee] did ask about Ms. Wiggins, if she was ... okay. But the nonchalance, especially when hearing that he's being charged with a felony. His whole statement was that he was in such a bad place and a bad mindset. He was aggravated. He was annoyed. He just had to get home because he was so upset. It didn't appear that way in the video. Remorse, I can't speak to. I definitely think there was a lot of downplaying of his conduct." Tr. Vol. I. pg. 96, 163-165.

2) Trooper Jermell Chatman ("Trooper Chatman")– Tr. Vol. I. pgs. 176 -257

Trooper Chatman is employed by Virginia State Police ("VSP"), and he has been a trooper for approximately six (6) years. He affirmed that he had the same responsibilities on November 22, 2023, as his current responsibilities. He cited that now he was currently assigned to the Division 7 Area 45 Office, which covers Arlington, some of Fairfax, and some of Alexandria. Trooper Chatman noted that he had training in vehicle pursuit from the Virginia State Police Academy. He stated that he also had "advance PIT maneuver training at the same location." He asserted that he has encountered over 20 high-speed pursuits in his career. Tr. Vol. I. pgs. 177-178.

Trooper Chatman cited that he was on duty in Arlington, Virginia on November 22, 2023. He explained that he was on selective enforcement, which is a federal grant for them to look for impaired drivers, reckless driving, people who have warrants etc. Trooper Chatman stated that he first encountered Employee around the 27 ramp leading to Southbound Interstate 395 at about 2357 hours that night. He noted that he was drawn to Employee by his speed. He asserted that Employee was "driving a whole lot faster than other vehicles on the highway, especially as you take that ramp merging onto Southbound 395." Trooper Chatman stated that Employee was also weaving in and out of traffic. He also affirmed that before he activated his lights or siren, there was a pretty good distance between his vehicle and Employee's vehicle. He confirmed that Employee's speeding and weaving in traffic continued after he activated his lights, but it got faster after he activated his lights. Tr. Vol. I. pgs. 179-181, 210-212, 250. He testified that while Employee's "speed is what first brought my attention to the vehicle..." he effectuated the traffic stop when Employee made an unsafe lane change. Tr. Vol. I. pgs. 229 – 232.

Trooper Chatman explained that "When I first encountered his vehicle, I attempted to catch up to the vehicle. I didn't have my lights or my sirens on. As we passed Southbound 395 just at the Arlington Ridge overpass, the vehicle was gaining a lot of distance on me. Again, I still hadn't activated my lights and sirens. As we approached the Glebe Road exit, I kind of got a little bit closer to him and was able to get behind the vehicle as we passed the Glebe Road exit." He then asserted that he activated his lights at this point to initiate a traffic stop, but Employee merged to another lane and accelerated his speed. He testified that Employee's vehicle was not directly in front of his vehicle when he activated the lights and

that there were several vehicles between his police cruiser and Employee's vehicle. Trooper Chatman cited that he believed Employee sped up in reaction to him activating his lights. He testified that once his lights were activated and Employee's vehicle didn't stop, he then activated his siren and Employee continued to pull away from him, while driving in a reckless manner. Trooper Chatman confirmed that his vehicle was equipped with a loudspeaker, but he did not use it to get Employee's attention because that's not the practice they use. Tr. Vol. I. pgs. 181 – 183, 213 -214.

Trooper Chatman stated that Employee's vehicle was still way ahead of him when he turned on his siren. He, however, noted he was in close enough proximity for Employee to hear his siren. Tr. Vol. I. pgs. 189-190, 250. Trooper Chatman testified that before he activated his lights and sirens, he first had to catch up to Employee's vehicle and try to run the tag on the vehicle. Tr. Vol. I. pg. 207. Trooper Chatman asserted that he wasn't as close to Employee when he turned on his siren as he was to Employee when he lit up his lights. Tr. Vol. I. pg. 238.

Trooper Chatman testified that as they approached Seminary Road, he observed Employee's vehicle which was ahead of him, merge through traffic to take the exit for Seminary Road. Trooper Chatman stated that he got off on Seminary Road, as well. He asserted that at some point after he had turned on his lights and siren, he relayed to Dispatch that he had a vehicle that wasn't stopping for him and Dispatch asked him if he was in pursuit and he said he was. Trooper Chatman explained that after he exited on Seminary Road, he saw Employee's vehicle run through a red light "at the Southbound 395 Seminary ramp that intersects with the Westbound Seminary Road." He further explained that "Take the ramp to Southbound 395, there's a ramp right there, there's a traffic light and then you had the westbound traffic that will go westbound from Seminary Road. I observed him run the red light right there. Then there's another red light that you can go straight and enter back onto Interstate 395 Southbound before you can turn Eastbound on Seminary Road. I didn't know exactly where he went once he got there, and then I turned left on Eastbound 395 and that's when I came upon [Employee's] vehicle. It was sideways in the road facing Northbound in the Eastbound Seminary Road lane." Trooper Chatman explained that he couldn't tell which way Employee went "after he went through the first stop light and then at the second stop light where you can continue on 395 or Eastbound." He stated that the only time he lost sight of Employee's vehicle was once they got to the ramp for Seminary Road. Trooper Chatman asserted that he could see Employee's vehicle run the first red traffic light, but he did not see Employee run through the second traffic light. Tr. Vol. I. pgs. 190 – 193, 238.

Trooper Chatman stated that he could tell Employee was speeding when he first encountered Employee's vehicle just based off a visual estimate of the vehicle. He noted that based on his training, he does not use a radar when doing speed enforcement, instead, he uses pacing, which is a skill they learned at the police academy. Trooper Chatman explained how vehicle pacing and visual estimate of vehicles work. Trooper Chatman testified that he could not use the pacing method on the night of November 22, 2023, when he encountered Employee because once he activated his lights, Employee's vehicle accelerated from him. He cited that "I can only tell you what I relayed to Dispatch that my speed was at the time." Trooper Chatman asserted that despite not being able to pace Employee's vehicle, he knew Employee was speeding just from using the other vehicles that were on the highway versus his speed. Trooper Chatman stated that his last speed that he called out to Dispatch was 119 miles per hour. He noted that Employee's vehicle was creating distance between them, which indicated that Employee was "going more than 119 miles an hour." Trooper Chatman stated that their vehicles are calibrated twice a year. Tr. Vol. I. pgs. 183-189.

Trooper Chatman noted that he did not see the accident when it occurred. He testified that when he arrived at the scene of the accident involving Employee's vehicle, he got out of his car, pulled out his firearm and started giving commands to Employee. He stated that he didn't know anybody else was in the vehicle at that time, so he started giving verbal commands to Employee. Trooper Chatman asserted that he drew his weapon as part of his post-pursuit practices. He explained that he did not know why the driver was trying to run from him, so the pursuit was a felony pursuit at this point. Trooper Chatman asserted that Employee identified himself as an MPD officer and that he had a weapon at some point while he was giving him verbal commands during the post-pursuit encounter. He noted that he was surprised because "... I just wouldn't think that that would've been the end of the pursuit that it would be somebody saying they were a police officer." Tr. Vol. I. pgs. 193 – 195. Trooper Chatman confirmed that Employee's actions leading to the crash posed a risk to public safety, as well as to himself and other passengers in the vehicle. He explained that anytime anyone is driving recklessly, there exists a potential to cause very serious and/or deadly accidents, and that speed limits are there for a reason. Trooper Chatman asserted that "395 is a heavily trafficked area, and so driving at those speeds, maneuvering in and out of traffic is a very, very high risk to public safety while you're driving." Tr. Vol. I. pgs. 196 – 177, 238-239, 241-242.

Trooper Chatman confirmed that there was another vehicle which belonged to a civilian that was involved in the collision. He stated that he had contact with the civilian and their family members after the accident. Trooper Chatman asserted that based on his understanding, the civilian had some anxiety issues which impacted their communication. He noted that he was not sure if this anxiety issues arose before or after the accident involving Employee. Trooper Chatman testified that he informed the civilian and their family that the driver of the other vehicle was a police officer and they were shocked. He cited that the civilian's family noted that "... somebody like that shouldn't be a police officer." Trooper Chatman also noted that during the court proceedings, "the [civilian's] sister made a statement basically saying that she didn't want [Employee] to necessarily go to jail and spend time in jail, but she wanted him to have a felony on his record because she didn't think somebody like him should ever be a police officer." Tr. Vol. I. pgs. 195 – 196.

Trooper Chatman confirmed that he was aware that a radar detector was found in Employee's vehicle. He stated that "...I just don't know why a police officer would have one." He cited that a reason a citizen would carry a radar detector would be "to see where the police are at so that they don't speed when they encounter them." Trooper Chatman asserted that the radar detector in Employee's vehicle would not have detected his presence that night because of where he first encountered Employee. He explained that he came from behind Employee as they were merging on together, so Employee wouldn't have been able to detect him. Tr. Vol. I. pgs. 197 – 199. Trooper Chatman stated that he did not believe he had any interaction with the passenger in Employee's vehicle, Officer AG. Tr. Vol. I. pg. 199. Trooper Chatman stated that Employee's demeanor after the collision "wasn't that empathetic." He stated that when he informed Employee that he was being arrested for a felony pursuit, Employee "mentioned like, you believe this is a felony?" Tr. Vol I. pgs. 199 -200.

Trooper Chatman was asked how Employee's conduct affected the reputation of the DC MPD to Virginia state troopers like himself, to which he responded that "... I know that police officers will sometimes make mistakes. We have our issues in the Virginia State Police. I'm sure that every other law enforcement agency out there does. More than what type of message does it send for us, it's the message that it sends out to the community. I know it sucks, but a lot of times we have to live above and beyond what the moral standard of living is. Then when people within the community see us doing things like that ... it makes it harder for us to do our job, not easier, because there's a lack of trust, a loss of respect

when they see us doing things like this that we should be enforcing and we're out there doing it ourselves.” He also noted that the conduct of DC MPD can also affect how they are seen as Virginia officers and vice versa. When asked if he had seen this incidence through the news or social media, he stated that “I think I may have seen it maybe on social media, but I'm not sure.” Trooper Chatman noted that no one from the public ever brought up this incident with him. Tr. Vol. I. pgs. 201 – 203.

Trooper Chatman confirmed that he gave Employee his ‘Miranda’ warning. He also confirmed that when Employee was asked why he didn’t pull over when Trooper Chatman turned on his lights and siren, Employee responded that he didn't see Trooper Chatman and that he just wanted to get home. Trooper Chatman could not recall if Employee said anything to him that would have made him think or believe that Trooper Chatman was behind Employee at any point in time and trying to effectuate a traffic stop. Tr. Vol. I. pgs. 243-246. Trooper Chatman confirmed that he charged Employee with Felony Eluding and a charge relating to the radar detector. He cited that the charge of reckless driving was added by the Commonwealth attorney. Trooper Chatman affirmed Employee was charged with Felony Eluding and Reckless Driving in court and that he was present in court when the judge dismissed the charge for felony eluding. He affirmed Employee pled guilty to reckless driving. Tr. Vol. I. pgs. 247 - 249.

When asked by the Panel why he thought Employee was actively trying to evade him, Trooper Chatman stated that “From my experience, most of the time when you turn on emergency equipment, especially the lights, if anything other vehicles tend to slow down or move over to the shoulder, get out the way. This vehicle is accelerating in his speed and the driving that I observed before I activated my lights and sirens has gotten worse. It's starting to make more unsafe lane changes. At that point it's under my belief that this person is actively attempting to flee from me and use any means necessary in order to evade me.” Tr. Vol. I. pgs. 255-256.

#### *Employee’s Case-in-Chief*

#### 3) Officer Brandi Fowler (“Ofc. Fowler”)– Tr. Vol. I. pgs. 260-284

Ofc. Fowler works for MPD and is currently assigned to the Sixth District (“6D”). She’s been employed with Agency since June 8, 2020, and she has known Employee for five (5) years. She cited that she and Employee were in the same academy class, they built a relationship and stayed in touch throughout the years post academy. Ofc. Fowler noted that she considered Employee a personal friend, they maintained contact and still hung out in person from time to time. Ofc. Fowler explained that “we kind of spoke the first day and we hit it off. We remained close through the academy. My first impressions of [Employee] was that he was pretty cool, reserved. He was intelligent, pretty sharp, as far as picking up material and being able to complete the task that was asked of him.” She also cited that Employee was “... pretty considerate with others and how we had to communicate because we came on during COVID, so our experience like a little bit unique.” Tr. Vol. I. pgs. 261 -264, 268.

Ofc. Fowler stated that she has ridden in Employee’s personal vehicle numerous times as a passenger. She testified that she’s never felt unsafe in the car with Employee. She also stated that she has “...ridden with him after the incident numerous times, whether we go to like a sports game or something like that, he usually comes, grabs me, or we'll meet up somewhere and he'll probably be the primary driver.” Ofc. Fowler affirmed that she was aware of the current incident. -Tr. Vol. I. pgs. 263 -264.

Ofc. Fowler asserted that while Employee was her personal friend, “I haven't really got to work with him directly, but we have conversations about the job and the things that it entails and like the

different things that ... we had to go through, being in the Department to now like having around five years. My impressions on him as a police officer as he speaks about his experiences and he listens to mine as well is that he's fair, levelheaded. I like the way he kind of thinks through things, reflects on things. I think our viewpoints are similar in a lot of ways in kind of how we see people and kind of like this job is stressful, obviously, like you meet people on their worst days. So we've had conversations like that. I think that as a police officer, seeing his viewpoints and how he understands and digests kind of the things that we've seen and how he's also been able to help -- kind of talk me through things about the kind of things that I've seen. I think he's a good officer. His mindset is in the right place. His heart is in the right place." Ofc. Fowler noted that she did not have any concerns with Employee's judgement. When asked if she had ever questioned Employee's truthfulness, or his candor, Ofc. Fowler said 'No.' She affirmed that she would continue to rely upon and trust Employee. She also cited that she would welcome the opportunity to work with Employee. Tr. Vol. I. pgs. 265-267.

Ofc. Fowler noted that she's not had any supervisory role over Employee. She cited that her opinion about Employee is based on her interactions with Employee prior to, and after the current incident. Ofc. Fowler cited that she was aware of the current incident and that she saw news articles about the incident. She noted that she was aware that a civilian was injured in the accident, but she was not aware of Ofc. AG's injuries. Tr. Vol. I. pgs. 268 – 270.

Ofc. Fowler was asked if her opinion of Employee's character changed after she watched the dash camera footage of the incident and she said 'No.' She stated that Employee "... should be trusted as a beat officer." Ofc. Fowler affirmed that MPD had a duty to uphold public trust, and that accountability is essential to maintaining that trust. She confirmed that a penalty other than termination would be appropriate to hold Employee accountable for his conduct as seen on the dash camera footage. Tr. Vol. I. pgs. 275-276, 283 -284.

4) Officer Trevon King ("Ofc. King") – Tr. Vol. I. pgs. 285-301

Ofc. King has been employed at Agency for about five (5) years and is assigned to the Fourth District ("4D"). He confirmed working with Employee while at 4D. He explained that "When I got out of FTO, I was assigned to Sector 3. I believe it was PSA ... 408 initially and then 409. And [Employee] was already down there. And yeah, we were assigned to the same area. We rode together. Became real good friends..." Ofc. King asserted that "Around 2020, end of 2020, 5/2021, maybe November, December of 2021 is when we became close friends and partners." He asserted that as partners, they rotated driving duties. Ofc. King stated that Employee was a better driver than he was. He noted Employee's driving has always been good and he was never concerned about Employee's speed. Tr. Vol. I. pgs. 285 – 287, 291.

Ofc. King testified that they supported each other when they rode together. He explained that while riding together, "... if I see something, or see a traffic violation, he would effect a traffic stop. I would effect a traffic stop. And I guess I would say, I mean, during that time we were go-getters.... And we just liked doing the work, doing police work. And he was good at ... I mean, he was effective and probably more knowledgeable than me when it come to the things that we did. I always say ... and a lot of us in the rank and file in 4D who work with him, we always say if none of us were here right now, if he wasn't here in this situation or whatever, he would be detective. He would have been number one on the list." Ofc. King noted that at 4D, they thought that if Employee wasn't with them, he would be a detective. ... the time that we worked together, he was a solid, knowledgeable guy. He knew more than most." Ofc. King also asserted that "... [Employee] exhibited great judgment, very professional. You think of somebody with good character and conduct when it comes to police work, I mean it's him. ... it

was known on the streets a while as being not aggressive, but like, you know, he didn't really take any nonsense of people ... He has abled me a bunch of times so that's how I know, how, like the guy has patience. I mean, his judgment has always been good.” Ofc. King stated that “... I have never known him to not be truthful about anything, especially during the time that we worked together... I have never known his word to not be reliable, whether on duty or off duty. I just never got that vibe of him ever.” Tr. Vol. I. pgs. 288 – 290.

Ofc. King confirmed that he was aware of the current incident involving Employee. He stated that he was aware that Employee was charged with false statements and a misdemeanor reckless driving charge. He explained that these charges involved Employee driving home, speeding, he got into an accident, and he was arrested in Virginia. He also noted that he was aware that Employee later had an interview with “with IED and things were said. And I guess it kind of spearheaded from there”. Ofc. King cited that despite this incident, Employee was “... still a professional guy. He was still a good police officer... So given the opportunity, yeah, of course, a lot of us would. And I speak for everybody who knows this guy at work. A lot of us still, we would love to work ... we would love to have him back. You can ask anybody. Anybody you can ask, they will tell you the same thing.” Tr. Vol. I. pgs. 291-294.

Ofc. King confirmed that he was aware that two (2) individuals were injured as a result of the motor vehicle incident and that one of them was a fellow police officer. He noted that he had not seen the dash camera footage of the pursuit that led to the collision. Tr. Vol. I. pgs. 294-295. Ofc. King was asked viewing the dash camera footage of the incident changed his testimony about Employee’s character, to which he said ‘No.’ He cited that he knew Ofc. AG was in the vehicle with Employee, but he did not know what was said. Ofc. King was asked if he believed the conduct in the footage was consistent with the values of MPD and he said ‘No.’ He affirmed that accountability is essential to maintaining MPD’s public trust and he stated that “... it is the standard in the whole department, not just with officers.” Ofc. King affirmed that he interacted with Employee after the incident and that the Panel could hold Employee accountable without terminating him. He noted that “... I've seen them for other people.” Tr. Vol. I. pgs. 296-297.

5) Sergeant Andrew Shaheen (“Sgt. Shaheen”)– Tr. Vol. I. pgs. 302 - 314

Sgt. Shaheen has been employed by Agency for 13 years and he is currently assigned to the Fourth District (“4D”). He confirmed that he knew Employee. He asserted that when he got promoted to 4D in 2022, he and Employee were assigned to the evening tour (from 2:00 p.m. to midnight) and they worked together for approximately two (2) years. Sgt. Shaheen cited that they were both assigned to the same platoon. Tr. Vol. I. pgs. 302-304.

Sgt. Shaheen asserted that as Employee’s supervisor, he had a great experience with Employee. He explained that Employee was a great officer, “... he took his assignment[s]. Never challenged an assignment. Never challenged a PSA... His reports were amazing... He was a straightforward, good officer... I enjoyed working with him... he is calm, always on time, a nice guy... I really had... a pleasant experience supervising him. And hopefully I get to supervise him again because he was an easy officer to work with.” Sgt. Shaheen cited that he never wrote Employee up. He highlighted that he was never concerned about the truthfulness or accuracy in Employee’s verbal or written communication with him. Sgt. Shaheen noted that while working with Employee, he did not recall receiving any complaints about Employee’s driving style. Tr. Vol. I. pgs. 304-307, 313.

Sgt. Shaheen testified that he learned about the current incident involving Employee through "... a video that was circulating around, but that was about it." He cited that he was shocked when he heard of the incident. When asked if he would like to work with Employee in the future, Sgt. Shaheen said "100 percent." Tr. Vol. I. pgs. 307-309. Sgt. Shaheen testified that he did not remember seeing the dash camera footage from the incident. He confirmed that he was aware that another officer was in the vehicle with Employee, but he could not remember if the other officer was injured from the accident. Sgt. Shaheen confirmed that he was aware that a civilian was injured by the accident. When asked if viewing the dash camera footage changed his character testimony, Sgt. Shaheen said, "No, I would still like to supervise him if I get the chance." Tr. Vol. I. pgs. 310-313.

6) Sergeant Jose Burgos ("Sgt. Burgos") – Tr. Vol. I. pgs. 315 - 326

Sgt. Burgos has been employed by Agency for about 18 years, and he is currently assigned to the Fourth District ("4D"). He has been assigned to 4D for about nine and a half (9.5) years as an official. He cited that he worked and interacted with Employee in different situations to include "...control on the evening shift and sometimes if there were CDU 44 deployments ...So I have had interactions with him in different scenario situations, reports, arrests, things of that matter." Tr. Vol. I. pgs. 315-316.

Sgt. Burgos testified that "My impression of [Employee] is that he is very intelligent, articulate. He makes sure that whatever he needs to get done, if it's a scene or paperwork, it is done properly. He is very respectful. He always took his assignments, no issues. I never had any complaints from him professionally. And as sergeants, we do talk to each other about... who may or may not give us issues, and his name never, ever came up from any other officials." He also noted that he never received any complaints from citizens about Employee. When asked if while supervising Employee, he wrote him up or issue him any form of discipline based on his police work, Sgt. Burgos said, "No, no, no, never." He asserted that he never heard any officer "... ever say I don't want to ride with [Employee]" because of his driving style. Sgt. Burgos noted that he did not have any concerns about Employee's judgement. Tr. Vol. I. pgs. 317-320.

Sgt. Burgos confirmed that he had a general understanding of the current incident. He asserted that "My understanding is that [Employee] worked some overtime assignments on that particular day. He was on his way home. He was driving his vehicle, my understanding is, at highway speed and got into a traffic accident in Virginia." When asked that if given the opportunity by this Panel to supervise Employee in the future, would he like to do so, Sgt. Burgos said, "Oh, absolutely." He explained that "... we are all humans. We are all going to make mistakes. But I am sure that [Employee] has learned from his mistakes. And I would have no issue working with him, give him a vehicle or anything to that situation where I believe... he would be in -- putting the department or anybody else in danger. I trust his judgment. He probably just had a bad day. And, you know, I do hope that I can work with him again because it was actually very pleasant to work with him on the evening tour. He was actually very reliable. Like I said, no issues. I said I needed this done. It was just done. There was no question about it, no arguments. Just, you know, a very pleasant experience that I have had working with [Employee]" Tr. Vol. I. pgs. 320-322.

Sgt. Burgos testified that he was aware that Officer A.G. was in the vehicle with Employee and that she was injured in the accident, but he was not aware that she begged Employee to slow down. Sgt. Burgos noted that he was not aware that a civilian was also injured in the accident. He noted that his opinion of Employee was based on his experience with Employee prior to the November 22, 2023,

incident. He cited that he has not had any reason to have any interaction with Employee after the incident. Tr. Vol. I. pgs. 322 – 324.

7) Employee - Tr. Vol. I. pgs. 327-396; Vol. II. pgs. 5-25

Employee has been employed as an officer with Agency, assigned to the Fourth District (“4D”), PSAs 44, 408 and 409, for approximately five (5) years. Employee cited that he believed he was a very good police officer. He stated that he treated every citizen that he came across with, with respect, kindness, he completed reports, took assignments and was diligent in everything that he did. Employee noted that apart from Ofc. A.G., his colleagues did not have any concerns about his driving on or off duty. Tr. Vol. I. pgs. 328 – 330.

Employee testified that November 22, 2023, was his day off, and he decided to work a double overtime shift from “8:00 a.m. working CDU. And that was supposed to be half of the day and then switch to the KDY, Kennedy Street overtime, until midnight that day.” He cited that he worked a 16-hour shift that day. He confirmed that the 1500 to 2400 hours shift was the second half of the overtime shift. Tr. Vol. I. pgs. 330 -331.

Employee asserted that he was driving during the second half of the overtime shift, and that as it was getting pretty late and close to the end of their shift, they (Employee and Ofc. A.G.) decided to head back to the station to get their 1130 signed for the check-off and go home for the night. Employee cited that after Sgt. deRoo signed their 1130 overtime slip, his understanding was that Sgt. deRoo knew they were going home. He stated that this was at approximately 11:30 p.m. on November 22, 2023. Employee noted that it was not abnormal to present a 1130 to an MPD official prior to the official end of tour. Tr. Vol. I. pgs. 331-333.

Employee testified that after his 1130 was signed, he and Ofc. A.G. got into Employee’s car from 4D, and Employee started driving to his home in Alexandria, Virginia. He stated that at the time, Ofc. A.G. was his girlfriend. Employee cited that it was generally not a good day as they were having relationship issues that continued throughout their whole shift. He stated that they got into a disagreement when they got into the car to go home, which continued while he was speeding. Employee asserted that Ofc. A.G. expressed some concerns about his driving behavior “and unfortunately that ultimately led to me not paying attention, and being distracted up to the point where I caused the traffic accident...” He asserted that he was also playing loud music in his car. He affirmed that the music was loud enough that he could hear and enjoy it, but not too loud that he could not have a conversation with someone else present in the car. Tr. Vol. I. pgs. 333-336, 340; Tr. Vol. II. pg. 22.

Employee testified that he was driving at an elevated rate of speed while on Interstate 395 Southbound because he was “Just tired, not in the best mood as I’m having a disagreement with my girlfriend. So I just wanted to get home as quickly as possible.” He confirmed that based on the dash camera footage, before Trooper Chatman activated his lights, he was off to the left of where Trooper Chatman was and he was considerably ahead of Trooper Chatman while Trooper Chatman was attempting to catch up to him. Employee noted that he did not have any reason to believe or to know that Trooper Chapman’s vehicle was behind you at that point. Tr. Vol. I. pgs. 337 – 338. He cited that the incident occurred about three (3) years into his tenure with MPD and he did not receive any other speeding tickets in those three (3) years. Tr. Vol. II. pg. 24.

Employee affirmed that he was weaving in and out of traffic, changing lanes, and accelerating before Trooper Chatman activated his lights. He noted that he changed lane when Trooper Chatman activated his light because there was no car in front of him. Employee noted that when Trooper Chatman activated his lights, Trooper Chatman was in the lane to the right of his vehicle, and he was in the lane to the left of Trooper Chatman's vehicle, and he did not see the lights being activated. He also noted that he did not hear a siren thereafter. Employee cited that the first time he noticed that law enforcement was passing him was after the traffic accident. Employee cited that the crash occurred about four (4) minutes away from his home. Tr. Vol. I. pgs. 339 -341.

Employee testified that after the accident, he rolled down his window, and Trooper Chatman had his gun drawn and pointed at Employee "... so I just put my hands out of the window, and I pretty much stayed there until he ... told me to put my hands up... I told him that... I was MPD, and then just waited for him to approach the vehicle." Employee asserted that he kept his hands out the window while Trooper Chatman approached the vehicle. He stated that he told Trooper Chatman that "... where my duty weapon was and he retrieved it from my waistband." Employee testified that he pled guilty to the charge related to the off-duty holster. He explained that he knew that the holster was unauthorized as he "... didn't go through the process of getting that specific holster authorized through the proper channels, as I know I'm supposed to go to the range and get authorized. It was just more convenient to have that specific holster that I did at the time." Tr. Vol. I. pgs. 341 – 343.

Employee confirmed that he was placed in handcuffs and his Miranda rights were read to him when he got out of his vehicle. Employee stated that Trooper Chatman asked him why he did not stop and he responded that he didn't see Trooper Chatman and he just wanted to go home. Employee noted that he complied with all the instructions he was given at the scene of the accident. Employee cited that if he had seen Trooper Chatman's lights on, he would have pulled over. He explained that there was no reason for him to flee from law enforcement. He affirmed that a radar detector was found in his car after the accident. Tr. Vol. I. pgs. 343 -346, 349.

Employee asserted that after his arrest, he was taken to the hospital to be checked out, thereafter, he was taken to the Alexandria Sheriff's office to be processed for felony eluding and radar detector. He stated that he was caught off guard because Trooper Chatman thought he was fleeing from him and mentioned the felony eluding charge. Employee confirmed that he wasn't necessarily questioning Trooper Chatman, but rather, he was essentially parroting back what he had just heard. Employee cited that the "Commonwealth filed for the additional reckless driving charge to be added... There was a warrant out for my arrest, so I had to go get processed again for the additional charge, and I'm not sure when the radar detector infraction went away, but that was gone, so then it was just the felony eluding and then now the addition of the reckless driving." Tr. Vol. I. pgs. 346 – 349. Employee testified that the felony eluding charge was dismissed during the trial for lack of evidence to support the charge, and he pled guilty for reckless driving. Employee stated that the judge issued "... a 12-month sentence for the reckless driving, with all 12 months of the sentence suspended." He testified that he also received "... 50 hours of community service that I had to complete. I had to get some sort of mental health or therapy/counseling for six months, and then also the judge restricted me from driving in the State of Virginia for 29 days." He noted that his driver's license was not impacted and that he has satisfied all the requirements of the sentencing. Tr. Vol. I. pgs. 350-351, 356-359, 383-386.

Employee identified Employee's Exhibit 1 as "a recruitment video that I was approached to do by Officer, I believe, Benson, at the time." He stated that he was "... honored that Officer Benson would think to pick me to do a recruitment video for the Department." Employee confirmed that during his

tenure at Agency, he received commendations for his actions as a police officer. Employee testified that he became a police officer because he enjoyed "... helping people and I feel like that's what I was called to do, and so, and I'll never think twice about going to help somebody." Employee identified Employee's Exhibit 4 as his employee evaluation form for the period of October 1, 2022, to September 30, 2023. He asserted that he was rated by Sergeant Banks, his PSA sergeant on the evening shift. Employee testified that he was rated a "successful performer." Tr. Vol. I. pgs. 363-369, 371-374, 376-378.

Employee testified that he participated in both a reckless driving and a defensive driving course prior to the criminal trial. He noted that he completed the course on November 29, 2023. He cited that as of 2025, he has not been stopped or pulled over by law enforcement since the incident. Tr. Vol. I. pgs. 379 -382.

Employee testified that following the November 22, 2023, incident, he has "... had a lot of time on suspension, almost going on two years now, so I would say that I've learned a lot. I've had time to reflect on myself a lot, and I've also had time to grow. And the things I previously stated, I participated in both the reckless driving course and the defensive driving course to address my driving behavior, and I understand the importance of and adhering to, obeying the posted speed limits. I understand the risk that I posed to myself and others that night. And I understand that my actions have consequences, and I take responsibility for my actions and I own up to it, and understanding that this is not a situation that I ever want to be in again, so I know that something like this will never happen again. And then once again, the 180 hours of community service, I've had a lot of time for self-reflection and self-evaluation, just continuing that idea of service that's pretty much instilled within me and that I agreed to uphold when I signed on to be a police officer. And then finally, growth, I have been to therapy to address my behavior and I was working with a therapist, and that really helped me to mature in terms of understanding my feelings and emotions, and finding ways to control them and deal with them. And I've also gained a deeper understanding of my responsibility to carry myself in a manner that upholds MPD standards, whether on or off duty, just at all times." Tr. Vol. I. pgs. 395-396; Tr. Vol. II. pgs. 14-15.

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Employee was asked what actions he took on November 22, 2023, that led to the current adverse action hearing, and he stated that "The actions that I took that night were leaving my overtime assignment early and traveling home from D.C. to Virginia and being involved in a traffic accident." He asserted that his driving behavior as seen on the dash camera footage "... was not good at all." He explained that this "was due to multiple factors, being tired, fatigued, just trying to get home as quickly as possible and dealing with some issues with my girlfriend at the time." He reiterated that he only became aware that the police officer was behind him after the traffic accident. Employee stated that he was shocked when he noticed the police officer with "... a gun pointed at me, so I just put my hands out the window and I'm following ... trooper's commands." Tr. Vol. II. pgs. 6-7.

Employee testified that as he was traveling through the eastbound ramp, his vehicle was struck as it was almost through the intersection on that ramp. Employee was asked if he ran a red light immediately preceding the collision and he said "Yes. At the time, obviously, I did not know that. I wasn't paying attention so I did not know that the light was red but yes, it was red." Employee stated that while he was not physically able to check on the civilian at the time of the accident, he asked whether she was okay and his understanding was that she wasn't seriously injured. Tr. Vol. II. pgs. 7-8.

Employee affirmed that his passenger that night was also a police officer, she expressed concerns about his driving, and she asked him to slow down, but he ignored her probably because he was trying to get home as quickly as possible. He cited that they had been arguing earlier in the day. Employee stated that he apologized to Ofc. A.G. He asserted that everybody makes mistakes and that everybody deserves a second chance, and “a little bit of grace.” Employee was asked if after watching the dash camera footage, if he thought the individual driving the blue tesla was fleeing from the state trooper, and he said ‘No.’ He explained that “Driving behavior is not good. ... But, I don't think from the video that I would say that that vehicle was fleeing.” Tr. Vol. II. pgs. 8-13.

Employee testified he was under the impression that when Sgt. deRoo signed their 1130, he was aware that they were leaving because “The 1130 ... has our check-off time, so we were at the back door of the Fourth District. ... but I would just assume that if this was signed, our 1130... in close proximity to the time that we're about to get off that she would assume we're going home.” He noted he did not indicate to Sgt. deRoo that they were going home when she signed the 1130. Tr. Vol. II. pgs. 13-14.

Employee was asked why he had a functional radar detector in his car and he stated that “I... used to consider myself somewhat of a car enthusiast, and that was really just something in the car community that's like more of an aesthetic piece to just have in the car, so that's why I had it.” Employee stated that the radar detector was functional and left on in his car. He stated that the radar detector was a gift to him and that it acts like a GPS. Employee was asked if he ever used the radar detector to avoid being caught for speeding or other bad driving behaviors and he responded ‘No.’ Tr. Vol. II. pgs. 16 -17.

Employee cited that he was remorseful for the November 22, 2023, and November 23, 2023, incidents. He testified that “I'm remorseful that my driving behavior, my actions led up to a car accident that totaled two vehicles and injured two people.” Employee was asked if he had been arrested or cited for any misdemeanors or felonies since the incident and he said, “No, sir.” He asserted that “Knowing what I know now, I would have pulled over if I had saw Trooper Chatman trying to pull me over, so that might have ... prevented a traffic accident.” Employee testified that the initial news reports of the incident “affected [Agency] in a negative light, but the report wasn't true, and I have no control over that.” Employee noted that he has not violated any traffic laws since the incident, he no longer has a habit of speeding, and he does not have a radar detector. He stated that he discarded the radar detector that was found in his car. Tr. Vol. II. pgs. 18-21.

Employee was asked why he accelerated when Trooper Chatman turned on the light and he stated that “The only thing I can say is that there was nobody in my lane in front of me, and so I accelerated.” Employee also stated that “I'm not sure if you all are familiar with Teslas, but it's a lot different than gas cars. So, when you hit the gas, like the torque, the car goes. So, I'm not using that as an excuse, but there was nobody in my lane, and I hit the gas.” Tr. Vol. II. pg. 23.

### Panel Findings<sup>9</sup>

The Trial Board Panel made the following findings of fact based on their review of the evidence presented at the hearing:

1. [Employee] has been employed with the Metropolitan Police Department (MPD) since June 08, 2020, and was assigned to the Patrol Division's 4<sup>th</sup> District.

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<sup>9</sup> Agency's Answer to the Petition at TAB 6.

2. On Wednesday, November 22, 2023, Officers [Employee and A.G.], are both Metropolitan Police Department (MPD) at the Fourth District. They were on their scheduled day off and worked an overtime assignment in the Fourth District from 1500 to 0000 hours.
3. Officers [Employee and A.G.] got their PD 1130 signed by Lieutenant Anna DeRoo (at the time of the incident she was a sergeant) and left the fourth District at approximately 2335 hours, prior to the completion of their overtime assignment.
4. Approximately twenty minutes later at 2355 hours, Trooper Chatman observed [Employee] driving at a high rate of speed from Route 27 south onto 1-395 in Arlington, Virginia. Officer [A.G.] was in the front passenger seat of the vehicle.
5. Trooper Chatman sped up to approximately 90 MPH to catch up to [Employee] while on 1-395. Trooper observed [Employee's] driving for approximately two minutes has [Employee] continued to drive erratically and changing lane rapidly without concern for the safety of other drivers, his passenger or himself.
6. Trooper Chatman activated his cruiser's blue emergency lights to affect a traffic stop. At that moment [Employee] failed to stop for Trooper Chatman with his emergency lights activated and accelerated away from the trooper at a high rate of speed, exceeding 120 MPH.
7. On Wednesday, November 22, 2023, at approximately 2357 hours, Trooper Chatman initiated a vehicle pursuit on 1-395.
8. At approximately 2358 hours, [Employee] passed through two red lights to evade Trooper Chatman, who now had his lights and sirens activated and was in active pursuit of [Employee]. While running the second red light on Seminary Road, [Employee] collided with Ms. [Wiggins'] vehicle, causing damage to both vehicles and injuries to Ms. Wiggins and Officer [A.G.].
9. Within about 15 seconds of the crash Trooper Chatman arrived on the scene. On November 22, 2023, Officers [Employee and A.G.] advised Trooper Chatman that they were Metropolitan Police Department officers and were in possession of their service weapons.
10. On Thursday, November 23, 2023, at approximately 0001 hours, [Employee] was arrested for violation of Virginia Code S 46.2-817 (B) Disregarding signal by law-enforcement officer to stop and Virginia Code 46.2-1079 Radar Detector.
11. Ms. *Wiggins* and Officer [A.G.] were transported to Inova Alexandria Hospital where they were treated and released.
12. On November 23, 2023, [Employee] appeared before Magistrate Burnette of the Commonwealth of Virginia and was issued a Virginia Summons, 4183766, for violation of Virginia Code S 46.2-817 (B) Disregarding signal by law enforcement officer to stop and Virginia Summons, 4183767, for violation of Virginia Code 46.2-1079 Radar Detector, to appear in General District Court on January 9, 2024, at 0930 hours.
13. On November 23, 2023, [Employee] was released from custody on personal recognizance.
14. On November 23, 2023, Agent Welch obtained Incident Summary# 23004447 for this event.
15. On November 27, 2023, at approximately 0915 hours, Agent MacDonald served [Employee] with a supplemental PD 77, placing him *in* an Administrative Leave with Pay duty status and proposed Indefinite Suspension.
16. On November 29, 2023, [Employee's] arraignment was continued and sometime prior to the January 9, 2024, hearing, the case was reassigned to the Circuit Court of the City of Alexandria to be presented to a Grand Jury.
17. On November 30, 2023, Officer [AG] responded to the PFC and completed a PD 42 and was placed in a Limited Duty status.
18. On February 7, 2024, Mr. Daniel J. McCartin, Esquire, of Conti Fenn LLC., was given notice of the denial and final agency action regarding [Employee's] appeal of his Indefinite Suspension Without Pay.

19. On February 12, 2024, a Grand Jury in the Circuit Court of the City of Alexandria, Virginia indicted [Employee] on one (1) count of violation of Virginia Code S 46.2-817 (B) Disregarding signal by law-enforcement officer to stop, and one (1) count of violation of Virginia Code S 46.2-852 Reckless driving, resulting in the issuance of a warrant for his arrest.
20. On February 20, 2024, [Employee] responded to the Magistrate's Office located at 2001 Mill Road Alexandria, VA 22314 and was arrested for an outstanding warrant for violation of Virginia Code S 46.2-852 Reckless driving.
21. On November 25, 2024, in a jury trial presided by the Honorable Judge Rebecca Wade of the Circuit Court for the City of Alexandria, [Employee] was found guilty of violation of Virginia Code S 46.2-852. Reckless driving, and was scheduled to be sentenced on January 16, 2025, at 1000 hours.
22. On December 18, 2024, at 0900 hours, Commander John Knutsen of the IAD authorized Reverse Garrity for [Employee].
23. Although [Employee] was not cited for displaying expired tags on his vehicle, his temporary tags that were affixed to his vehicle had expired on November 21, 2023.
24. [Employee] admitted during his supplemental interview on December 23, 2024, that he was not wearing an authorized/approved MPD holster on November 22, 2023.

Upon consideration and evaluation of all the testimony and factors, as well as the relevant *Douglas* factors,<sup>10</sup> the Trial Board Panel found as follows:

Charge No. 1, Specification No. 1: **Guilty: Tier 4 - Termination**

Charge No. 1, Specification No. 2: **Guilty: Tier 4 - Termination**

Charge No. 1, Specification No. 3: **Guilty: Tier 2 - Termination**

Charge No. 1, Specification No. 4: **Guilty: Tier 2 - Termination**

Charge No. 2, Specification No. 1: **Guilty: Tier 4 - Termination**

Charge No. 2, Specification No. 2: **Guilty: Tier 4 - Termination**

Charge No. 3, Specification No. 1: **Guilty: Tier 3 - Termination**

Charge No. 3, Specification No. 2: **Guilty: Tier 3 - Termination**

Charge No. 3, Specification No. 3: **Guilty: Tier 2 - Termination**

Charge No. 4, Specification No. 1: **Guilty: Tier 2 - Termination**

Charge No. 5, Specification No. 1: **Guilty: Tier 3 - Termination**

Charge No. 5, Specification No. 2: **Guilty: Tier 4- Termination**

#### FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW<sup>11</sup>

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,<sup>12</sup> OEA has a limited role where a departmental hearing has been held. According to *Pinkard*, the D. C. Court of Appeals found that OEA generally has jurisdiction over employee appeals from final agency decisions involving adverse actions under the CMPA. The statute gives OEA broad

<sup>10</sup> *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981).

<sup>11</sup> 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 Tinto 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”).

<sup>12</sup> 801 A.2d 86 (D.C. 2002).

discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.<sup>13</sup> The Court of Appeals held that:

“OEA may not substitute its judgment for that of an agency. Its review of the agency decision ... is limited to a determination of whether it was supported by substantial evidence, whether there was harmful procedural error, or whether it was in accordance with law or applicable regulations. The OEA, as a reviewing authority, must generally defer to the agency’s credibility determinations.”

The Court of Appeals found that OEA’s broad power to establish its own appellate procedures is limited by Agency’s Collective Bargaining Agreement. Thus, pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met:

1. The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department;
2. The employee has been subjected to an adverse action;
3. The employee is a member of a bargaining unit covered by a collective bargaining agreement;
4. The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: “[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing”; *and*
5. *At the agency level, Employee appeared before an Adverse Action Panel that conducted an evidentiary hearing, made findings of fact and conclusions of law, and recommended a course of action to the deciding official that resulted in an adverse action being taken against Employee (emphasis added).*

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the Metropolitan Police Department and was the subject of an adverse action (termination); Employee is a member of a Union - Fraternal Order of Police (“FOP”), which has a Collective Bargaining Agreement (“CBA”) with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on August 20, 2025, and August 25, 2025, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated. Consequently, I find that *Pinkard* applies in this matter and pursuant to *Pinkard*, OEA may not substitute its judgement for that of the Agency, and the undersigned’s review of Agency’s decision in this matter is limited to the determination of (1) whether the Adverse Action Panel’s decision was supported by substantial evidence; (2) whether there was harmful procedural error; and (3) whether Agency’s action was done in accordance with applicable laws or regulations.

*Whether the Panel’s Decision was supported by Substantial Evidence*

Pursuant to *Pinkard*, the undersigned must determine whether the Panel’s (“Panel”) findings were supported by substantial evidence.<sup>14</sup> “Substantial evidence” is defined as “such relevant evidence as

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<sup>13</sup> See D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

a reasonable mind might accept as adequate to support a conclusion.”<sup>15</sup> If the [Panel] findings are supported by substantial evidence, then the undersigned must accept them even if there is substantial evidence in the record to support findings to the contrary.<sup>16</sup>

Employee avers that Charge No.1., Specification Nos. 1-3 do not constitute illegal conduct. He cites that while Agency charged him with engaging in conduct that constitutes a crime, Agency’s reliance on his arrest and indictment in Virginia is legally insufficient as it is not proof of a crime. Employee further asserts that Agency failed to specify the illegal conduct that constitutes a crime. Employee argues that a conviction is the required evidence for a crime.<sup>17</sup> Employee further explains that the charge of felony eluding, which Agency relied on in Specification Nos. 1-3 to support Charge No. 1., was dismissed by the judge in the related criminal case. Employee states that the code provisions for eluding and reckless driving are found in Virginia Code 46.2-817 and Virginia Code 46.2 -856 respectively.<sup>18</sup> Employee contends that no elements of these crimes are contained in Charge No. 1., therefore, to find him guilty of these crimes is a clear violation of law. Employee avers that Agency was required to provide detailed specifications in compliance with case law, thereby affording him with a fair opportunity to oppose the proposed adverse action. Employee concludes that because Agency relied on the arrest and indictment without proving the underlying elements, Charge No. 1., is defective as a matter of law and must be dismissed.<sup>19</sup>

Agency argues that substantial evidence exists for Charge No. 1., Specification No. 1., because Employee was placed under arrest at the scene. Agency also notes that Charge No. 1., Specification No. 2., is supported by substantial evidence because Employee was indicted on February 12, 2024. Agency further notes that substantial record evidence supports Charge No.1., Specification No. 3., because Employee’s reckless conduct resulted in a serious traffic crash and caused extensive property damage and injuries.<sup>20</sup> Agency contends that Employee’s argument that Charge No. 1., Specification Nos. 1-3 are legally insufficient should be rejected because this is the first time Employee is raising this issue. Agency cites that the specifications should be read in the context of the overarching charge, which is ‘engaging in a conduct that constitutes a crime’ and that Employee was aware of the conduct at issue and he never raised this issue before the Trial Board Panel. Agency avers that the purpose of the specificity requirement is to afford an employee with a fair opportunity to oppose the proposed adverse action, and it fully satisfied this purpose here. Agency contends that even if Specifications Nos. 1-3 were dismissed, it would not change the outcome because Employee pled guilty to Charge No.1., Specification No. 4.<sup>21</sup>

In review of the record, the undersigned finds that the underlying conduct Agency relied on to justify Charge No. 1., “*engaging in conduct that constitutes a crime*” are (1) *Disregarding signal by law-enforcement officer to stop; eluding police, which is a felony charge* pursuant to the eluding Virginia Code 46.2-817 (B) and (2) reckless driving pursuant to Virginia Code 46.2-856. After reviewing the dash camera footage, the judge in the related criminal case dismissed the eluding charge as described in Virginia Code 46.2-817 due to insufficient evidence in relation to whether Employee

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<sup>14</sup> *Elton Pinkard v. DC Metropolitan Police Department*, 801 A.2d at page 91. (2002).

<sup>15</sup> *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 at 985 (D.C. 2002).

<sup>16</sup> *Metropolitan Police Department v. Baker*, 564 A.2d 1155, 1189 (D.C. 1989).

<sup>17</sup> Employee’s Brief (April 8, 2026).

<sup>18</sup> Employee’s Brief, *supra*.

<sup>19</sup> *Id.*

<sup>20</sup> Agency’s Brief (March 6, 2026).

<sup>21</sup> *Id.*

was aware that Trooper Chatman was attempting to stop him.<sup>22</sup> The judge cited that

“In looking at the video, it appears that the vehicle moved – was starting to change lanes to accelerate at about the same time the officer turned on the lights. Ultimately, the question is whether a reasonable fact finder could find that this was a willful and wanton disregard of the signal. And while the Court finds that maybe some fact finder could, I don’t think that it would be a reasonable fact finder to find it beyond a reasonable doubt. I think the Commonwealth has not excluded even in the light most favorable to the Commonwealth the theory of innocence that this was a coincidence. And as such, it would be unreasonable for a jury to find beyond a reasonable doubt that [Employee] drove in a manner willful and wanton disregard of the signal. The Court will grant the renewed motion to strike on the felony charge.”<sup>23</sup>

Here, while I agree with Agency’s assertion that the standard of review in the criminal case is higher than that of an administrative proceeding, from the day of the incident to the day of the Trial Board hearing, Employee has consistently asserted that he did not see Trooper Chatman’s lights or hear the siren. Agency has not provided any convincing evidence to counter Employee’s assertion. Further, Agency acknowledged that Trooper Chatman was not directly behind Employee when he turned on his lights. Instead, he was within three to four car lengths behind Employee when he activated his blue lights. I find that this highlights the possibility that Employee might not have been aware that Trooper Chatman was attempting to stop him. Agency’s only support for this charge is the fact that Employee accelerated his speed at the same time that Trooper Chatman turned on his lights. Employee explained during the Trial Board Hearing that he accelerated because there was an open space. Moreover, as the Judge in the related criminal matter in the Virginia Court opined, Employee accelerating his vehicle at about the same time that Trooper Chatman turned on his light could have been a coincidence, and not a willful and wanton disregard of Trooper Chatman’s signal. Moreover, Officer A.G., who was in the vehicle with Employee noted in her statement that she did not hear Trooper Chatman’s siren.<sup>24</sup>

The OEA Board in *Employee v. MPD*,<sup>25</sup> held that based on the lack of evidence in the record, and because the Superior Court Judge in the employee’s criminal case acquitted the employee for the underlying conduct that supported the cause of action, the employee did not engage in conduct that constitutes a crime. Similarly, here, I find that based on the lack of evidence in the record, and because the Judge in the related criminal matter dismissed the felony eluding charge as described in Virginia Code 46.2-817, I find that Agency cannot rely on this charge to support Charge No. 1. Nonetheless, because Employee pled guilty to Charge No. 1., Specification No. 4., - Reckless Driving, I must agree

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<sup>22</sup> See. Employee’s Brief, *supra*, at Exhibit 2, pgs. 212 – 218. The Trial Board Panel admitted the transcript of the criminal proceeding into evidence during the Trial Board Hearing.

<sup>23</sup> *Id.* at pgs. 217 -218.

<sup>24</sup> Officer A.G. also stated that she did not see the lights because her eyes were closed. Agency argues that Officer AG did not hear the siren because she was “a fearful passenger with closed eyes, in a vehicle where music was playing and an argument was occurring, is not a reliable witness as to what the driver could see or hear.” I do not find this argument convincing. Agency would want the undersigned to believe that Officer A.G. was alert enough to reliably notice that this was the fastest Employee had ever driven with her in the car and that something was different at the time, but she was not alert enough to testify that she did not hear Trooper Chatman’s siren. I find that Officer A.G. was in the same vehicle under the same conditions as Employee. And since she was fearful and concerned about Employee’s driving, it is reasonable to assume that she had a heightened sense of her surrounding, even with her eyes closed.

<sup>25</sup> OEA Matter No. 1601-0006-25, Opinion and Order on Petition for Review (December 18, 2025).

with Agency that it had substantial evidence to charge Employee with “engaging in a conduct that constitutes a crime” as described in Charge No. 1., Specification No. 4.

Additionally, I find that Agency does not have substantial evidence to support Charge No. 2., Specification No. 1. – *Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any officer, or intended for the information of any superior officer, or making an untruthful statement before any court or any hearing.* Agency argues that Employee stated during his IAD interview of the November 22, 2023, incident that he did not see Trooper Chatman behind him; his emergency lights or audibly hear his siren, but the dash camera footage showed that after Trooper Chatman activated his emergency light, Employee dramatically accelerated his speed while making rapid lane changes in an apparent attempt to flee. Agency further argues that Office A.G. noted in her statement to IAD that she was scared because of Employee’s driving behavior which caused her to close her eyes. Agency also asserts that, “[a] preponderance of the evidence clearly indicates that you were aware of the trooper's attempt to stop you, and that you did in fact attempt to elude Trooper Chatman and flee from the traffic stop. Additionally, you willfully and knowingly made false statements to the investigating agent regarding your conduct.”<sup>26</sup>

Employee avers that to sustain this charge, Agency must prove that he knowingly and willfully made a false statement. Employee contends that it is not enough to show that Employee’s account differs from Trooper Chatman’s account or any other evidence in the record. Employee also argues that Agency has the burden to prove that he intentionally lied about not seeing Trooper Chatman’s light and attempting to pull him over. Employee explains that the evidence does not establish that he knew a trooper was attempting to stop him. He notes that pursuant to the dash camera footage, Trooper Chatman was not directly behind Employee when he activated his lights, but rather, several car lengths away from Employee when he activated his light. Employee contends that because there were several cars on I-395 South when Trooper Chatman activated his lights, the dash camera footage regarding Employee’s awareness is inconclusive. Employee further notes that while Agency argues that he accelerated his speed when Trooper Chatman activated his lights, Agency conveniently ignores the reality that Employee’s driving that evening was the same when he got on I-395 South – weaving and accelerating in and out of traffic once he obtained clear space to do so. Employee avers that his acceleration at the time Trooper Chatman activated his light is not indicative of knowledge as the Agency attempts to suggest.<sup>27</sup>

After reviewing the dash camera footage, the undersigned agrees that Employee’s driving was consistent – weaving in and out of traffic at an accelerated speed once he got on I-395 South. The Panel confirmed this when it stated in its Finding of Facts that Trooper Chatman “observed [Employee’s] driving for approximately two minutes as [Employee] continued to drive erratically and **changing lanes rapidly** without concern for the safety of other drivers, his passenger or himself.” (Emphasis added). Also, Agency acknowledged under this charge that “Trooper Chatman was within three to four car lengths behind you when he activated his blue lights” not directly behind Employee. Trooper Chatman also testified that he was not directly behind Employee when he activated his lights. Therefore, it is highly possible that Employee did not see Trooper Chatman’s lights. Furthermore, while Officer A.G. (who was in the vehicle with Employee) noted that she was scared because of Employee’s driving behavior which caused her to close her eyes. Ofc. A.G. also stated

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<sup>26</sup> Agency’s Answer, *supra*.

<sup>27</sup> Employee’s Brief, *supra*.

that she did not hear Trooper Chatman's siren. Moreover, in dismissing the felony eluding charge, the Virginia judge in the related criminal matter cited that Employee accelerating his speed at about the same time Trooper Chatman activated his light could be a coincidence. Specifically, she stated that "it appears that the vehicle moved – was starting to change lanes to accelerate at about the same time the officer turned on the lights. Ultimately, the question is whether a reasonable fact finder could find that this was a willful and wanton disregard of the signal. And while the Court finds that maybe some fact finder could, I don't think that it would be a reasonable fact finder to find it beyond a reasonable doubt. I think the Commonwealth has not excluded even in the light most favorable to the Commonwealth the theory of innocence that this was a coincidence..." When Trooper Chatman questioned Employee immediately after the accident as to why he did not stop, Employee stated that he did not see Trooper Chatman and that he just wanted to go home, and he stated the same to IAD during his interview. Based on the record, I find that Agency has not established by a preponderance of evidence that Employee was aware that Trooper Chatman was attempting to stop him, and he deliberately accelerated his speed, then lied to IAD about this. Accordingly, I find that Employee did not willfully and knowingly make an untruthful statement of any kind in any verbal or written report ... to, or in the presence of, any officer, or intended for the information of any superior officer. Therefore, I conclude that Agency has not met its burden of substantial evidence for Charge No. 2., Specification No. 1.

The record also reflects that Employee pled guilty for reckless driving for how he operated his vehicle on November 22, 2023. He acknowledged that his driving was 'imperfect.' Employee's reckless driving resulted in an accident with another vehicle. Employee admitted to running red lights prior to the accident. Both Ofc. A.G. and the driver of the other vehicle sustained injuries, and they were transported to the hospital. Additionally, both Employee's vehicle and the other vehicle involved in the accident were 'totaled' as a result of the accident. Furthermore, Employee was scheduled to be on duty until midnight on November 22, 2023. Based on the record and Employee's own testimony, he left his overtime assignment with Officer AG at around 11:30 p.m. The record is void of any evidence to suggest that Employee had permission to leave his overtime assignment early. Employee argues that the shift supervisor signed his overtime sheet, which constituted authorization as a matter of practice and common sense. Even assuming that this was the case, I still find that Employee's reckless driving was done in disregard of safety and it caused an accident that resulted in property damage and injuries to Officer AG and a civilian, notwithstanding the seriousness of the injuries. Therefore, I find that Agency has met its burden for substantial evidence for Charge No. 3.

Pursuant to the record, Employee pled guilty to Charge No. 4., Specification No. 1. - Failure to obey orders or directives issued by the Chief of Police. Consequently, I find that Agency has met its burden for substantial evidence for this charge and specification.

Regarding Charge No. 5, Specification No. 1., I find that there is substantial evidence in the record to support Agency's assertion that Employee's misconduct garnered significant media attention and it was widely publicized on more than ten (10) major media outlets, as well as social media. Employee testified that the initial news reports of the incident "affected [Agency] in a negative light, but the report wasn't true, and I have no control over that." Tr. Vol. II. pgs. 18-21. Ofc. Fowler cited that she saw news articles about the incident. Tr. Vol. I. pgs. 268 – 270. Sgt. Labun noted that "I sampled ten different news outlets." He also asserted that there were several news articles with Employee's arrest booking image, his driving speed, the crash and his connection to MPD. Tr. Vol. I. pgs. 76-83.

For Charge No. 5., Specification No. 2, I find that the record does not support Agency's assertion that Employee "willfully and intentionally engaged in criminal conduct when [he]

*attempted to flee from the VSP after they attempted to stop [him] for speeding.”* (Emphasis added). The record does not support that Employee was aware that he was being pursued or that he was attempting to flee from the Virginia State Trooper when he crashed into a civilian’s vehicle. Accordingly, I find that Agency has not met its burden for substantial evidence for Charge No. 5, Specification No. 2.

**Whether there was harmful procedural error.**

In accordance with *Pinkard* and OEA Rule 631.3, the undersigned is required to evaluate and make determinations as to whether there are any harmful procedural errors in the administration of the instant action. OEA Rule 634.6 provides as follows: “notwithstanding any other provision of these rules, the Office shall not reverse an agency’s action for error in the application of its rules, regulations, or policies if the agency can demonstrate that the error was harmless. Harmless error shall mean an error in the application of the agency’s procedures, which did not cause substantial harm or prejudice to the employee’s rights and did not significantly affect the agency’s final decision to take the action.”

Employee avers that Agency committed harmful procedural error by failing to consider material evidence. Employee cites that Agency violated its duty “to ensure a fair and proper fact-finding proceeding when it failed to include several of Employee’s Exhibits entered into the record in its Findings issued by the Panel ... MPD failed to evaluate mitigating evidence entered on behalf of [Employee] thereby destroying their neutrality and impartiality as required by MPD’s own procedural due process guideline... Therefore, MPD’s termination of [Employee] must be rendered void *ab initio*.” Specifically, Employee notes that Agency’s Adverse Action Hearing Panel failed to include and considered Employee’s Exhibit 1 (the complete transcript of Employee’s related criminal matter in Virginia). Employee also asserts that the Panel explicitly omitted discussion of critical evidence including the criminal trial transcript, and the comparator discipline evidence. Agency highlights that under the ‘Summary of Evidence’ section of the MPD Adverse Action Hearing Panel’s Finding, it lists eight (8) Exhibits entered by Employee, which is incorrect. Employee asserts that he introduced eleven (11) Exhibits, but “critically, the three (3) Exhibits that are arguably the most influential for determining the critical issue of “felony eluding” (Trial Transcript – Exhibit 1) and the proper disciplinary sanction (Comparative Discipline cases – Exhibits 8 and 10) were not mentioned or even discussed in the Panel’s decision.”<sup>28</sup> Employee asserts that it addressed this issue with the Chief of Police and on appeal, “the Chief merely assumes (quite disgracefully) that the three (3) highlighted exhibits were properly reviewed and considered by the hearing Panel because “they were admitted into evidence at the hearing and presented for the record.””<sup>29</sup> Employee argues that failure to address such central evidence constitutes reversible error as it prejudiced the outcome of the matter. Agency avers that “because the substantive procedural defect undermines confidence in both the finding and the penalty, it is harmful error.”<sup>30</sup>

Agency contends that it did not commit harmful procedural error. Agency argues that “Employee’s argument conflates the Panel’s obligation to consider evidence with the obligation to discuss every exhibit in its written findings. All ten (10) of Employee’s Exhibits were admitted into evidence and are part of the official record... The Panel’s Summary of Evidence included a typographical error when it only listed eight exhibits that Employee presented, rather than the ten exhibits MPD filed as a part of the official record... Each of the three exhibits omitted from the Panel’s

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<sup>28</sup> Employee’s Brief, *supra*.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

summary of evidence was considered.” Agency also asserts that “the Exhibits are included in the record under Tab 4, Employee’s Exhibits, and Employee’s counsel presented the Exhibits during the hearing and discussed them during his closing arguments...The Panel explicitly noted that it based its findings “on the consideration of the evidence presented through documents, sworn testimony, and the representations and arguments of counsel” .... Nothing in the record suggests the Panel ignored any evidence.”<sup>31</sup> Agency cites that even if the three (3) Exhibits were not considered by the Panel, the Chief of Police addressed this issue and considered the Exhibits before rendering her Final Decision. Agency states that to support the assertion that the Chief of Police considered these Exhibit, the Chief of Police stated in her Final Decision that ““the dismissal of [Employee’s] felony eluding charge in a criminal court” did not make it “evident that [Employee] did not commit a crime.””<sup>32</sup> Agency avers that the Chief of Police highlighted the difference in the standard of proof in a criminal proceeding, compared to an administrative proceeding when discussing this issue. Agency asserted that assuming *arguendo* that the three (3) Exhibits were in fact omitted, it would not change the outcome of this matter because while the felony eluding charge was dismissed, a conviction does not change whether Employee committed the underlying misconduct. Agency maintains that the dismissal of the criminal charge under the beyond reasonable doubt criminal standard does not preclude an administrative finding under the preponderance standard. Agency also asserts that the comparable discipline cases do not change the outcome of this matter, therefore, “neither the Panel nor Chief Smith committed procedural error, and even if either did, any error was harmless because the allegedly omitted exhibits would not have changed the outcome.”<sup>33</sup>

Pursuant to *Pinkard*, the undersigned must determine whether there was harmful procedural error in Agency’s administration of the instant action. In accordance with the previously cited OEA rule, I find that the record does not support Employee’s claims of harmful procedural error. Furthermore, I must agree with Agency’s assertion that a failure to reference admitted evidence does not imply that the evidence was not reviewed and considered by the Panel and/or the Chief of Police.<sup>34</sup> Here, the Exhibits in dispute were discussed extensively during the Trial Board Hearing. Moreover, Employee cited these issues in his appeal of the Trial Board Panel’s decision to the Chief of Police and his appeal was denied. Specifically, the Chief of Police noted in their response that “the sustained charges are non-categorized offenses and based on the scope, severity, and egregiousness of [Employee’s] misconduct, I have concluded that termination is the only appropriate penalty.” Chief Smith also stated that the *Douglas* factor analysis was appropriate; that Employee acted in disregard of Agency policy; the mitigating circumstances do not warrant a reduction in penalty; and that Employee “cannot properly execute his duties as a sworn officer of the force, and termination is the only effective sanction for his unacceptable misconduct.” Therefore, I find that even if the Panel did not consider these exhibits, the record supports the assertion that the Chief of Police considered these Exhibits in reaching her decision to terminate Employee.<sup>35</sup> Pursuant to case law, I find that while the record suggests that Agency considered all the evidence, the Panel and/or the Chief of Police was not required to discuss every piece of evidence in their written decision. As a result, I further find that there were no harmful procedural errors committed in the administration of the adverse action. Accordingly, I conclude that there are any harmful procedural errors in the administration of the instant action.

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<sup>31</sup> Agency’s Brief, *supra*. See. also., Agency’s Sur-Reply (April 29, 2026).

<sup>32</sup> *Id.*

<sup>33</sup> *Id.*

<sup>34</sup> 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”).

<sup>35</sup> Agency’s Brief, *supra*. See. also. Agency’s Sur-Reply, *supra*.

***1) Whether Agency's action was in accordance with law or applicable regulation***

As noted above, I find that the record does not support Charge No. 2., Specification No. 1. - Violation of General Order 120.21, Attachment A, A-5, *which states, "Willfully and knowingly making an untruthful statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making an untruthful statement before any court or any hearing."* I also find that the record does not support Charge No. 1., Specification Nos. 1 and 2; and Charge No. 5, Specification No. 2. As such, Agency cannot rely on these charges and specifications to discipline Employee. Nonetheless, I find that there is substantial evidence in the record to support Charge No. 1, Specification Nos. 3 and 4; Charge No. 3, Specification Nos. 1, 2, and 3; Charge No. 4, Specification No. 1; and Charge No. 5, Specification No. 1, therefore, Agency can rely on these charges to discipline Employee.

**Whether the Penalty was 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).<sup>36</sup> According to *Stokes*, OEA must decide whether the penalty was within the range allowed by law, regulation, and any applicable table of penalties. Therefore, when assessing the appropriateness of a penalty, this Office is not to substitute its judgment for that of the Agency but is simply to ensure that "managerial discretion has been legitimately invoked and properly exercise." Specifically, OEA held in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), that selection of a penalty is a management prerogative that is not subject to the exercise of discretionary disagreement by this Office.<sup>37</sup> Accordingly, when an Agency charge is upheld, this Office will "leave Agency's penalty undisturbed when the penalty is within the

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<sup>36</sup> 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).

<sup>37</sup> *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)).

range allowed by law regulation or guidelines, is based on consideration of the relevant factors and is clearly not an error of judgement.”<sup>38</sup>

Here, I find that Agency has met its burden of proof for Charge No. 1., as it relates to reckless driving. The record shows that this was the first time Employee violated this cause of action. General Order Series 120.21, Attachment A, Part A-6, lists, “*Engaging in conduct that constitutes a crime*” as a cause of action.” A review of the Table of Penalties (“TAP”) pursuant to GO 120.21, Attachment A, Part B (Table of Penalties Guide), highlights that the charge of “*Engaging in conduct that constitutes a crime*” is classified as a “Termination offense”. The Table of Penalties specifies that a “**Conviction**” is required in order to terminate an Employee for “*Engaging in conduct that constitutes a crime, other than misdemeanor traffic.*” (Emphasis added). Nonetheless, this same Table of Penalties also classifies reckless driving as a ‘Tier 2’ offense. Specifically, the Table of Penalties lists “**Criminal Non-Felony Traffic Matters Offenses** (e.g., **Reckless Driving/Speed**)” as a ‘Tier 2’ offense and this carries a maximum penalty of a five (5) day suspension. (Emphasis added). While Employee was arrested, indicted and charged with felony eluding and reckless driving, the felony eluding charge was dismissed<sup>39</sup> and Employee was only convicted for reckless driving. Pursuant to Virginia law<sup>40</sup>, reckless driving is a “Class 1 misdemeanor”, not a felony. Accordingly, I conclude that Agency correctly classified this as a ‘Tier 2’ offense, however, I find that its chosen penalty of termination is not within the range allowed by law, regulation, and the applicable Table of Penalties.

Under Charge No. 3, Employee was charged with Violation of General Order 120.21, Attachment A, A-11, which states, “*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violations of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*” Pursuant to the Table of Penalties, a charge for ‘Conduct unbecoming’ is considered a “Non-Categorized Offenses” with the offenses classified as ‘Tier 2’ ‘Tier 3’ or ‘Termination’ offenses. Agency classified Charge No. 3., Specification Nos. 1 and 2 as ‘Tier 3’ offenses. A ‘Tier 3’ offense carries a maximum penalty of thirty (30) days suspension. Therefore, I find that Agency’s chosen penalty of termination for Charge No. 3., Specification Nos. 1 and 2., is not within the range allowed by law, regulation, and the applicable Table of Penalties.

Agency classified Charge No. 3., Specification No. 3., as a ‘Tier 2’ offense which is in alignment with the TAP. This carries a maximum penalty of a five (5) day suspension. While I find that Agency correctly classified this as a ‘Tier 2’ offense, I find that its chosen penalty of termination for Charge No. 3., Specification No. 3., is not within the range allowed by law, regulation, and the applicable Table of Penalties because the maximum penalty Agency can charge Employee for this specification is a five (5) day suspension.

Employee pled guilty to Charge No. 4., Specification No. 1 - Violation of General Order Series 120.21, Attachment A, Part A-16, which states, “*Failure to obey orders or directives issued*

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<sup>38</sup> *Id.* See also. *Sarah Guarin v Metropolitan Police Department*, 1601-0299-13 (May 24, 2013) citing *Stokes supra*.

<sup>39</sup> Even assuming that the undersigned found that there is sufficient evidence in the record to support a charge for felony eluding, Agency would still not be able to terminate Employee for the misconduct under this charge because the cause of action of ‘engaging in conduct that constitutes a crime’ requires a conviction, and Employee was not convicted for this misconduct.

<sup>40</sup> 46.2-868. Reckless driving; penalties. - A. Every person convicted of reckless driving under the provisions of this article is guilty of a Class 1 misdemeanor. See. <https://law.lis.virginia.gov/vacode/title46.2/chapter8/section46.2-868/> (Retrieved on August 31, 2026).

by the Chief of Police. Employee was charged for carrying his MPD issued pistol in a non-issued and unauthorized holster, which is classified as a ‘Tier 2’ non-categorized offense under the Table of Penalties. This carries a maximum penalty of a five (5) day suspension. While I find that Agency correctly classified this as a ‘Tier 2’ offense, I find that its chosen penalty of termination for Charge No. 4., Specification No. 1., exceeds the recommended penalty for this cause of action.

Agency classified Charge No. 5, Specification No. 1, as a ‘Tier 3’ offense, which aligns with the TAP and carries a maximum penalty of 30 days suspension. Therefore, I conclude that Agency correctly classified Employee’s conduct in Charge No. 5., Specification No. 1., as a ‘Tier 3’ offense, however, I find that its chosen penalty of removal is not within the range allowed by law, regulation, and any applicable Table of Penalties.

#### Penalty Based on Consideration of Relevant Factors

Although OEA has a “marginally greater latitude of review” than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.<sup>41</sup> The “primary discretion” in selecting a penalty “has been entrusted to agency management, not to the OEA.”<sup>42</sup> Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.<sup>43</sup> 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 OEA were in MPD’s shoes in the first instance; such an approach would fail to make proper deference to the Agency’s primary discretion in managing its workforce. Rather, OEA’s review of an agency-imposed penalty is essentially to ensure that MPD conscientiously considered the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if OEA finds that the agency failed to weigh the relevant factors, or that MPD’s judgment clearly exceeded the limits of reasonableness, is it appropriate for OEA then to specify how the MPD’s decision should be corrected to bring the penalty within the parameters of reasonableness.<sup>44</sup>

Additionally, in *Barry v. Department of Public Works*<sup>45</sup>, the OEA Board held that an Agency’s penalty will not be reversed unless it fails to consider relevant factors, or the imposed penalty constitutes an abuse of discretion. *Therefore, even if an agency’s selected penalty falls within the range allowed by law, it is not entitled to deference if the reviewing authority determines that the agency exceeded its discretionary authority.* (Emphasis added). Also, in *Employee v. D.C. Public Schools*<sup>46</sup>, the OEA Board held that the record was void of any evidence that the agency considered relevant factors when terminating the employee, which constituted an abuse of discretion. Similarly, in *Bryant and Love v. D.C. Department of Corrections*<sup>47</sup>, the OEA AJ found that the agency exceeded the exercise of its managerial discretion and failed to properly consider the relevant *Douglas* factors.

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<sup>41</sup> See, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981) (Federal Merit Protection Board case); Raphael 740 A. 2d 945).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> Raphael 740 A. 2d at 945.

<sup>45</sup> 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).

<sup>46</sup> OEA Matter No. 1601-0015-20, Opinion and Order on Petition for Review (January 4, 2024).

<sup>47</sup> OEA Matter Nos. 1601-0034-08R14 and 1601-0038-08R14 (November 4, 2014).

Here, Employee argues that termination was not the appropriate penalty. Employee asserts that “given that the incident only concerns speeding, a minor accident and a plea for reckless driving, ...removal is not the appropriate penalty in this case.” Employee cites that regardless of the seriousness of the accident, Agency “has routinely issued a lesser penalty under nearly identical circumstances. Therefore, Agency’s *Douglas*<sup>48</sup> assessment cannot stand.” Employee further argues that Agency is required to assess the *Douglas* factors when determining the appropriate penalty for the alleged misconduct. Employee avers that Agency’s penalty of termination should be set aside because it is “vague and ambiguous, is unsupported by the record, or lacks sufficient explanation as required by law.”

Citing to *Jahr v. District of Columbia*,<sup>49</sup> Employee further contends that a disparate treatment analysis is not required under *Douglas* factors nos. 6 and 7. He notes that “the Employee does not have the burden of proof here because this is a penalty assessment under *Douglas*, and not an Employee led Title VII action affirmatively alleging disparate treatment... As such, the Agency’s argument that the Employee must show that he “worked in the same organizational unit” “subject to discipline by the same supervisor” “within the same general period” is inapplicable in this case.”<sup>50</sup> Employee also cites to *MPD V. FOP/MPD Labor Committee*,<sup>51</sup> to support his assertion that Agency had the burden of proof for the *Douglas* factor analysis. Employee avers that Agency failed to discuss a single comparator employee in its *Douglas* factors Nos. 6 and 7 analysis and that a review of the comparative discipline proves that the penalty of termination was extensive.<sup>52</sup>

Agency asserts that its termination of Employee is in accordance with applicable laws and regulations. It avers that based on its factual findings and consideration of the *Douglas* factors, the Panel determined that Employee’s conduct warranted termination. Agency contends that the Panel conducted a thorough and balanced analysis of the *Douglas* factors and found six (6) of the 12 factors to be

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<sup>48</sup> *Douglas v. Veterans Administration*, 5 M.S.P.R. 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 any applicable agency table of penalties;
- 7) consistency of the penalty with those imposed upon other employees for the same or similar offenses;
- 8) the notoriety of the offense or its impact upon the reputation of the agency;
- 9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
- 10) potential for the employee’s rehabilitation;
- 11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and
- 12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

<sup>49</sup> 968, F.Supp 2d. 186, 192 (D.C. 2013).

<sup>50</sup> Employee’s Brief, *supra*.

<sup>51</sup> 47 D.C. Reg. 7217, Slip Op. No. 633, PERB Case No. 00-A-04 (2000) (stating that under a *Douglas* factor analysis the burden is on the Agency to prove its facts by a preponderance of evidence).

<sup>52</sup> Employee’s Brief, *supra*.

‘aggravating’; one (1) mitigating; and five (5) neutral. Additionally, Agency stated that Chief Smith rejected Employee’s argument in his appeal to the Chief of Police stating that the Panel did not consider the comparative discipline cases. Agency cites that Chief Smith found that “the sustained charges are non-categorized offenses and based on the scope, severity, and egregiousness of [Employee’s] misconduct, I have concluded that termination is the only appropriate penalty.”<sup>53</sup> Chief Smith also stated that the *Douglas* factors analysis was appropriate; that Employee acted in disregard of Agency policy; the mitigating circumstances do not warrant a reduction in penalty; and that Employee “cannot properly execute his duties as a sworn officer of the force, and termination is the only effective sanction for his unacceptable misconduct.”<sup>54</sup>

Additionally, Agency argues that Employee did not establish disparate treatment because he failed to prove that any of the comparative discipline involved substantially similar circumstances as required for a finding of disparate treatment. Agency attempts to distinguish Employee’s misconduct with that of the comparative employees, noting that in all six (6) comparative disciplinary cases, none of them was chased by law enforcement, fled, got into an accident that caused injuries and was untruthful. Therefore, Agency concludes that Employee is unable to meet its burden to establish disparate treatment, as such, the penalty of termination should be upheld.<sup>55</sup> Furthermore, Agency cites that it does not dispute the general principle as stated in *MPD V. FOP/MPD Labor Committee*, that Agency had the burden of proof for *Douglas* factors analysis, but it notes that none of the six (6) comparator employees were involved in the combination of offenses as in the current case. It cites that the circumstances are fundamentally different and render the comparators “inapposite under [*Douglas*] Factor 7.”<sup>56</sup>

In the current matter, both parties have agreed that pursuant to case law, Agency has the burden of proof regarding the assessment of whether the penalty was consistent with that imposed upon other similarly situated employees for the same or similar offenses, and if the penalty is consistent with the Table of Penalties. Employee further notes that most of the Panel’s *Douglas* factor analysis is wrong and for this reason, Agency’s decision to terminate Employee should be set aside as it is not within the tolerable limits of reasonableness.

In assessing and weighing the *Douglas* factors, and in determining the severity of Employee’s conduct, the undersigned finds that because the record does not support a charge for felony eluding pursuant to Virginia Code 46.1-817 and the charge for false statement, Agency cannot rely on these charges. Therefore, the undersigned further finds that the severity of Employee’s conduct is diminished because Agency cannot establish that Employee intentionally provided false statements to the IAD or that he willfully and intentionally fled from Trooper Chatman after he attempted to stop him for speeding.

The Trial Board Panel relied on both the sustained charges and the charges that were not sustained to assess the severity of Employee’s conduct. For instance, under *Douglas* Factors no. 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;** the Panel noted that:

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<sup>53</sup> Agency’s Brief, *supra*. See. also. Agency’s Sur-Reply, *supra*.

<sup>54</sup> *Id.*

<sup>55</sup> *Id.*

<sup>56</sup> Agency’s Sur-Reply, *supra*.

The Panel holds this to be an aggravating factor. This incident is significant wherein you engaged in misconduct that raises serious concerns surrounding your character, integrity and judgment, as a law enforcement officer. On November 22, 2023, after leaving your MPD overtime early without permission, **you willfully and intentionally engaged in criminal conduct when you attempted to flee from the VSP after they attempted to stop you for speeding.** You intentionally put everyone in your driving radius at risk, including yourself and your passenger, and the other driver. Your criminal and irresponsible behavior resulted in a serious traffic crash, causing extensive property damage and injuries to others. **You were arrested for and charged with fleeing from the police** and reckless driving and placed under arrest. On November 25, 2024, in a jury trial presided by Judge Wade of the Circuit Court for the City of Alexandria, you were found guilty of violation of Virginia Code 46.2-852 Reckless Driving. **During your IAD interview, you willfully and deliberately made false statements to the investigating agent regarding your actions.** Your misconduct was egregious and inexcusable, causing irreparable harm to your reputation as a law enforcement officer, and bringing discredit and embarrassment to the department. (Emphasis added).

In *Aguilar v. D.C. Office of Employee Appeals, et al.*<sup>57</sup>, the Superior Court for the District of Columbia held that if a penalty was imposed based on numerous incidents of misconduct and some of those incidents of misconduct are not substantiated, the Court must “scrutinize carefully the appropriateness of the penalty imposed.” Here, the undersigned finds that the penalty of termination was imposed based on numerous incidents of misconduct, some of which are not substantiated. For instance, the record does not support the assertion that Employee “*willfully and intentionally engaged in criminal conduct when [he] attempted to flee from the VSP after they attempted to stop [him] for speeding*” or that Employee *willfully provided untruthful statements to IAD during the investigation*. (Emphasis added). Based on the foregoing, I find that Agency’s penalty of termination is excessive and not within the parameters of reasonableness. Furthermore, pursuant to the applicable TAP, the sustained charges and specifications against Employee carry a maximum penalty of suspension, yet, the Panel noted ‘termination’ as the recommended penalty for all the charges levied against Employee under the ‘Recommendations’ section of its findings. Additionally, it should be noted that the misconduct of fleeing from law enforcement and making a false statement was not substantiated. Absent these charges, I conclude that the remaining misconduct/charges are less severe than what the Agency originally codified in its charging documents.<sup>58</sup>

The record also highlights that Agency relied on these actions of misconduct in its *Douglas* factor analysis and in its submissions to this Office. Specifically, in reference to *Douglas* factor nos. 6 and 7, when Employee argued that the imposed penalty was not consistent with that imposed upon other similarly situated employees for the same or similar offenses; Agency contended that Employee’s misconduct and the misconduct in the comparative cases are fundamentally different and render the comparators “inapposite under [*Douglas*] Factor 7.” Agency explains that *none of the comparative*

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<sup>57</sup> 2022 CA 003383 P(MPA) (D.C. Super. Ct. March 13, 2023). See. also. *Employee v. Office of the Chief Technology Officer*, OEA Matter No. 1601-0058-23, Opinion and Order on Petition for Review (December 18, 2025).

<sup>58</sup> *Id.*

*employees were chased by law enforcement, fled, got into an accident that caused injuries and was untruthful.* (Emphasis added).

Here, it appears Agency is not disputing that the comparator employees are similarly situated as Employee, but rather, Agency seems to take issue specifically with the similarity of the offense/misconduct between the comparator employees and Employee. That noted, I find that the record highlights that Agency imposed a penalty of suspension on other employees charged with similar misconduct. Notably, Agency acknowledged that Employee's most similar comparator – DRD# 558-22 received a 25-day suspension for driving 119 miles per hour. Agency attempts to distinguish Employee from this comparator employee by noting that the comparator employee's misconduct "... involved only speeding, **with no pursuit**, no crash, no injuries, and **no finding of untruthfulness.**"<sup>59</sup> (Emphasis added). Because the record does not support the assertion that Employee willfully engaged in a pursuit with the VSP or that he willfully made untruthful statements to the IAD, I find that this comparator employee's misconduct is substantially similar to Employee's misconduct, yet they received a penalty of suspension while Employee was terminated.

As previously cited, the parties have agreed that pursuant to case law, a disparate treatment analysis is not required under a *Douglas* factor analysis. Agency has acknowledged that it has the burden of proof with regard to assessing whether the penalty was consistent with that imposed upon other similarly situated employees for the same or similar offenses, and if the penalty is consistent with the Table of Penalties. Therefore, the undersigned will not address the issue of disparate treatment independent of the *Douglas* factors analysis. Moreover, the OEA Board highlighted in *Employee v. Metropolitan Police Department*,<sup>60</sup> that pursuant to *Singh v. U.S. Postal Service*,<sup>61</sup> a finding of disparate treatment is not outcome-determinative. This notwithstanding, I find that because Agency's *Douglas* narratives and some of the sustained charges were based on instances of misconduct not proven, the penalty of termination is excessive. Moreover, based on the record, absent the unsubstantiated incidents of misconduct, the undersigned finds that the charges/specifications levied against Employee were less severe than what Agency originally codified in its charging document. Additionally, the sustained charges and specifications carry a maximum penalty of suspension pursuant to the TAP.

Employee further contends that Agency did not consider the *Douglas* factor relating to his length of service, and performance on the job. He further notes that Agency did not consider mitigating factors, his potential for rehabilitation and effectiveness of other sanctions. In *Aronson v. D.C. Fire and Emergency Medical Services Department*, OEA Matter 1601-0128-99, Opinion and Order on Petition for Review (January 26, 2007), the OEA Board found that the employee's ten-year history, coupled with no previous adverse actions and his strong potential for rehabilitation, supported a different penalty.<sup>62</sup>

In the instant matter, Employee had been employed with Agency for approximately four (4) years and had no prior adverse action. Employee testified that he was rated a "successful performer" and Agency does not dispute this assertion. Moreover, the record suggests that Employee got along well with his colleagues, and that he was dependable. Nonetheless, Agency designated *Douglas* factor no. 4 - **The employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability** as 'neutral' instead of 'mitigating.' Employee

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<sup>59</sup> Agency's Reply, *supra*.

<sup>60</sup> OEA Matter No. 1601-035-25, Opinion and Order on Petition for Review (April 23, 2026).

<sup>61</sup> 2022 M.S.P.R. 15 (May 31, 2022).

<sup>62</sup> *See. also.* 2007 CA 001923 P(MPA) (D.C. Super Ct. April 22, 2008).

received several commendations and was the 'face of MPD' at some point prior to the incident. Further, Sgt. Shaheen asserted that as Employee's supervisor, he had a great experience with Employee. He explained that Employee was a great officer, "... he took his assignment. Never challenged an assignment. Never challenged a PSA... His reports were amazing... He was a straightforward, good officer... I enjoyed working with him... he is calm, always on time, a nice guy... I really had... a pleasant experience supervising him. And hopefully I get to supervise him again because he was an easy officer to work with." Sgt. Shaheen cited that he never wrote Employee up. He highlighted that he was never concerned about the truthfulness or accuracy in Employee's verbal or written communication with him. When asked if he would like to work with Employee in the future, Sgt. Shaheen said, "100 percent." When asked if viewing the dash camera footage changed his character testimony, Sgt. Shaheen said, "No, I would still like to supervise him if I get the chance."

Sgt. Burgos testified that "My impression of [Employee] is that he is very intelligent, articulate. He makes sure that whatever he needs to get done, if it's a scene or paperwork, it is done properly. He is very respectful. He always took his assignments, no issues. I never had any complaints from him professionally. And as sergeants, we do talk to each other about... who may or may not give us issues, and his name never, ever came up from any other officials." He also noted that he never received any complaints from citizens about Employee. When asked if while supervising Employee, he wrote him up or issue him any form of discipline based on his police work, Sgt. Burgos said, "No, no, no, never." He asserted that he never heard any officer "... ever say I don't want to ride with [Employee]" because of his driving style. Sgt. Burgos noted that he did not have any concerns about Employee's judgement. Tr. Vol. I. pgs. 317-320. When asked that if given the opportunity by this Panel to supervise Employee in the future, would he like to do so, Sgt. Burgos said, "Oh, absolutely." He explained that "... we are all humans. We are all going to make mistakes. But I am sure that [Employee] has learned from his mistakes. And I would have no issue working with him, give him a vehicle or anything to that situation where I believe... he would be in -- putting the department or anybody else in danger. I trust his judgment. He probably just had a bad day. And, you know, I do hope that I can work with him again because it was actually very pleasant to work with him on the evening tour. He was actually very reliable. Like I said, no issues. I said I needed this done. It was just done. There was no question about it, no arguments. Just, you know, a very pleasant experience that I have had working with [Employee]" Tr. Vol. I. pgs. 320-322.

Agency also designated *Douglas* factor no. 5 - **The effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties** as 'aggravating'. However, when asked if he would like to work with Employee in the future, Sgt. Shaheen said, "100 percent." When asked if viewing the dash camera footage changed his character testimony, Sgt. Shaheen said, "No, I would still like to supervise him if I get the chance." Additionally, when asked that if given the opportunity by this Panel to supervise Employee in the future, would he like to do so, Sgt. Burgos said, "Oh, absolutely." He explained that "... we are all humans. We are all going to make mistakes. But I am sure that [Employee] has learned from his mistakes. And I would have no issue working with him, give him a vehicle or anything to that situation where I believe... he would be in -- putting the department or anybody else in danger. I trust his judgment. He probably just had a bad day. And, you know, I do hope that I can work with him again because it was actually very pleasant to work with him on the evening tour. He was actually very reliable. Like I said, no issues. I said I needed this done. It was just done. There was no question about it, no arguments. Just, you know, a very pleasant experience that I have had working with [Employee]" Tr. Vol. I. pgs. 320-322.

Additionally, while the Panel found *Douglas* factor no. 12 - **Mitigating circumstances surrounding the offense, such as unusual job tensions, personality problems, mental impairment, harassment, bad faith, malice, or provocation on the part of others involved in the matter** to be a 'neutral' factor, citing that "the investigative report does not describe any mitigating circumstances surrounding your misconduct," I find that this is not supported by the record. The record suggests that Employee had just completed a 16-hour shift. He testified that ongoing relationship tensions between him and Officer A.G. resurfaced during their drive home on the night of the incident, which led to a heated argument, which significantly distracted him. He acknowledged that the emotional nature of their disagreement impaired his judgment and contributed to his careless driving behavior. Additionally, Employee admitted that he had been fatigued after the long workday and emotionally unsettled from the argument, which made him eager to get home quickly.

Furthermore, Agency rated *Douglas* factor no. 10 - **Potential for the employee's rehabilitation as 'aggravating'** despite Employee's testimony that he satisfied all the requirements of the sentencing for his reckless driving charge. Employee stated that he completed a Defensive Driving Course, a Reckless Driving Course, and community service. Employee noted that as of 2025, he has not been stopped or pulled over by law enforcement since the incident. Employee testified that following the November 22, 2023, incident, "... I've learned a lot. I've had time to reflect on myself a lot, and I've also had time to grow. ... I participated in both the reckless driving course and the defensive driving course to address my driving behavior, and I understand the importance of and adhering to, obeying the posted speed limits. I understand the risk that I posed to myself and others that night. And I understand that my actions have consequences, and I take responsibility for my actions and I own up to it, and understanding that this is not a situation that I ever want to be in again, so I know that something like this will never happen again. ... I agreed to uphold when I signed on to be a police officer. ... I've also gained a deeper understanding of my responsibility to carry myself in a manner that upholds MPD standards, whether on or off duty, just at all times."

Consequently, based on the above, and consistent with *Aronson*, the undersigned find that although this incident was publicized in the media<sup>63</sup>, Employee's approximately four (4) years history, coupled with no previous adverse actions, his ability to work well with his colleague, his dependability, his ability to perform at a satisfactory level and its effect upon supervisors' confidence in the employee's ability to perform assigned duties, his strong potential for rehabilitation, and the mitigating factors support a different penalty. As such, I conclude that the failure to properly accord factors their correct weight has the effect of invalidating Agency's *Douglas* factor analysis.<sup>64</sup>

In *Jones v. D.C. Public Schools Division of Transportation*, OEA Matter No. 1601-0077-09 (January 7, 2020), the AJ ruled that although the agency argued that it presented sufficient evidence to establish that its selection of the imposed penalty action was not arbitrary or capricious, removal was too harsh and the record lacked a sufficient evidentiary basis for the penalty of termination. Also, in *Tucker v. Department of the Army*<sup>65</sup> and *Bivens v. Tennessee Valley Authority*,<sup>66</sup> the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, held that when a deciding official fails to consciously consider relevant mitigating factors, an agency's penalty is not entitled to deference. In this case, there is

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<sup>63</sup> Even with the incident being publicized in the media which Agency captured in Charge No. 5, Specification No. 1., I find that the penalty of termination for this Tier 3 offense is not within the range allowed by the applicable TAP.

<sup>64</sup> *Employee v. Office of the Chief Technology Officer*, OEA Matter No. 1601-0058-23, Opinion and Order on Petition for Review (December 18, 2025).

<sup>65</sup> 2019 MSPB LEXIS 658 (M.S.P.B. March 12, 2019).

<sup>66</sup> 8 M.S.P.R. 458, 461 (1981).

substantial evidence in the record to support a finding that Agency failed to meaningfully weigh certain mitigating factors. There is also substantial evidence in the record to support a finding that Agency's chosen penalty of termination for: Charge No. 1., Specification Nos. 3 and 4; Charge No. 3, Specification Nos. 1, 2, and 3; Charge No. 4, Specification No. 1; and Charge No. 5, Specification Nos. 1., does not fall within the range allowed by law and the applicable TAP.

While the undersigned finds that Agency met its burden of proof as to a portion of Employee's actions, a reduction in the severity of conduct required the undersigned to carefully scrutinize the balance of each *Douglas* factor in this matter. The undersigned finds that Agency did not engage in a responsible balancing of the factors it considered, as it failed to consciously consider the relevant mitigating factors, and in doing so clearly exceeded the limits of reasonableness. Additionally, I find that Agency's penalty of termination is not within the range of penalties allowed by law and the applicable TAP. Therefore, I conclude that Agency exceeded the exercise of its managerial discretion and failed to properly consider the relevant *Douglas* factors. I further conclude that Agency's penalty of termination constitutes an abuse of discretion and that its action of removing Employee from service cannot be sustained.

### ORDER

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

1. Agency's action of terminating Employee is **REVERSED** and Employee shall be **REINSTATED** to his previous position of record.
2. Agency's action of terminating Employee for the following sustained charges and specifications is **REVERSED** and **MODIFIED** as follows:
  - a. Charge No. 1, Specification No. 3: **Tier 2 – 5 DAYS SUSPENSION**
  - b. Charge No. 1, Specification No. 4: **Tier 2 – 5 DAYS SUSPENSION**
  - c. Charge No. 3, Specification No. 1: **Tier 3 – 30 DAYS SUSPENSION**
  - d. Charge No. 3, Specification No. 2: **Tier 3 – 30 DAYS SUSPENSION**
  - e. Charge No. 3, Specification No. 3: **Tier 2 – 5 DAYS SUSPENSION**
  - f. Charge No. 4, Specification No. 1: **Tier 2 – 5 DAYS SUSPENSION**
  - g. Charge No. 5, Specification No. 1: **Tier 3 – 30 DAYS SUSPENSION**
3. Agency shall reimburse Employee all back-pay and benefits lost as a result of the termination.
4. Agency shall file within thirty (30) days from the date this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

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