THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0050-23R25
	)	
v.	)	Date of Issuance: May 30, 2025
	)	
D.C. FIRE AND EMERGENCY MEDICAL SERVICES DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Employee, *Pro Se*
Jeremy Greenberg, Esq., Agency's Representative

AMENDED INITIAL DECISION ON REMAND[2]

INTRODUCTION AND PROCEDURAL HISTORY

On July 13, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Fire and Emergency Medical Services Department's ("Agency" or "FEMS") decision to terminate him from his position as a Firefighter/EMT effective June 24, 2023. OEA issued a Request for Agency Answer to Petition for Appeal on July 13, 2023. Agency submitted its Answer to Employee's Petition for Appeal on August 11, 2023. This matter was assigned to the undersigned on August 14, 2023.

On August 22, 2023, the undersigned issued an Order Convening a Status/Prehearing Conference in this matter for September 12, 2023. During the Status/Prehearing Conference, the undersigned was informed that an Adverse Action Panel Hearing was convened in this matter on December 1, 2022. As such, OEA's review of 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).

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

[2] This Initial Decision on remand is an amendment to the Initial Decision in the above captioned matter that was issued on April 30, 2025. Pursuant to OEA Rule 633.2, "The jurisdiction of an Administrative Judge terminates upon issuance of the Initial Decision; Provided, that *the Administrative Judge shall retain jurisdiction over the appeal to the limited extent necessary to correct the record* or transcript, rule on a request by the employee for attorney fees, or process any petition for enforcement." (Emphasis added). Per directions from the OEA General Counsel's Office, the current amended decision is being issued to correct the record, so it reflects Employee's submission and arguments in support of his position.

Thereafter, on March 15, 2024, I issued an Initial Decision ("ID") in this matter reversing Agency's decision to terminate Employee. Agency appealed the ID to OEA's Board on April 18, 2024, and on January 16, 2025, the OEA Board issued an Opinion and Order ("O&O") remanding this matter to the undersigned.[3] The OEA Board remanded this matter "to be adjudicated based on analysis of the 2012 regulations and Agency's Order Book." The OEA Board also noted that the undersigned "did not make findings related to how, or if, Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties."[4]

Subsequently, on February 19, 2025, I issued an Order requiring the parties to submit written briefs addressing whether Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties. Agency's brief was due by March 12, 2025; Employee's brief was due by April 2, 2025; and Agency had the option to file a sur-reply by April 18, 2025. While Agency timely filed its brief, Employee did not comply with the February 19, 2025, Order.[5] Accordingly, on April 4, 2025, the undersigned issued an Order for Statement of Good Cause wherein, Employee was ordered to explain his failure to respond to the February 19, 2025, Order. Employee had until April 18, 2025, to respond to the Statement of Good Cause Order.[6] On April 11, 2025, Employee emailed a courtesy copy of his response to the February 19, 2025, Order noting that "I will be turning the physical copy in shortly."[7] Employee filed his brief with OEA on the same day.[8] On April 15, 2025, Agency filed a Motion to Strike Employee's "Rebuttal" or alternatively, Agency's Reply Brief. As of the date of this decision, Employee has not mailed or hand-delivered his brief in compliance with OEA rules, or the February 19, 2025, and April 4, 2025, Orders. The record is now closed.

JURISDICTION

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

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[3] *Employee v. D.C. Fire and Emergency Medical Services Department*, OEA Matter No. 1601-0050-23, Opinion and Order on Petition for Review (January 16, 2025),

[4] *Id*.

[5] The February 19, 2025, Order mailed to Employee's address on file was returned to OEA on March 3, 2025. Accordingly, a courtesy copy of the February 19, 2025, Order and a Change of Address form was emailed to Employee by OEA's administrative staff on March 4, 2025. Employee did not acknowledge receipt of the email, and he failed to provide this Office with an updated address as requested in the email. Employee was also reminded in that email that "OEA's official communication methods are by mail or hand delivery to the office. For ease of reference, see the link to the OEA rules 6B DCMR Chapter 6.pdf. Hence, the email above is a courtesy copy in light of the returned mail by USPS."

[6] The April 4, 2025, Order was returned to OEA by the USPS on April 28, 2025, as "Return to Sender. Not Deliverable as addressed. Unable to Forward."

[7] Employee's April 11, 2025, courtesy email filing was not accepted as part of the record.

[8] However, due to an administrative error at OEA, Employee's brief was not properly documented within OEA's internal system as having been filed. This triggered the issuance of the April 30, 2025, Initial Decision which dismissed Employee's appeal for failure to prosecute.

ISSUE

Whether Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties

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.[9]

OEA Rule § 631.2 *id.* states:

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

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW[10]

In its January 16, 2025, O&O remanding this matter to the undersigned, the OEA Board instructed the undersigned to adjudicate the current matter "based on analysis of the 2012 regulations and Agency's Order Book." Therefore, the undersigned will rely on the 2012 District Personnel Manual ("DPM") and the Agency's Order Book in adjudication the current matter. Additionally, the OEA Board instructed the undersigned to make findings related to how, or if, Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties. Accordingly, the only issue before the undersigned is whether Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties.

Agency's Position

Agency argues that Employee's conduct on December 30, 2020, and on March 14, 2021, conflicts with its operation, mission and core values of bravery, accountability, safety, integrity, compassion and service. Agency explains that Employee was scheduled to work on December 30, 2020, but because of his arrest, he called out from work to avoid being designated as Absent Without

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[9] OEA Rule § 699.1.

[10] Although I may not discuss every aspect of the evidence in the analysis of this case, I have carefully considered the entire record. *See Antelope Coal Co./Rio Tino Energy America v. Goodin*, 743 F.3d 1331, 1350 (10th Cir. 2014) (citing *Clifton v. Chater*, 79 F.3d 1007, 1009-10 (10th Cir. 1996)) ("The record must demonstrate that the ALJ considered all of the evidence, but an ALJ is not required to discuss every piece of evidence").

Leave ("AWOL"), thus impacting the performance of his duty. Additionally, Agency notes that Employee's conduct on December 30, 2020, and March 14, 2021, prove that Employee is undependable. Agency also asserts that it lost confidence in Employee based on his behavior towards law enforcement during the relevant period. Agency avers that Employee's conduct negatively impacted Agency's reputation and the efficiency of its operations. Agency referenced Ofc. Washington of Prince George's County Police Department's ("PG County PD") and Corporal Wooten of the Prince George's County Sherriff Department's ("PG County Sherrif Department") testimonies about their respective encounter with Employee during the relevant period, Employee's unprofessionalism and their negative impression about Agency. Agency contends that Employee's arrest for possession of a stolen regulated firearm, loaded handgun on a person in a vehicle, on December 30, 2020, and his arrest for assaulting his fiancé, assaulting law enforcement and disturbing the peace on March 14, 2021, conflict with Agency's mission to preserve life and safety. Agency states that Employee's conduct on December 30, 2020, and March 14, 2021, is consistent with the Article VII, Section 2 definition of 'employment related', accordingly, Employee's termination should be upheld.[11]

Employee's Position

Employee argues that his conduct on December 30, 2020, and March 14, 2021, did not adversely and materially affect, or was likely to affect, the efficiency of government operations or the performance of Employee's duties. Employee further argues that he did not violate Article VII, Section 2 of the Order Book. He explained that he was on leave during both the December 30, 2020, and the March 14, 2021, incidents, therefore, the efficiency of the government operations were not hindered nor was his job hindered in any way.[12]

Whether Employee's conduct on December 30, 2020, and March 14, 2021, adversely and materially affected, or was likely to affect, the efficiency of government operations or the performance of Employee's duties

The record is clear that both the December 30, 2020, and March 14, 2021, incidents occurred while Employee was off-duty. However, Agency argues that Employee's conduct on these dates was employment related. Citing to case law and Article VII, Section 2 of the Order Book, Agency avers that 'employment-related or omission' is defined as "an act or omission, occurring during a time that the member was other than on duty, and which adversely and materially affected, or is likely to affect, the efficiency of government operations or the member's performance of his or her duties." The OEA Board in *McCain v Fire and Emergency Medical Services Department*[13], opined that "because Article VII, Section 2 exists, this Board does not believe that the requirement for a nexus to Employee's position is needed. This section specifically covers incidents that occurred while an employee is off duty that affects agency's operation or Employee's performance of her duties."

I find that on December 30, 2020, Employee was arrested for possession of a loaded handgun on his person, while he was in the public parking lot of a senior citizen community. He did not immediately inform the officers that he was in possession of a handgun. Employee also acted in a disorderly manner, resisted arrest and struggled with the officers on the scene on March 14, 2021.

[11] Agency's Response to February 19, 2025, Order (March 3, 2025). *See also*. Agency's Motion to Strike Employee's "Rebutal" or alternatively, Agency's Reply Brief (April 15, 2025).
[12] Employee's Rebutal (sic) (April 11, 2025).
[13] OEA Matter No. 1601-0375-10, Opinion and Order (June 19, 2015).

Therefore, I find that these conflict with Agency's mission and core values of bravery, accountability, safety, integrity, compassion and service. Employee was arrested for his conduct which impacted Agency's operation on December 30, 2020, and Employee's ability to perform his job. Although Employee was not sick, he testified during the Trial Board Hearing that he had to take sick leave on December 30, 2020, when he was arrested, to avoid being charged with AWOL. Furthermore, Employee's failure to observe precautions regarding safety on December 30, 2020, and on March 14, 2021, constitutes neglect of duty.

In addition, I disagree with Employee's assertions that his conduct on the relevant dates did not adversely and materially affect, or was likely to affect, the efficiency of government operations or the performance of Employee's duties, and that he did not violate Article VII, Section 2 of the Order Book. On the contrary, consistent with the OEA Board's ruling in *McCain v Fire and Emergency Medical Services Departmen*t, and the OEA Board's reliance on Article VII, Section 2, of the Order Book, I find that Agency has proved that Employee engaged in "Any on-duty or employment-related act or omission that the employee knew or should reasonably have known is a violation of the law, and Any on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations to include: Neglect of Duty."

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).[14] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions ("TIA"); whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[15] In this case, the undersigned found in the March 15, 2024, ID that the Trial Board Panel met its burden of substantial evidence for the charges and specifications for Case No. **U-21-154** and for Case No. **U-21-087**. Agency did a thorough *Douglas* factors analysis in this matter. Therefore, I conclude that Agency has sufficient cause and was within its managerial discretion to terminate Employee.

As provided in *Love v. Department of Corrections*, OEA Matter No. 1601-0034-08R11 (August 10, 2011), selection of a penalty is a management prerogative, not subject to the exercise of discretionary disagreement by this Office.[16] When an Agency's charge is upheld, this Office has held

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[14] *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).

[15] *Butler v. Department of Motor Vehicles,* OEA Matter No. 1601-0199-09 (February 10, 2011) citing *Employee v. Agency*, OEA Matter No. 1601-0012-82, *Opinion and Order on Petition for Review*, 30 D.C.Reg. 352 (1985).

[16] *Love* also provided that "[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

that it will leave the agency's penalty undisturbed when the penalty is within the range allowed by law, regulation or guidelines, is based on consideration of the relevant factors, and is clearly not an error of judgment. I find that Agency has properly exercised its managerial discretion, and its chosen penalty of termination is reasonable and not an error of judgment.

ORDER

Based on the foregoing, it is hereby **ORDERED** that Agency's action of terminating Employee is **UPHELD.**

FOR THE OFFICE:

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

would fail to accord proper deference to the agency's primary discretion in managing its workforce. Rather, the [OEA's] review of an agency-imposed penalty is essentially to assure that the agency did conscientiously consider the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if the [OEA] finds that the agency failed to weigh the relevant factors, or that the agency's judgment clearly exceeded the limits of reasonableness, is it appropriate for the [OEA] then to specify how the agency's decision should be corrected to bring the penalty within the parameters of reasonableness." *Citing Douglas v. Veterans Administration.*