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THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

_____)	
In the Matter of:)	
)	
EMPLOYEE ¹ ,)	OEA Matter No. 1601-0060-22
)	
v.)	Date of Issuance: May 8, 2023
)	
D.C. FIRE AND EMERGENCY MEDICAL)	
SERVICES DEPARTMENT,)	MONICA DOHNJI, Esq.
Agency)	Senior Administrative Judge
_____)	
Employee, <i>Pro Se</i>)	
Rahsaan Dickerson, Esq., Agency's Representative)	

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On July 6, 2022, 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 25, 2022. OEA issued a Request for Agency Answer to Petition for Appeal on July 7, 2022. Agency submitted its Answer to Employee’s Petition for Appeal on July 22, 2022. Following an unsuccessful attempt at mediation, this matter was assigned to the undersigned on September 2, 2022.

On September 14, 2022, the undersigned issued an Order Convening a Status/Prehearing Conference in this matter for October 5, 2022. During the Status/Prehearing Conference, the undersigned was informed that an Adverse Action Panel Hearing was convened in this matter. 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). Thereafter, I issued a Post Status Conference Order the same day, requiring the parties to submit briefs addressing the issues raised during the Status/Prehearing Conference. The parties have submitted their respective briefs. The record is now closed.

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

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.²

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 Appeal³, Employee's adverse action was predicated on the following charges and specifications, which are reprinted in pertinent part below:

Charge 1: Violation of D.C. Fire and Emergency Medical Services Department Communications Operations Bulletin No. 6 (**Dispatch and Response Procedures**) which states:

2.0 Policy

2.3 Turnout and travel times established by NFPA 1710 shall be the Department standard regardless of the incident type, incident priority, or time of day.

² OEA Rule § 699.1.

³ Agency Answer at Tabs 23 (July 22, 2022).

3.0 DEFINITIONS

3.1 Turn out time – the time interval that begins when notification of the response is provided to the emergency response units by either an audible alarm or visual annunciation or both and ends at the beginning point of travel time.

3.1.1 The performance objective for turnout time is 60 seconds for EMS response.

Further violation of D.C. Fire and Emergency Medical Services Department Rules and Regulations Article VI (**General Rules of Conduct**) which states as follows

Section 2. Member shall devote proper attention to the service, exert their greatest energy and full ability in the performance of their duties, not perform their duties in a spiritless, lax, surly, or careless manner, not neglect nor fail to perform any portion of their duties required by rule, regulations, order common practice, or the necessities of the situation involved; avoid connection with any clique tending to interfere with good order; be efficient; exercise proper judgment in the performance of their duties.

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII § 2(f) (3) which states: “Any on-duty or employment-related act or omission that interfere with the efficiency or integrity of government operations, to with Neglect of Duty.” *See also* 16 DPM § 1603(3)(f)(3).

Specification 1 In his Special Report (dated 06/13/2021) Lieutenant Ward C. Caddington describes your misconduct as follows:

On June 1st, 2021, I was the Platoon Commander of Engine Company 27 on Platoon 2. On June 1st, 2021, Ambulance 27 (EMT Deborah J. Hassan ACIC, Firefighter/EMT [Employee] ACA, and Probationary Firefighter/EMT Zachary K. Aschenbrenner – Training 3rd) was dispatched on incident number F2100883215 to 208 Kenilworth Avenue NE on a Medical Response for a “BLS sick person.” **Ambulance 27 failed to acknowledge the radio requests from OUC after numerous attempts at contacting them on the following channels, Zero-1 dispatch, Zero-11 EMS, [and] Zero-12 EMS.** Due to Ambulance 27 failing [to] acknowledge the radio, Engine 27 (Lieutenant/Paramedic Ward C. Caddington, Technician Scott Moore, Firefighter/Paramedic Floyd York, and Firefighter/EMT Robert Gill) was immediately dispatched by OUC on incident F2100883215 to assist. While responding, Ambulance 27 ultimately answered the radio on Channel Zero-11 EMS marking on the scene at 208 Kenilworth Avenue NE.

Firefighter/EMT [Employee's] failure to observe precautions regarding safety as well as his careless/negligent work habits constitutes neglect of duty. Accordingly, this termination action is proposed.

Charge 2 Violation of D.C. Fire and Emergency Medical Services Department Order Book Article VI, §6 Conduct Unbecoming an Employee, which states:

Conduct unbecoming an employee includes conduct detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or any conduct that violates public trust or law of the United States, any law, municipal ordinance, or regulation of the District of Columbia committed while on-duty or off-duty.

Further violation of D.C. Fire and Emergency Medical Services Department Rules and Regulations Article VI (**General Rules of Conduct**) which states as follows

Section 5. Members shall conduct themselves in a respectful manner; be just, impartial, firm, and dignified in their relations with others; be respectful and obedient to their superior officers; accord proper respect to members and others; refrain from the use of harsh, violent, abusive, coarse, or insolent language; not unnecessarily disturb other members; refrain from unnecessary altercations; refrain from giving unauthorized orders or directions to other members.

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII § 2(h) which states: "Any act which constitutes a criminal offense whether or not the act results in a conviction." *See also* 16 DPM § 1603(h).

This misconduct is defined as cause in D.C. Fire and Emergency Medical Services Department Order Book Article VII § 2(f) (3) which states: "Any on-duty or employment-related act or omission that interfere with the efficiency or integrity of government operations, to with Neglect of Duty." *See also* 16 DPM § 1603(3)(f)(3).

Specification 1 In his Final Investigative Report (dated 09/27/2021), Lieutenant Weldon T. Genies, describes FF/EMT [Employee's] misconduct as follows:

CHRONOLOGICAL NARRATIVE SECTION

On Monday, June 14, 2021, the Office of Internal Affairs received an email from Deputy Fire Chief Juan Carter detailing the actions and behavior of [FF/EMT] [Employee] E-27-2. The email alleged that there was a workplace violence on the part of [FF/EMT] [Employee] on incident # F2100883215, 208 Kenilworth Ave NE.

COMPLAINANT'S STATEMENT

On Tuesday, June 29, 2021, the Office of Internal Affairs conducted an administrative interview with FF/PM Christopher Agbobli-Dougno.

[...] FF/PM Agbobli was asked what transpired on 208 Kenilworth Ave., to which he replied that A-27 was dispatched on a call, and didn't status in route, so E-27 was placed on the run then sent back once A-27 was statused (sic) in route. [...] He stated that A-27 responded, assessed the patient, and requested ALS. M-27 was dispatched on the run with A-17.

FF/PM C. Agbobli stated that all findings were in line with an NTL [Nurse Triage Line] referral. He stated that he explained everything that was done to the patient and was giving his recommendation. The patient stated that he didn't want to be seen at the clinic. His reasoning was that he called an ambulance because he wanted to go to the hospital. The patient was adamant about not speaking with the nurse. FF/PM C. Agbolbli stated that's when [FF/EMT] [Employee] said: "Hey Bra, I need to holla at you," to which he replied after the call was over. FF/PM C. Agbobli stated after he told [FF/EMT] [Employee] to wait, he grabbed the ambulance bag and stormed out of the apartment; he and his partner never saw him inside again.

FF/PM C. Agbobli was asked if he could visibly see that [FF/EMT] [Employee] was upset, to which he replied, "Yes," he was mumbling under his breath and stormed out of the apartment. The patient stated that he was going to stay home and see how he felt; if it got worse, he would call back. FF/PM C. Agbobli stated that they retrieved a signed refusal and gathered their equipment to leave the apartment. He stated that he went back to the unit and was finishing up documentation. That's when he received a phone call from Lt. W. Caddington.

FF/PM C. Agbobli stated that Lt. W. Caddington wanted him to go back to the patient and call AMR or have A-27 transport. He stated that he complied and made his way to the A-27 passenger side door and informed [FF/EMT] [Employee] of Lt. Caddington's directions. FF/PM C. Agbobli stated that this is when [FF/EMT] [Employee] and EMT D. Hassan stated simultaneously: **"Why the Fuck can't you go back in and call, what the fuck do you need us for."** [...]

[FF/EMT] [Employee] didn't agree with his recommendation. **[FF/EMT] [Employee] jumped out of the Ambulance and started to go off, and he was irate. [FF/EMT] [Employee] stated: "That he was a bitch-ass nigga, and he didn't like him." "What do you want to do? I will knock your punk-ass out."** FF/PM C. Agbobli was asked if this transpired at the scene and he said "Yes," he tried to diffuse the situation and told [FF/EMT] [Employee] to just go in service, they would call for AMR. **FF/PM C. Agbobli stated that he tried to walk around but [FF/EMT] [Employee] chest bumped him, so he backed up, and [FF/EMT] [Employee] continued to come forward and pushed him.**

[...] FF/PM C. Agbobli was asked how many times he was chest-bumped, to which he replied that **[Employee] was chest-bumping while he was yelling as he was backing up, when he finally got enough space in between, that (sic) when [FF/EMT] [Employee] pushed him.** [...] FF/PM C. Agbobli was asked what happened once you arrived back at E-27 Quarters, to which he replied that **A-27 returned to the Quarters, and [FF/EMT] [Employee] gets out and walks straight up to my door and continues his verbal assault.**

F/F [Employee backed up a little and **FF/PM C. Agbobli closed the Medic Unit's door, but [FF/EMT] [Employee] ripped the door back open, so he had to forcefully slam the door to close and lock it. He stated that [FF/EMT] [Employee] pulled out his phone and started recording, calling him a Bitch and a pussy, edging him to get out of the unit,** that's when Lt. Caddington came out to the bay floor.

INVOLVED MEMBER(S) STATEMENT(S)

[FF/EMT] [EMPLOYEE]

On Tuesday, September 14th, 2021, the Office of Internal Affairs conducted an Administrative Interview with [FF/EMT] [Employee].

[...] [FF/EMT] [Employee] stated that FF/PM C. Agbobli flagged down their ambulance as they were attempting to leave and yanked his door open. FF/PM C. Agbobli stated that since you want to overstep me, you call for AMR. He stated that the Lieutenant told you to get an AMR. That was the final straw for him, he got out of the unit and they were in each other's face exchanging words. **[FF/EMT] [Employee] was asked was there any profanity used, to which he replied "Yes,"** he was in my face also. [...] **[FF/EMT] [Employee] was asked if there was any physical contact between you and FF/PM C. Agbobli, to which he replied, our chest(s) bumped, we were that close.**

[...] [FF/EMT] [Employee] was asked once he arrived back at the firehouse did he continue the altercation with FF/PM C. Agbobli, to which he replied, he saw FF/PM C. Agbobli first and felt that he started with him and went over to him, I should have handled that a different way. He stated that he wanted to confront him about what happened on the scene.

FF/EMT [Employee's] admitted failure to observe precautions regarding safety as well as his careless/negligent work habits constitutes neglect of duty. Notwithstanding the fact that FF/EMT [Employee] was not prosecuted, his assault of a co-worker constitutes a criminal offense insofar as he violated laws, municipal ordinances, and regulations of the District of Columbia. Accordingly, this termination action is proposed.

On February 10, February 23, and March 2, 2022, Employee appeared before a Fire Trial Board. He was represented by counsel and pled Not Guilty to Charge 1 and Charge 2.⁴

SUMMARY OF THE TESTIMONY⁵

On February 10, February 23, and March 2, 2022, Agency held Trial Board Hearings in this matter. During the hearings, 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 Hearings.

Agency's Case-in-Chief

Vol I. – February 10, 2022

Weldon Genies Vol. I. Tr. pgs. – 39 - 123

Weldon Genies ("Lieutenant Genies") is employed with Agency and currently assigned to Truck 11, Platoon Number 3. On June 1, 2021, he was assigned to the Office of Internal Affairs ("OIA"). He was assigned to the OIA for about one and a half (1.5) years. His duties at the OIA involved investigating Agency complaints, and ongoing criminal complaints involving Agency members. Tr. Vol. I. pg. 40.

Lieutenant Genies stated that on June 14, 2021, the OIA became aware of a potential physical incident involving Employee and Firefighter Christopher Agbobli-Dougno, via an email from Deputy Fire Chief Juan Carter, who was previously the commander or deputy fire chief of Platoon Number 2. Tr. Vol. I. pg. 41. Lieutenant Genies noted that he was assigned to work on this case after the OIA received it. He then gathered as much information as possible, starting with special reports from all the witnesses on the scene and from the members, so he could get a detailed account of what happened. He also reviewed the incident report to see the type of medical call and what happened went on with the patient care aspect. Lieutenant Genies cited that he also reviewed journal entries to account for the times and the members on the platoon on that day in case he needed to get a statement from them. He also

⁴ *Id.*

⁵ *Id.* at Tab 18.

looked for any ambulance recordings/footages before he began the interview process. Tr. Vol. I. pgs. 42 – 43, & 81-82.

Lieutenant Genies testified that he interviewed all witnesses that were on scene, as well as two battalion supervisors that were over Employee throughout his duration at that Engine 27, Number 2 Platoon. The interviews were recorded and included in his final report. He affirmed that at the conclusion of his investigation, he created a report detailing his findings, and the report consisted of all the information he gathered throughout the process. Tr. Vol. I. pgs. 43 - 44. Lieutenant Genies acknowledged that Agency's Exhibit 12, was his final investigative report. Tr. Vol. I. pg. 45. Lieutenant Genies stated that he reviewed the special reports, and cross-referenced the information within, so he could clarify the information in the special report that did not make sense to him, during the interview. Tr. Vol. I. pg. 47.

Lieutenant Genies testified that the June 1, 2021, incident was initially reported to the Platoon Commander on that shift – Lieutenant Caddington (“Lt. Caddington”). Lieutenant Genies stated that when he interviewed Lt. Caddington, he informed Lieutenant Genies that he was not made aware that there was a physical aspect to the incident involving Employee.

Lieutenant Genies stated that upon review of the incident run report, he concluded that ALS/Medic 27 did everything correctly when they arrived at the scene. Tr. Vol. I. pg. 49. According to Lieutenant Genies, Firefighter/Paramedic Agbobli-Dougno would have had the lead because he was the highest-level provider on the scene. All the other members on the scene were either probationary members, EMTs only or EMT level providers. Tr. Vol. I. pg. 50.

Lieutenant Genies testified that after the scene was cleared, Firefighter Agbobli-Dougno received a call from Lt. Caddington while they were outside, and Lt. Caddington instructed Firefighter Agbobli-Dougno to call an AMR unit to transport the patient to the hospital. Firefighter Agbobli-Dougno went over to Ambulance 27 to request that they call AMR and wait for them to come transport the patient. Tr. Vol. I. pgs. 58-59. Lieutenant Genies asserted that when Firefighter Agbobli-Dougno informed the members of Ambulance 27 of Lt. Caddington's directives, they were upset. Employee opened the door, exited Ambulance 27 and confronted Firefighter Agbobli-Dougno on the scene. Tr. Vol. I. pg. 60.

Lieutenant Genies noted that Ambulance 27 members felt that Medic 27 should have waited on scene for the AMR unit to come to the residence to transport the patient. Lieutenant Genies stated that based on his investigation, it was alleged that Employee was yelling, using obscenities and cursing. He noted that Employee was pushing and chest-bumping Firefighter Agbobli-Dougno. Employee and Firefighter Agbobli-Dougno were in each other's face. While Firefighter Agbobli-Dougno was trying to retreat, Employee kept coming towards him. Members from both Ambulance 27 and Medic 27 exited tried to intervene by calming Employee down, to no avail. They got between Employee and Firefighter Agbobli-Dougno. Tr. Vol. I. pgs. 61-62. When Employee returned to Ambulance 27, Firefighter Agbobli-Dougno told Ambulance 27 members to go “in service” and that Medic 27 would wait for the AMR unit to arrive at the scene. Medic 27 stayed back, and AMR arrived and took the patient to the hospital. Tr. Vol. I. pg. 63.

Medic 27 arrived Engine 27 before Ambulance 27, thereafter, another altercation ensued between Employee and Firefighter Agbobli-Dougno. According to Lieutenant Genies, multiple

witnesses stated to him that Employee was still upset about the incident at 208 Kenilworth Ave, he felt disrespected by Firefighter Agbobli-Dougno and wanted to confront him. Employee went over to the ambulance, tried to open the door, while cursing, using obscenities, and calling Firefighter Agbobli-Dougno out of his name, causing commotion in the apparatus bay floor. Lt. Caddington was called to come outside by Firefighter Probationary Member Aschenbrenner. Lt. Caddington immediately went outside to investigate what was going on. Tr. Vol. I. pgs. 64-65. Lt. Caddington separated the two members to give them time to calm down – he had one member go to the watch desk and the other member sit in the company office. Tr. Vol. I. pg. 65.

Lieutenant Genies testified that he learned that Firefighter Agbobli-Dougno was not totally forthcoming with the events that happened at 208 Kenilworth when he talked to Lt. Caddington. He informed Lt. Caddington that he had an altercation with Employee, but Firefighter Agbobli-Dougno did not disclose that there was pushing, chest bumping or anything physical. Lieutenant Genies stated that when he interviewed Firefighter Agbobli-Dougno, he asked him about him about not being forthcoming with Lt. Caddington, and Firefighter Agbobli-Dougno explained that he did not want to blow it out of proportion because he did not know how Employee would react, or if he would start something else. According to Lieutenant Genies, information about a physical component of the incident was provided on June 5, 2021. Tr. Vol. I. pgs. 66-67.

Lieutenant Genies testified that there were many inconsistencies with EMT Deborah Hassan's statements when he interviewed her. He stated that EMT Deborah Hassan was not forthcoming with some information, and her account did not match that of the other members on her transport unit. He averred that EMT Hassan stated during her interview that she did not witness any physical contact. Tr. Vol. I. pgs. 68-69, & 86.

Lieutenant Genies also noted that he interviewed Employee. According to Lieutenant Genies, Employee stated that he felt that Firefighter Agbobli-Dougno did not have the best interest of the patient and that the patient should be transported to the hospital. Employee also noted that he felt disrespected when he tried to talk to Firefighter Agbobli-Dougno on the scene. Employee also asserted that there were other things that Firefighter Agbobli-Dougno was doing at the firehouse that Employee did not find appropriate. Tr. Vol. I. pgs. 73-74. Employee stated during the interview that he did not have a good relationship with Firefighter Agbobli-Dougno. Tr. Vol. I. pg. 76.

Lieutenant Genies acknowledged asking Employee about the physical altercation with Firefighter Agbobli-Dougno, to which Employee responded that they were in each other's faces, and he did not recall any physical contact. After refreshing his recollection, Lieutenant Genies stated that Employee did mention that they chest bumped and were in each other's faces. Tr. Vol. I. pgs. 77-78.

Lieutenant Genies also interviewed Probationary Firefighter/EMT Julio Quintero ("EMT Quintero") and cited he did not have too much information to offer. Tr. Vol. I. pg. 78. On cross-examination, Lieutenant Genies noted that EMT Quintero stated during the interview that he did not see any physical contact since he was in the back. Tr. Vol. I. pgs. 86-87. Lieutenant Genies testified that at the conclusion of his investigation, he sustained the charge of hostile work environment against Employee based on his verbal altercation, the alleged chest-bump and putting his hands on Firefighter Agbobli-Dougno on June 1, 2021. Tr. Vol. I. pgs. 79- 81, & 97 - 100. He also made the determination that Employee was the aggressor because members testified that when the members exited the unit and

tried to separate them, Firefighter Agbobli-Dougno retreated, while Employee continued on. Tr. Vol. I. pg. 80.

Lieutenant Genies noted on cross-examination that he was not present at both scenes on the June 1, 2021, and he did not have firsthand knowledge of what happened. Tr. Vol. I. pg. 82. He noted that he paraphrased what was said in the interview in his report. Lieutenant Genies stated that he audio-recorded every interview, which he listens to for used on his reports. He affirmed that Employee stated that there was no physical contact with Firefighter Agbobli-Dougno, but they chest bumped. He recalled hearing the word chest-bump, but without listening to the interview recording, he was not sure of the exact context. He asserted that he did not listen to the audio recordings prior to the Trial Board Hearing. Tr. Vol. I. pgs. 83-85.

Lieutenant Genies also affirmed that Leyland stated during the interview that she had no recollection of a physical altercation. However, Firefighter Agbobli-Dougno and Firefighter Probationary Member Aschenbrenner stated that there was a physical contact. Tr. Vol. I. pgs. 87-88. He affirmed that four (4) out of the six (6) members he interviewed between June and September of 2021, regarding this matter stated that there was no physical contact, and two (2) stated there was physical contact. Tr. Vol. I. pgs. 89-91.

Lieutenant Genies asserted that he was informed by Firefighter Agbobli-Dougno that Employee made threats against him, Firefighter Agbobli-Dougno. Lieutenant Genies however noted that EMT Quintero stated during the interview that he did not hear any threats made on the scene. Tr. Vol. I. pgs. 101-102.

Lieutenant Genies acknowledged that the initial written notification (“IWN”) was issued on July 29, 2021, after his interview with Firefighter Agbobli-Dougno, Leyland and Firefighter Probationary Member Aschenbrenner, but before he interviewed Employee, EMT Hassan and Probationary Firefighter/EMT Julio Quintero in September of 2021. Lieutenant Genies explained that his report had not been sent to anyone prior to the date of issuance of the initial written notice. He testified that the IWN was drafted by the Office of Compliance and the OIA had nothing to do with it. Lieutenant Genies noted that they rarely saw the charges generated by the Department after their investigation. Tr. Vol. I. pgs. 104 –106, & 118-119.

Upon review of Employee’s first interview recording at minute 2654, Lieutenant Genies affirmed that the recording was consistent with his report synopsis regarding physical contact. Tr. Vol. I. pg. 111.

When questioned by Chairperson Coombe, Lieutenant Genies confirmed that Firefighter Agbobli-Dougno relayed to him during the interview that he, Firefighter Agbobli-Dougno pushed Employee, when Employee chest-bumped him. Tr. Vol. I. pg. 124.

Kimberly Leyland Vol. I. Tr. pgs. 124 – 160

Kimberly Leyland (“EMT Leyland”) has been employed by Agency as an EMT for 18 years. She is currently assigned to Medic 27, Platoon 2. She was assigned to Medic 27, which provides Advance Life Support (“ALS”) service, on June 1, 2021, with Firefighter Agbobli-Dougno and Quinteros, as a

ride-along. Tr. Vol. I. pg. 125. EMT Leyland affirmed responding to 208 Kenilworth Ave during her tour on June 1, 2021. Medic 27 responded to 208 Kenilworth Ave based on a request for ALS assessment from Ambulance 27. Tr. Vol. I. pg. 126. Ambulance 27 crew was inside when they arrived at the scene. EMT Leyland stated that she did not observe anything as it pertained to patient care because her partner, Firefighter Agbobli-Dougno and Quinteros went inside and she stayed outside in Medic 27. According to EMT Leyland, Medic 27 and Ambulance 27 were parked nose to nose, bumper to bumper, about 30-40 feet apart. Tr. Vol. I. pgs. 127 -128, 145, 147.

EMT Leyland testified that she did not see anyone when she was outside. She noted that she was in the driver seat of Medic 27, when she observed Employee walk outside with a red Basic Life Support (“BLS”) bag which he put inside the ambulance. EMT Leyland asserted that Employee then entered the ambulance from the passenger side and slammed the door. The rest of the members from both units came out a few minutes later. Per EMT Leyland, Firefighter Agbobli-Dougno stated that he got a signed release and they did not have to take the patient to the hospital. Thereafter, Firefighter Agbobli-Dougno received a phone call and he stepped out of the vehicle to take the call. Tr. Vol. I. pgs. 128 -129, 146.

EMT Leyland noted that Firefighter Agbobli-Dougno’s demeanor was normal when he was taking the call. She noted that it was not a long call and it lasted a couple of minutes. According to EMT Leyland, when Firefighter Agbobli-Dougno got off the call, he walked over to the passenger side window of Ambulance 27 and relayed whatever message he got from the phone call. She could not hear the conversation between Firefighter Agbobli-Dougno and Employee. EMT Leyland averred that she saw everything that happened between Employee and Firefighter Agbobli-Dougno. EMT Leyland observed the passenger door of Ambulance 27 swing open and Employee came out after Firefighter Agbobli-Dougno as he was walking back to Medic 27. EMT Leyland observed Firefighter Aschenbrenner and EMT Hassan from Ambulance 27 get out of the ambulance to restrain and separate Employee and Firefighter Agbobli-Dougno. They got separated before he could call the police (a 10-33) in case of an actual physical altercation. EMT Leyland testified that Firefighter Agbobli-Dougno did not turn around, he just kept walking back towards the medic unit, while Employee followed and screamed at him. EMT Leyland testified that Employee and Firefighter Agbobli-Dougno were close to each other, but there was no physical touch. She stated that she did not see Employee physically assault Firefighter Agbobli-Dougno. EMT Leyland testified that Firefighter Agbobli-Dougno got back in the passenger door of medic 27, closed and locked the door. EMT Leyland stated that she heard Employee scream profane language. Firefighter Agbobli-Dougno did not engage with Employee, he told Ambulance 27 to go back into service and that Medic 27 would handle the situation. EMT Leyland affirmed that Firefighter Quintero was at the back of Medic 27. Tr. Vol. I. pgs. 130-141, 148-151, 156-159.

EMT Leyland testified that after they left the scene, they drove back to the firehouse. When she exited the ambulance, she went over to the sitting room to document the run. EMT Leyland highlighted that she did not see any more interactions between members of Medic 27 and Ambulance 27. EMT Leyland stated that Ambulance 27 was not at the firehouse when Medic 27 arrived. EMT Leyland asserted that he heard Lt. Caddington tell Employee and Firefighter Agbobli-Dougno to go into his office when Ambulance 27 returned to the firehouse. EMT Leyland acknowledged that when they got to the firehouse, no one asked her to write a special report about what happened at 208 Kenilworth Ave on June 1st. EMT Leyland stated that she completed a special report on June 9. She also gave an Internal Affairs Interview to Lieutenant Genies in connection with the current incident. Tr. Vol. I. pgs. 142 – 144, 149-152.

Julio Quintero - Vol. I. Tr. pgs. 161 - 205

Julio Quintero (“Firefighter Quintero”) became a Firefighter with Agency in June of 2020. He was a probationary employee assigned to Truck 4, Platoon number 2 at the time of the June 1, 2021, incident. He affirmed that as a probationary employee, he rode third on Medic 27 as part of his two (2) required ride-along on the medic unit. Firefighter Quintero acknowledged preparing a special report for a call at 208 Kenilworth Ave, NE. Tr. Vol. I. pgs. 161 – 164.

Firefighter Quintero testified that June 1, 2021, was the first time he rode on Medic 27. He noted that he rode with a lady and a driver, but he could not remember their names. He asserted that he rode at the back of the unit. Firefighter Quintero affirmed responding to a call for a patient having breathing issues on June 1, 2021. He remembered entering the residence with the medic. Firefighter Quintero stated that there were two (2) other people from the Ambulance that were in the residence. He averred that he did not recall the content of the conversation between the Paramedic and anyone from the Ambulance. He however recalled the mention of Nurse Triage Line, to which the patient declined. Firefighter Quintero asserted that when he got done with the patient, he returned to his backward facing seat at the back of the medic unit, waiting for the driver. Tr. Vol. I. pgs. 164 – 170, 172-174, 192.

Firefighter Quintero stated that when the driver/paramedic returned to the unit, he got a call and he got out of the unit to take the call. He stated that he heard a loud yelling voice that made him turn around towards the front. Firefighter Quintero stated that he heard the Paramedic and EMT exchanging words about patient care. He asserted that he saw the Paramedic walk up to Ambulance 27, as the two (2) started exchanging words. He recalled the EMT yelling at the Paramedic, and the Paramedic then walked over to Ambulance 27, while the EMT was by the ambulance door, halfway in and halfway out. They then moved to the street and were in each other’s faces (about an inch apart) arguing about patient care. Firefighter Quintero got out of the medic unit to try to break them up. He affirmed that the ambulance driver and the rookie in the ambulance were also present on the scene trying to calm things down. Firefighter Quintero stated that since the ambulance crew was closer, they got to the scene before him and when he arrived, he helped them break it up. He noted that he saw everything onward from when he heard the EMT and the Paramedic yelling and getting into each other’s faces. Tr. Vol. I. pgs. 174-180, 192, 194, 200-205.

Firefighter Quintero testified that the entire incident lasted about five (5) to ten (10) minutes. He stated that once they broke them up, the EMT and Paramedic were no longer in each other’s faces. He affirmed that the EMT and Paramedic were face to face. Tr. Vol. I. pgs. 181 - 182. Firefighter Quintero testified that based on his recollection, they were face-to-face and cannot say they were bumping against each other for certain. He affirmed that he did not see any physical contact or touching. He explained that he pulled the Paramedic away when they were breaking them up. Tr. Vol. I. pgs. 184, 193-194.

Firefighter Quintero affirmed preparing the special report on June 5, 2021. He acknowledged that the incident was fresher in his recollection on June 5, 2021, than it was on the date of the trial board hearing. He also affirmed that his special report does not identify the person he pulled off when they broke them up. Firefighter Quintero stated that his testimony is based on what he remembered. Tr. Vol. I. pgs. 185 – 187. He asserted that after the incident outside, Medic 27 stayed on the scene waiting for the AMR. Once it arrived and the patient was transported, they left for the firehouse – Engine 27. Tr. Vol I. pg. 188.

Firefighter Quintero asserted that when they got back to the firehouse, he went to the bathroom, he heard the Ambulance come in, and loud yelling again. He stated that he did not see what happened at the firehouse as he was coming out of the bathroom, which was inside the sitting room. The Lieutenant brought them inside his office as Firefighter Quintero was coming out of the bathroom. Tr. Vol I. pgs. 189 -191, 195.

Firefighter Quintero stated that he had a telephone interview with Lieutenant Genies about the incident. He affirmed that he told Lieutenant Genies that he did not think either Employee or the Paramedic were the aggressor. Firefighter Quintero also affirmed that he spoke to Lt. Caddington on June 1, 2021. Tr. Vol. I. pgs. 195-197.

Zachary Aschenbrenner Vol. I. Tr. pgs. 205 - 258

Zachary Aschenbrenner (“Firefighter/EMT Aschenbrenner”) was employed by Agency on July 20, 2020, and has been assigned to Engine Company 27 since January 20, 2021, as a Firefighter/EMT, trained in Basic Life Support (“BLS”). He was a probationary Firefighter/EMT on June 1, 2021. Tr. Vol. I. pgs. 205 - 206.

Firefighter/EMT Aschenbrenner recalled responding to a call at 208 Kenilworth Ave on June 1, 2021. He stated that he was riding third with EMT Hassan and Employee on that day. That was the first time he was riding with both of them and they were supposed to mentor him. Tr. Vol I. pgs. 207 – 208. When they arrived at the scene, Firefighter/EMT Aschenbrenner and Employee carried their equipment into the building and began assessing the patient. The patient had a slightly elevated heart rate and blood pressure and he complaint of chest pain. They requested a medic unit for further cardiac evaluation. Medic 27 was placed on the run and Medic 27 consisted of EMT Leyland as the driver, Firefighter/Paramedic Agbobli-Dougno, and Firefighter Quintero. Tr. Vol. I. pgs. 208 – 210.

Firefighter/EMT Aschenbrenner testified that he had ridden in the engine multiple times during his probationary period with Firefighter/Paramedic Agbobli-Dougno. He stated he had not ridden with EMT Leyland, but had worked with her at the firehouse. Firefighter/Paramedic Agbobli-Dougno and Firefighter Quintero got into the building and started ALS assessment of the patient. The patient’s vitals were stable at this time, so Firefighter/Paramedic Agbobli-Dougno recommended the Nurse Triage Line. The patient did not want this service and he signed a refusal. He asserted that Firefighter/Paramedic Agbobli-Dougno’s interaction with the patient was professional. Tr. Vol. I. pgs. 211-214.

Firefighter/EMT Aschenbrenner testified that while Firefighter/Paramedic Agbobli-Dougno was having a conversation with the patient about the nurse triage line, Employee exited the apartment after trying to talk to Firefighter/Paramedic Agbobli-Dougno. He explained that Employee stated that “Chris, let me holla at you outside”, but because Firefighter/Paramedic Agbobli-Dougno was in the middle of explaining the nurse triage line to the patient, he did not want to leave. According to Firefighter/EMT Aschenbrenner, Firefighter/Paramedic Agbobli-Dougno responded that Employee should hold on while he finished with the patient. Employee was agitated when he exited the apartment and he did not return. Firefighter/Paramedic Agbobli-Dougno remained in the apartment and got the patient to sign a refusal to transport. Tr. Vol. I. pgs. 215-216, 219, 234-235. Firefighter/EMT Aschenbrenner asserted that when they exited the apartment, he went to the back of the ambulance. He explained that he could not see

anything from the front window of the ambulance without turning the chair around. Tr. Vol. I. pgs. 217-219, 239.

Firefighter/EMT Aschenbrenner averred that while he was in the back of the ambulance and EMT Hassan and Employee were in the front, Firefighter/Paramedic Agbobli-Dougno walked over to Ambulance 27, and Firefighter/EMT Aschenbrenner heard a mumbling exchange between Employee and Firefighter/Paramedic Agbobli-Dougno. He could not hear what they were saying because the engine was running, however, he heard EMT Hassan yell “Why don’t you call them”. He stated that that’s the only conversation he heard before Employee got out of the ambulance. He heard Employee open the door. Thereafter, EMT Hassan asked Firefighter/EMT Aschenbrenner to go get Employee. This alerted him to the situation going on outside the ambulance. Firefighter/EMT Aschenbrenner stated that he opened the back door and exited the ambulance. He saw Employee yelling expletives, pursuing in an agitated manner, while pushing and chest bumping Firefighter/Paramedic Agbobli-Dougno. Firefighter/EMT Aschenbrenner averred that there were portions of the altercation outside the ambulance that he did not see. He explained that it wasn’t until after he exited the ambulance that he was able to see or hear what was happening. Tr. Vol. I. pgs. 220-222, 236-240.

According to Firefighter/EMT Aschenbrenner, Firefighter/Paramedic Agbobli-Dougno did not say a word. He was trying to get away from Employee, but Employee was angry and hostile, and he continued to pursue Firefighter/Paramedic Agbobli-Dougno with subtle shoving, pushing and chest bumps. Employee used both hands to push Firefighter/Paramedic Agbobli-Dougno. Firefighter/EMT Aschenbrenner testified that he placed himself between Employee and Firefighter/EMT Aschenbrenner with his hands out to separate them. But Employee pushed him so he could go after Firefighter/Paramedic Agbobli-Dougno. He affirmed that Employee was intentionally moving his chest outward to make physical contact with Firefighter/Paramedic Agbobli. He reiterated that there was contact between Employee and Firefighter/Paramedic Agbobli-Dougno before he got between them. Tr. Vol. I. pgs. 223-225, 240 -241, 255-257.

EMT Hassan and Firefighter Quintero all came out to help calm down the situation and Employee returned to the ambulance with them. Firefighter/EMT Aschenbrenner stated that they were closer to Ambulance 27, and he had his back turned to Firefighter/Paramedic Agbobli-Dougno, so he could not observe anything that might have happened with Firefighter/Paramedic Agbobli-Dougno at that point. Firefighter/EMT Aschenbrenner asserted that his main focus was to prevent the situation from escalating into something bigger. Firefighter/EMT Aschenbrenner stated that they did not call the police. Tr. Vol. I. pgs. 226-227, 243-245.

Firefighter/EMT Aschenbrenner testified that Medic 27 backed into the firehouse before Ambulance 27. At the firehouse, after EMT Hassan had exited the ambulance, Employee exited the ambulance, took out his phone and started recording Firefighter/Paramedic Agbobli-Dougno, while shouting expletives at him. Employee then walked over the passenger side of Medic 27 where Firefighter/Paramedic Agbobli-Dougno was sitting and pulled the door open so Firefighter/Paramedic Agbobli-Dougno could not reclose the door. Firefighter/EMT Aschenbrenner noted that it was a one-sided situation with Employee being the aggressor, as Firefighter/Paramedic Agbobli-Dougno did not respond to Employee. Firefighter/EMT Aschenbrenner went into the kitchen and got Lt. Caddington to calm down the situation. Lt. Caddington was able to break up the situation and he brought Employee and Firefighter/Paramedic Agbobli-Dougno separately into his office to talk to them. Firefighter/EMT

Aschenbrenner affirmed that sometime during that shift or a later shift, he was ordered to write a special report about the incident. He affirmed completing his special report on June 9, 2021. Tr. Vol. I. pgs. 229-233, 248-252.

Vol. II. February 23, 2022

Ward Caddington – Vol. II. Tr. 5 – 139

Lieutenant Ward Caddington (“Lt. Caddington”) has been employed by Agency since December 15, 2003. He has been a lieutenant assigned to Engine 27, Platoon 2 since November of 2019. As Platoon Commander for Engine 27, Platoon 2, he is responsible for all the administrative duties of the personnel assigned under him, as well as their training, education, and daily operations. Lt. Caddington affirmed that he was at work on June 1, 2021, and he recalled hearing of a call for service at 208 Kenilworth Ave on that date. He explained that Ambulance 27, was initially dispatched to 208 Kenilworth Ave alone as a BLS unit. While enroute, OUC was unable to get a hold of them on several dispatch channels to verify that they were actually enroute, so they immediately dispatched Paramedic Engine 27 to the run, which was also under his unit. Lt. Caddington asserted that all ambulance personnel are supposed to monitor the radio consistently, except for those riding third on the ambulance since they are probationer on training and have no responsibilities. He highlighted that the procedure was for the crew to update their status via the tablet. He affirmed that sometimes the tablets do not work or they are slow. Lt. Caddington noted that he did not cite EMT Hassan for violation of this dispatch procedure. He averred that Ambulance 27 finally made contact verbally with the radio and verified that they had been responding and they were on the scene and Engine 27 was no longer needed. OUC placed Engine 27 back in service, Engine 27 acknowledged the response from OUC and their status at that time was ‘in-service’ and available, as they returned to the firehouse. Tr. Vol. II. pgs. 5-14, 94-97, 128-129.

Lt. Caddington testified that when they returned to the firehouse, Medic 27 was dispatched to 208 Kenilworth Ave to assist. Thereafter, he received a call from Employee who was frustrated and upset about a conflict in the patient assessment on the scene. Employee felt that Firefighter/Paramedic Agbobli-Dougno was not doing a proper patient assessment. He told Employee he would call Firefighter/Paramedic Agbobli-Dougno to find out what the issue was. He stated that he could hear EMT Hassan’s voice in the background but he was not sure if the call was on speaker phone. Tr. Vol. II. pgs. 15 – 16, 18-19, 21, 97-99.

Lt. Caddington stated that after speaking to Employee, he called Firefighter/Paramedic Agbobli-Dougno and asked him to describe what was happening with the patient and he provided Lt. Caddington of his assessment of the patient. He stated that Firefighter/Paramedic Agbobli-Dougno was calm and his demeanor was normal. He then explained to Firefighter/Paramedic Agbobli-Dougno that based on the patient assessment and their refusal of the nurse triage line, Firefighter/Paramedic Agbobli-Dougno should call AMR and if AMR was unavailable to transport the patient, then they should use Ambulance 27 to transport. Firefighter/Paramedic Agbobli-Dougno agreed and hung up the phone. Tr. Vol. II. pgs. 21 – 26, 28, 100. Lt. Caddington does not recall receiving a call from Employee while Ambulance 27 was leaving the scene. Tr. Vol. II. pg. 100.

According to Lt. Caddington, he could see Medic 27 backing into the firehouse while he was eating lunch, but he did not pay any attention until he heard some commotion (loud yelling) down on the

apparatus floor. Firefighter/EMT Aschenbrenner came into the kitchen to tell him that Employee was verbally attacking Firefighter/Paramedic Agbobli-Dougno and that Lt. Caddington needed to intervene. He immediately went outside and saw that both Ambulance 27 and Medic 27 were in the firehouse, with Ambulance 27 backed in front of Medic 27. He testified that he saw Employee yelling profanities at Firefighter/Paramedic Agbobli-Dougno, like a ‘raving lunatic’ and taunting him. Lt. Caddington noted that Employee was standing outside of the driver side of Medic 27 with the door closed while Firefighter/Paramedic Agbobli-Dougno was at the passenger side with the ePCR and the door closed. Lt. Caddington asserted that he told Employee to stop, go into the company office, calm down and wait for him. Employee did as he was ordered. He then asked Firefighter/Paramedic Agbobli-Dougno to go wait for him in the watch office which was adjacent to the company office and he complied. Tr. Vol. II. pgs. 29 – 35, 102 -104.

Lt. Caddington affirmed that he prepared a special report for the June 1, 2021, incident at 208 Kenilworth Ave. He stated that after he sent Employee and Firefighter/Paramedic Agbobli-Dougno to the offices, he asked the personnel on Ambulance 27 and Medic 27 if anything happened at the scene of 208 Kenilworth Ave on June 1, 2021, none of them stated that anything happened. Lt. Caddington also acknowledged that EMT Hassan, EMT Leyland, firefighter Quintero, and firefighter/EMT Aschenbrenner all stated that there was no physical violence. He then interviewed Employee and Firefighter/Paramedic Agbobli-Dougno after about forty-five (45) minutes to an hour to ascertain the origin of the situation he just witnessed. He interviewed Employee first and Employee was very upset, argumentative and continued to use obscene words to describe Firefighter/Paramedic Agbobli-Dougno. According to Lt. Caddington, he asked Employee to stop and explain what happened. Employee explained that Firefighter/Paramedic Agbobli-Dougno disrespected him on the run and nobody was going to talk to him like that. Lt. Caddington stated that when he asked Employee if it got physical, and Employee said it was just words and nothing physical. He told Employee his behavior was unacceptable. Lt. Caddington noted that he then went to the watch office to interview Firefighter/Paramedic Agbobli-Dougno and he was calm and collected. He asked Firefighter/Paramedic Agbobli-Dougno what happened on the run and he explained that when they arrived at the scene to do patient assessment, Employee tried to talk to him and he told him he would talk to him when he was done with the patient assessment. Employee stormed out of the room and never came back. Vol. II. pgs. 35, 37-46, 104-108.

Lt. Caddington asserted that when he asked Firefighter/Paramedic Agbobli-Dougno if anything happened on the scene between him and Employee, Firefighter/Paramedic Agbobli-Dougno said ‘no’. He testified that he specifically asked Firefighter/Paramedic Agbobli-Dougno if there was any verbal or physical altercation at the scene, and he said ‘no’. Upon refreshing his recollection with his special report, Lt. Caddington asserted that he asked Firefighter/Paramedic Agbobli-Dougno if they just had a verbal altercation or if it was also physical and Firefighter/Paramedic Agbobli-Dougno stated it was just a verbal and not a physical altercation. He averred that he did not think Firefighter/Paramedic Agbobli-Dougno was being truthful because Firefighter/Paramedic Agbobli-Dougno was not looking at him straight in his eyes and he had his head down, he asked him again if there was no physical altercation and Firefighter/Paramedic Agbobli-Dougno said it was only verbal and not physical and that Employee was upset and he came at him yelling and taunting him to fight. Vol. II. pgs. 47 – 49.

Lt. Caddington testified that after his individual interviews with Employee and Firefighter/Paramedic Agbobli-Dougno, he brought them together in his office and talked to them about their behavior and explained the district’s ‘zero tolerance’ policies on verbal and physical abuse. He told

them they would be separated for the rest of the shift and they both agreed. Lt. Caddington admitted that he made the decision to counsel Employee and Firefighter/Paramedic Agbobli-Dougno on June 1, 2021, and he did not refer Employee for discipline on that date. Tr. Vol. II. pgs. 55-56, 112 -113, 126-127.

Lt. Caddington stated that they had 72-hours between shifts and during that time had had gone on an Agency fishing tournament and he heard rumors that the incident between Employee and Firefighter/Paramedic Agbobli-Dougno was more than verbal, and that it got physical. He stated that Captain Moore told him that Firefighter/Paramedic Agbobli-Dougno admitted to him that it had gotten physical on the run. During the next tour, he pulled Firefighter/Paramedic Agbobli-Dougno into the watch office, closed the door and asked him if there was something he wasn't telling him. He put his head down and said 'yes'. Firefighter/Paramedic Agbobli-Dougno admitted that there was a physical altercation on the 208 Kenilworth run and affirmed that he was assaulted by Employee, but he was not physically injured. Firefighter/Paramedic Agbobli-Dougno did not want the MPD called, and he stated that he did not want to do anything. Lt. Caddington averred that when he asked Firefighter/Paramedic Agbobli-Dougno why he did not tell him the truth during the first interview, Firefighter/Paramedic Agbobli-Dougno stated that he was scared of Employee and did not know how he would react. Tr. Vol. II. pgs. 57 – 62, 113 -115.

Lt. Caddington testified that he requested special reports from the Ambulance 27 and Medic 27 crew. Once he received them, he reviewed them and determined that Employee assaulted Firefighter/Paramedic Agbobli-Dougno. He completed his first endorsement which included attachments on June 11, 2021 and cited Employee with various violations of the Order book, rules and regulations and the hazing bulletin. Tr. Vol. II. pgs. 65-72. Lt. Caddington testified that he had formally cited Employee on several prior occasions for violation of the Order books and disregard of upholding policies. He asserted that Employee had a horrible attitude working with his crew at Engine 27. He witnessed verbal conflicts between Employee and almost all members on his shift at one point or another. He stated that Employee would get heated because he thought he was being disrespected. Tr. Vol. II. pgs. 75-82, 86-87.

Lt. Caddington noted that although Employee has had verbal altercations in the past, the reason he cited him this time was because this was the first time it got physical, and his only choice was to cite Employee since it became physical. Tr. Vol. II. pgs. 84. Lt. Caddington affirmed that his special report does not mention Employee's continuous use of profanity at Firefighter/Paramedic Agbobli-Dougno. Tr. Vol. II. pgs. 110-111. Lt. Caddington affirmed that he made his assessment of what happened based on the special reports he received. He stated that not all of Employee's prior discipline actions made it on Employee's disciplinary history report. Tr. Vol. II. pgs. 118-123, 131-133.

Christopher Agbobli-Dougno – Tr. Vol. I. pgs. 141 - 221

Christopher Agbobli-Dougno ("Firefighter/Paramedic Agbobli-Dougno") has been employed with Agency since September 2019, as a Firefighter/Paramedic. He has been stationed at Engine 27, Platoon #2 since June 27, 2020. His work schedule was 24 hours on and 72 hours off work schedule. Firefighter/Paramedic Agbobli-Dougno affirmed that he worked on June 1, 2020, on Medic 27, alongside EMT Leyland and Firefighter Quintero riding as third. Tr. Vol. II. pgs. 141 – 144.

Firefighter/Paramedic Agbobli-Dougno acknowledged responding to a call at 208 Kenilworth Ave on June 1, 2020. Ambulance 27 initially responded to the call, but after their assessment, they requested an ALS unit, and Medic 27 was dispatched to the scene. He stated EMT Hassan, Employee and Firefighter/EMT Aschenbrenner rode on Ambulance 27. Firefighter/Paramedic Agbobli-Dougno explained that he and Firefighter Quintero from Medic 27 went into the residence where Employee and Firefighter/EMT Aschenbrenner were already inside. Tr. Vol. II. pgs. 144 – 145.

Firefighter/Paramedic Agbobli-Dougno asserted that after completing his ALS assessment of the patient, he explained the nurse triage process to the patient, but the patient stated that he wanted a ride to the hospital in the Ambulance. Firefighter/Paramedic Agbobli-Dougno testified that Employee cut him off in the middle of his explanation of the nurse triage process to the patient, asking him to come into the hallway so he could talk to him about something. He explained that since he did not know what Employee wanted to talk to him about, he told Employee that they would talk after the run and he continued explaining the program to the patient. Employee then packed up his EMS bag and stormed out of the residence, while mumbling things under his breath. Firefighter/Paramedic Agbobli-Dougno noted that he remained in the building with Firefighter/EMT Aschenbrenner and Firefighter Quintero. He noted that they never called the nurse triage line as the patient refused to go through with that program. They then obtained a signed refusal from the patient, and a signature from the patient's wife as the witness. Tr. Vol. II. pgs. 145 – 154.

Firefighter/Paramedic Agbobli-Dougno testified that when they left the residence, they headed to Medic 27. He stated that after putting the equipment away, he went into the medic unit to complete his documentation. While doing so, he got a phone call from Lt. Caddington, who asked him to step outside of the medic unit and provide him with a rundown of what happened with the patient, which he did. Lt. Caddington explained to him that he received a phone call from Employee, and he also stated to Firefighter/Paramedic Agbobli-Dougno that they should not deny anyone ambulance transportation, even if they refuse to go to the nurse triage line. Lt. Caddington instructed Firefighter/Paramedic Agbobli-Dougno that he or Employee should return into the residence and transport the patient through Ambulance 27 or AMR. Tr. Vol. II. pgs. 154 – 157, 187-189.

Firefighter/Paramedic Agbobli-Dougno asserted that because Ambulance 27 was already backing out to leave the scene, he flagged them down and then walked to the passenger side of the Ambulance where Employee was seated. Employee opened the door. Firefighter/Paramedic Agbobli-Dougno explained that he told the ambulance crew that he just got off the phone with Lt. Caddington, and he wanted them to go back inside and transport the patient via ambulance or AMR. Tr. Vol. II. pgs. 158, 188-189.

Firefighter/Paramedic Agbobli-Dougno testified when he got done talking, Employee and EMT Hassan started yelling, asking why the medic unit crew could not go inside and call AMR to transport the patient. Employee then got out of the ambulance, very hostile, angry and started verbally assaulting him by yelling profanities at him. Firefighter/Paramedic Agbobli-Dougno highlighted that he felt threatened. Firefighter/Paramedic Agbobli-Dougno stated that he was within five (5) feet from the passenger seat. He testified that he and Employee were face-to-face; that he remained silent, took deep breaths and started walking back, but Employee kept coming after him. Firefighter/Paramedic Agbobli-Dougno stated that Employee intentionally chest-bumped him, he took a big step back and Employee kept coming towards him. At this point, both the ambulance and medic unit crews started getting out of

their vehicles to deescalate the situation. Firefighter/Paramedic Agbobli-Dougno asserted that Employee used both his hands to push him while he was still backing up. He stated that he put his hands up and walked to the opposite side of the street to his medic unit. He stated that the entire interaction from the time Employee got out of the passenger seat to when Firefighter/Paramedic Agbobli-Dougno walked to the medic unit lasted about three (3) minutes. He cited that EMT Hassan and Firefighter/EMT Aschenbrenner restrained Employee by putting themselves and their hands in between him and Employee. He stated that after Employee pushed him, he turned his back towards Employee, so he did not see Employee push Firefighter/EMT Aschenbrenner. Firefighter/Paramedic Agbobli-Dougno testified that after Employee stopped following him, he told Ambulance 27 to go back 'in service' and that they will call AMR and hand the patient transport. Tr. Vol. II. pgs. 159, 161 – 162, 189 -193, 212-213, 217.

Firefighter/Paramedic Agbobli-Dougno testified that Employee made two (2) physical contacts with him – first was the chest-bump, and then a push. He stated that he responded by trying to backup while attempting to put distance between the two (2) of them. He cited that he responded to the push by throwing his hands up in the air to avoid being the aggressor, backed up and tried an escape. Employee's crewmembers were able to get him back into the ambulance and they left. Tr. Vol. II. pg. 163.

Firefighter/Paramedic Agbobli-Dougno stated that Medic 27 returned to the firehouse – Engine 27, after the patient was transported to the hospital by AMR. He noted that they got back to the firehouse before Ambulance 27. When Ambulance 27 returned to the firehouse, it parked directly in front of Medic 27. He stated that he was sitting in the front passenger seat of Medic 27 working on the table when Ambulance 27 returned. Firefighter/Paramedic Agbobli-Dougno said Employee got out of Ambulance 27 and started walking over to Medic 27, closer to the passenger door, and began verbally assaulting Firefighter/Paramedic Agbobli-Dougno again. He testified that he closed the passenger door and Employee pulled it open. He closed it again, but Employee did the same thing, then he locked it. Firefighter/Paramedic Agbobli-Dougno averred that Employee went on the steps of the ambulance, pulled out his phone and started recording Firefighter/Paramedic Agbobli-Dougno as he was sitting in the medic unit through the window, while cursing and yelling at him. Firefighter/Paramedic Agbobli-Dougno testified that he was scared at that point because there was no one out there but for the two (2) of them. Lt. Caddington came out to the apparatus floor and asked Employee to go into the company room, and he asked Firefighter/Paramedic Agbobli-Dougno to sit in the watch room. Tr. Vol. II. pgs. 166 – 173, 194-195.

Firefighter/Paramedic Agbobli-Dougno testified that Lt. Caddington made a call to the Chief, placed both ambulances out of service and he interviewed both of them separately, starting with Employee and then Firefighter/Paramedic Agbobli-Dougno. He said Lt. Caddington later interviewed them together telling them that as professionals, they should not be berating and verbally assaulting their co-workers. He also told them that they needed to find ways to work together. Firefighter/Paramedic Agbobli-Dougno testified that his interview with Lt. Caddington was brief – he told Lt. Caddington what happened after he got off the phone with Lt. Caddington. He noted that out of fear and for his safety, he did not initially tell Lt. Caddington about the physical altercation. Tr. Vol. II. pgs. 173 – 177, 197-199, 203.

Firefighter/Paramedic Agbobli-Dougno stated that Captain Moore was the first person he told about the physical element of what happened on June 1, 2021, at 208 Kenilworth. He cited that he did

not call the police because the other crewmembers were able to get Employee back into the ambulance. Firefighter/Paramedic Agbobli-Dougno asserted that Lt. Caddington reached out to him after he spoke to Captain Moore, and they talked about the physical altercation and why Firefighter/Paramedic Agbobli-Dougno did not disclose this during their initial interview. He said he explained he admitted being wrong for not disclosing the information to Lt. Caddington and noted that he did that for safety reasons. Firefighter/Paramedic Agbobli-Dougno averred that during his next tour of duty which was four (4) days later, Lt. Caddington asked them to complete a special report on the June 1, 2020, incident at 208 Kenilworth. He also affirmed that he had an interview with Lieutenant Gaines from Internal Affairs. Tr. Vol. II. pgs. 180-182, 199 – 207, 213-214.

Employee – Tr. Vol. II. pgs. 221 - 314

Employee has been a Firefighter EMT with Agency for four (4) years. He is currently assigned at the Adam's Place Logistics, also known as logistics and they deliver supplies to different firehouses. Prior to his current assignment at Adam's place, he was assigned to Engine 27 Platoon number 2. Tr. Vol. II. pgs. 221 – 222, 263-264.

Employee affirmed that he was working on June 1, 2021, as the Ambulance Crew Assistant (“ACA”) on Ambulance 27, and EMT Hassan was the driver on that day. He noted that Firefighter/EMT Aschenbrenner was also riding on Ambulance 27, on that day. He acknowledged that Ambulance 27 was dispatched to 208 Kenilworth on June 1, 2021. Employee explained that Ambulance 27 noted that they were ‘en route’ but because the safety pad in Ambulance 27 had had problems for months, it was slow. He averred that it was both the Ambulance Crewmember in-Charge (“ACIC”)/driver and the ACA’s responsibility to status ‘en route’, but the ACIC/driver generally kept tabs on the status. Employee could not recall if Ambulance 27 verbally confirmed that they were on the scene at 208 Kenilworth. Tr. Vol. II. pgs. 222 – 224, 303-304.

Employee testified that when they got to the scene at 208 Kenilworth, EMT Hassan stayed in the ambulance while Employee and Firefighter/EMT Aschenbrenner went inside the residence to assess the patient. They did a patient assessment, and all his vitals were normal, but for his heart rate, which was slightly elevated. Employee stated that he called for an ALS medic unit over the radio on Channel 11, to ensure they were not missing anything. Medic 27 was dispatched to the scene. He provided that Firefighter/Paramedic Agbobli-Dougno, EMT Leyland and Firefighter Quintero were riding on Medic 27 on June 1, 2021, and Firefighter/Paramedic Agbobli-Dougno and Firefighter Quintero came into the residence. They conducted their own assessment of the patient. Employee cited that prior to the arrival of Medic 27, the patient repeatedly expressed that he wanted to be transported to the hospital because he had not been feeling well. Tr. Vol. II. pgs. 225 – 228.

Employee averred that after Firefighter/Paramedic Agbobli-Dougno completed his patient assessment, he informed the patient that there was no immediate life threat, and he referred the patient to the nurse triage line. Employee explained that Firefighter/Paramedic Agbobli-Dougno informed the patient that being transported to the hospital by the ambulance or AMR was not an option. He cited that Firefighter/Paramedic Agbobli-Dougno spent about ten (10) minutes trying to convince the patient to either do the nurse triage program or sign a refusal, despite the patient’s insistence on going to the hospital. Employee noted that those were not the only two (2) options available to the patient. Tr. Vol. II. pgs. 225 – 229.

According to Employee, when he realized the verbal exchange between Firefighter/Paramedic Agbobli-Dougno and the patient was not going anywhere, he asked Firefighter/Paramedic Agbobli-Dougno if he could speak with him outside. He asserted that they were trained to not show a difference in opinion in front of the patient. Employee testified that Firefighter/Paramedic Agbobli-Dougno told him he would speak to Employee after he got the patient to sign a refusal. Employee asserted that he took his EMS bag and walked out of the residence. He told EMT Hassan about the incident when he got to the ambulance. EMT Hassan then called Lt. Caddington on the speaker phone and they both narrated the incident to him. Employee cited that Lt. Caddington stated that he would call Firefighter/Paramedic Agbobli-Dougno and ask him to go back to the residence and have AMR transport the patient to the hospital. Tr. vol. II. pgs. 230 – 233, 272-273.

Employee testified that he remained in the ambulance after Lt. Caddington hung up the call until Firefighter/EMT Aschenbrenner returned to the ambulance. As Ambulance 27 was backing out of the scene, Firefighter/Paramedic Agbobli-Dougno was getting off the phone with Lt. Caddington and he flagged Ambulance 27 and they stopped. Employee testified that Firefighter/Paramedic Agbobli-Dougno walked to the ambulance and opened his door, stating that since Employee wanted to overstep by calling Lt. Caddington, Employee was going to call AMR and have the patient transported. Employee cited that he told Firefighter/Paramedic Agbobli-Dougno that Lt. Caddington stated that he would Firefighter/Paramedic Agbobli-Dougno call AMR to transport the patient. He maintained that Firefighter/Paramedic Agbobli-Dougno responded in a pushy manner that Employee was going to call AMR as he was told by Firefighter/Paramedic Agbobli-Dougno. Employee said he got out of the unit, and he told Firefighter/Paramedic Agbobli-Dougno that he was not scared of him and that Firefighter/Paramedic Agbobli-Dougno will not intimidate him like he did with the elderly patients. Employee stated that they were probably six (6) inches to a foot apart at this time. Employee affirmed using profanity towards Firefighter/Paramedic Agbobli-Dougno on the scene. Tr. Vol. 223 – 236, 289-291, 303.

When asked if he pushed Firefighter/Paramedic Agbobli-Dougno at any time during this interaction, Employee said 'no'. When asked if he put his hands on Firefighter/Paramedic Agbobli-Dougno, he said 'no'. Employee admitted that he told the internal affairs investigator during the interview that he touched chest with Firefighter/Paramedic Agbobli-Dougno. He explained that at the time, he was not able to fully express what he meant, and they were in such close proximity that they could have touched chests, but he did not touch Firefighter/Paramedic Agbobli-Dougno or anyone else. Tr. Vol. II. pgs. 236 -237. Employee testified that he had a verbal exchange with Firefighter/Paramedic Agbobli-Dougno while he was outside of the Ambulance. He stated that he was not restrained at the scene, and he did not physically touch Firefighter/Paramedic Agbobli-Dougno. He noted that EMT Hassan asked Employee to get back into the ambulance and he did. He stated that the entire interaction with Firefighter/Paramedic Agbobli-Dougno lasted about three (3) minutes. He stated that Firefighter/EMT Aschenbrenner's testimony that Employee pushed Firefighter/Paramedic Agbobli-Dougno was inaccurate. Tr. Vol. II. pgs. 238-240, 274-278, 300, 303.

Employee affirmed that Medic 27 was already at the firehouse when they got there, and Ambulance 27 backed in right in front of Medic 27. Employee stated that Firefighter/Paramedic Agbobli-Dougno was seated in the passenger seat of Medic 27, and he had to pass Medic 27 before he could get into the sitting area at the firehouse. He stated that there was no one else at the bay. Employee testified that he approached Firefighter/Paramedic Agbobli-Dougno to find out why

Firefighter/Paramedic Agbobli-Dougno felt the need to instigate and confront him that early in the day, when all he had to do was take Lt. Caddington's orders. Employee said Firefighter/Paramedic Agbobli-Dougno shut the door, so Employee called him a fraud and coward. Firefighter/Paramedic Agbobli-Dougno did not get out of the medic unit throughout this interaction. Employee stated that he did not go over intending to fight Firefighter/Paramedic Agbobli-Dougno. Employee cited Lt. Caddington came out after he heard the exchange of words, and he asked Employee to go to his office, which he complied to. Tr. Vol. II. pgs. 241 – 244, 281-282, 286-287, 293 -294, 296.

Employee said he was in the company office, and Lt. Caddington came to talk to him about what happened at the scene, and he explained what happened to Lt. Caddington. Employee affirmed having a conversation with both Lt. Caddington and Firefighter/Paramedic Agbobli-Dougno. He returned to work after the meeting. Tr. Vol. II. pgs. 244 – 247.

Employee affirmed completing a special report after the June 1, 2021, incident. Employee also admitted calling Lt. Caddington when they left 208 Kenilworth because he wanted to tell him what happened on the scene and also because he felt threatened by Firefighter/Paramedic Agbobli-Dougno. Tr. Vol. II. pgs. 266, 279-280

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Deborah Hassan – Tr. Vol. III. pgs. 5 – 63

Deborah Hassan (“EMT Hassan”) is a former EMT with Agency. She retired from Agency in December 2021. She was assigned to Engine 27, Ambulance 27 in June of 2021. She was driving Ambulance 27 on June 1, 2021, along with Employee and Firefighter/EMT Aschenbrenner. She was an ACIC. EMT Hassan was the most senior member of the department at the scene on June 1, 2021. Firefighter/Paramedic Agbobli-Dougno was the most senior in terms of patient care. Tr. Vol. III. pgs. 5 – 7, 18, 34-35, 56.

EMT Hassan recalled Ambulance 27 being dispatched to 208 Kenilworth Ave on June 1, 2021. She explained that after assessing the patient, Ambulance 27 concluded that the patient needed medic, thus, they requested a medic unit. Medic 27 was dispatched to the residence. She was in the ambulance when Medic 27 arrived. Firefighter/Paramedic Agbobli-Dougno got out of Medic 27 and walked to the patient's apartment. EMT Hassan recalled Employee and Firefighter/EMT Aschenbrenner came out of the apartment after Medic 27 arrived. Employee informed EMT Hassan that the elderly patient requested to be transported to the hospital, but Medic 27 was trying to talk him out of going to the hospital. EMT Hassan testified that she called Lt. Caddington and told him that the patient required a hospital visit, but Medic 27 was trying to talk him out of it. Lt. Caddington told her that he would call Medic 27. As they were backing out, about to leave the scene, Firefighter/Paramedic Agbobli-Dougno came out of the patient's apartment, approached Ambulance 27 from the passenger side where Employee was seated, opened the door open and said “since you want to go over my head, you call for AMR”. Employee then got out of the ambulance and approached Firefighter/Paramedic Agbobli-Dougno. EMT Hassan averred that she did not see Firefighter/Paramedic Agbobli-Dougno attempting to walk away. She stated that both Employee and Firefighter/Paramedic Agbobli-Dougno had to be restrained. Tr. Vol. III. pgs. 7 – 12, 18-19, 23, 33-38, 58-61.

EMT Hassan explained that a dispute ensued between Employee and Firefighter/Paramedic Agbobli-Dougno, and words were exchanged. She also stated that she could see both Employee and Firefighter/Paramedic Agbobli-Dougno throughout the dispute as she was seated in the driver's seat of the ambulance, looking out through the windshield and they were outside of the ambulance. Tr. Vol. III. pgs. 12 – 14.

EMT Hassan affirmed that she and Firefighter/EMT Aschenbrenner got out of the ambulance. When asked if she saw Employee make physical contact with Firefighter/Paramedic Agbobli-Dougno during this incident, she said 'no'. She noted that she did not see Employee strike or push Firefighter/Paramedic Agbobli-Dougno. She also highlighted that she did not see Employee make physical contact with Firefighter/EMT Aschenbrenner. She stated that Firefighter/Paramedic Agbobli-Dougno and Employee were in each other's face and there was too much confusion, screaming and hollering. EMT Hassan testified that she could not recall if she made physical contact with Employee or got in between Employee and Firefighter/Paramedic Agbobli-Dougno, but she recalled they were close. She did not have any recollection of pushing anyone, since the incident happened too fast, she could have grabbed or pushed Employee and Firefighter/Paramedic Agbobli-Dougno to try to prevent an incident. Tr. Vol. III. pgs. 14-15, 36-41, 53.

EMT Hassan testified that because Employee and Firefighter/Paramedic Agbobli-Dougno were arguing, she told them contain themselves since they were arguing. She affirmed that Employee finally got back into Ambulance 27. She estimated that Employee was outside of the ambulance for about a minute. EMT Hassan stated that after Employee got into the ambulance, they left the scene. Tr. Vol. III. pgs. 15 – 16, 42-43.

EMT Hassan asserted that when they got back to the firehouse, she retrieved the runs sheet and the ticket, and then headed into the EMS room to put the run in the book. Firefighter/Paramedic Agbobli-Dougno was in the passenger side of Medic 27. EMT Hassan highlighted that she did not witness any other dispute between Employee and Firefighter/Paramedic Agbobli-Dougno. Employee was out of the ambulance and Employee was pacing the apparatus floor, speaking loud and upset. Tr. Vol. III. pgs. 16-17, 45-49.

EMT Hassan stated that she was interviewed by an investigator from Internal Affairs. She testified that there was tension between Employee and other firefighters at Engine 27, including Firefighter/Paramedic Agbobli-Dougno. EMT Hassan asserted that she was disciplined (reprimand) in connection to the June 1, 2021, incident for lying. Tr. Vol. III. pgs. 25-26, 29-31, 50-51.

Durell Herman – Tr. Vol. III. pgs. 63 – 74

Durell Nathan Herman ("Lieutenant Herman") has been with Agency for fourteen (14) years. He is currently assigned to Truck Company 17 on Number 1 Platoon. He started at Logistics in March of 2020, and his responsibilities include to store inventory/equipment and sometime move them around from one place to another. Lieutenant Herman stated that he worked with Employee at the Adams Place in the summer of 2021. Employee reported to him, he showed genuine interest in what he did and he never had to ask Employee to do anything because he took initiative and got things done. Lieutenant Herman asserted that he did not have any issues with Employee's interaction with his co-workers at Adams Place. Tr. Vol. III. pgs. 64 – 73.

Christopher Adams – Tr. Vol. III. pgs. 75-81

Christopher Adams (“Captain Adams”) is the captain assigned to Adams Place Logistics, the second warehouse for the logistics division. He is responsible for maintaining and ordering COVID-19 supplies for Agency. He has been in this role since December 19, 2021. Captain Adams affirmed that in his current role, he is in Employee’s chain of command at Adams Place Logistics, as Employee works directly under his authority. He provided Employee with his daily task. Employee is not the only firefighter under his supervision. Captain Adams asserted that he has not had any issues with Employee’s work, and that Employee does what he is asked to do and beyond. He testified that he has observed Employee’s interaction with his coworkers at Adams Place and they get along fine. Tr. Vol. III. pgs. 75-79.

Panel Findings⁶

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

Charge 1

- 1) Ambulance 27 failed to acknowledge the radio request from the Office of Unified Communications after numerous attempts at contacting them on multiple channels.
- 2) The Department has established cause by a preponderance of the evidence on **Charge 1**.

Charge 2

- 1) In his interview with Lieutenant Weldon T. Genies from the Internal Affairs Division FF/EMT [Employee] admitted to chest bumping FF/P Christopher Agbobli-Dougno.
- 2) In his interview with Lt. Genies FF/P Agbobli-Dougno confirmed that FF/EMT [Employee] chest bumped and pushed him. This is supported by multiple witness statements.
- 3) Upon returning to the quarters of Engine 27, FF/EMT [Employee] continued to verbally assault FF/P Agbobli-Dougno. This is supported by multiple witness statements, including the testimony of Lt. Ward C. Caddington.
- 4) The Department has established cause by a preponderance of the evidence on **Charge 2**.

Upon consideration and evaluation of all the testimony, The Trial Board Panel found that there was a preponderance of evidence to sustain the charges against Employee. The Panel found Employee guilty of Charge No. 1, Specification No. 1 and Charge No. 2, Specification No. 1. In addition to making the findings of fact, the Panel also weighed the offenses against the relevant *Douglas* factors⁷ and

⁶ *Id.* at Tab 19.

⁷ *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:

concluded that termination for Charge No. 1, and Charge No. 2, was the appropriate penalty for these offenses.⁸

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW⁹

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,¹⁰ 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 discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.¹¹ 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.”

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

the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.

⁸ Agency Answer, *supra*, at Tab 19.

⁹ 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”).

¹⁰ 801 A.2d 86 (D.C. 2002).

¹¹ See D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

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 D.C. Fire and Emergency Medical Services Department and was the subject of an adverse action (termination); Employee is a member of the International Fire Fighters. Local 36, AFL-CIO MWC Union (“Union”) 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 February 10, February 23, and March 2, 2022, for an evidentiary hearing. This Panel made findings of fact, conclusions of law and recommended that Employee be terminated for the current charges. Consequently, I find that *Pinkard* applies in this matter. Accordingly, 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.

1) Whether the Adverse Action Panel’s decision was supported by substantial evidence

Pursuant to *Pinkard*, I must determine whether the Adverse Action Panel’s (“Panel”) decision was supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.¹² If the Panel’s 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.¹³

After reviewing the record, as well as the arguments presented by the parties in their respective briefs to this Office, I find that the Panel met its burden of substantial evidence for Charge No. 1, Specification No. 1 and Charge 2, Specification No. 1. Lt. Caddington testified that while enroute, OUC was unable to get a hold of them on several dispatch channels to verify that they were enroute, so they

¹²*Mills v. District of Columbia Department of Employment Services*, 838 A.2d 325 (D.C. 2003) and *Black v. District of Columbia Department of Employment Services*, 801 A.2d 983 (D.C. 2002).

¹³*Baumgartner v. Police and Firemen’s Retirement and Relief Board*, 527 A.2d 313 (D.C. 1987).

immediately dispatched Paramedic Engine 27 to the run, which was also under his unit. Employee explained that Ambulance 27 noted that they were ‘en route’ but because the safety pad in Ambulance 27 had had problems for months, it was slow. However, the record is void of any evidence establishing that Ambulance 27 responded to the radio communications from OUC on channel Zero-1 dispatch, Zero-11 EMS, and Zero-12 EMS, reason why Paramedic Engine 27 had to be dispatched to the run.

Additionally, Lieutenant Genies stated that Employee mentioned during the investigative interview that Employee and Firefighter Agbobli-Dougno chest bumped and were in each other’s faces. Firefighter/EMT Aschenbrenner also testified that he saw Employee yelling expletives, while pushing and chest bumping Firefighter/Paramedic Agbobli-Dougno. Employee admitted that he told the internal affairs investigator during the interview that he touched chests with Firefighter/Paramedic Agbobli-Dougno.

Firefighter/EMT Aschenbrenner also testified that Employee continued to pursue Firefighter/Paramedic Agbobli-Dougno with subtle shoving, pushing and chest bumps. According to Firefighter/EMT Aschenbrenner, Employee used both hands to push Firefighter/Paramedic Agbobli-Dougno. Firefighter/EMT Aschenbrenner further testified that he placed himself between Employee and Firefighter/EMT Aschenbrenner with his hands out to separate them. However, Employee pushed him so he could go after Firefighter/Paramedic Agbobli-Dougno. He affirmed that Employee was intentionally moving his chest outward to make physical contact with Firefighter/Paramedic Agbobli. He reiterated that there was contact between Employee and Firefighter/Paramedic Agbobli-Dougno before he got between them. Firefighter/EMT Aschenbrenner testified that at the firehouse, Employee exited the ambulance, took out his phone and started recording Firefighter/Paramedic Agbobli-Dougno, while shouting expletives at him.

Furthermore, Firefighter/Paramedic Agbobli-Dougno stated that Employee intentionally chest-bumped him, he took a big step back and Employee kept coming towards him. Firefighter/Paramedic Agbobli-Dougno testified that Employee made two (2) physical contacts with him – first was the chest-bump, and then a push. Employee also affirmed using profanity towards Firefighter/Paramedic Agbobli-Dougno on the scene. Based on the aforementioned, I find that there was substantial evidence in the record to support the Panel’s findings with regard to Charge No. 1, Specification No. 1 and Charge No. 2, Specification No. 1.

2) Whether there was harmful procedural error

Upon review of the record, the undersigned noticed that Agency used an older version of the DPM in this matter. The parties did not address this issue. It is undisputed that Agency used the 2012 version of the DPM in its administration of the instant adverse action. The District of Columbia Municipal Regulations (“DCMR”) and the corresponding District Personnel Manual (“DPM”) regulate the manner in which agencies in the District of Columbia administer adverse and corrective actions. The current and applicable DCMR and DPM versions (DCMR 6-B Chapter 16 and DPM Chapter 16) regulating the manner in which agencies administer adverse action went into effect in the District in 2019. Consequently, all adverse actions commenced after this date were subject to the new regulation, as noted in 2019.

In the instant matter, Employee was terminated effective June 25, 2022, and the current version of the DPM was already in effect. Moreover, the incident occurred on June 1, 2021, after the current DPM version was already in effect.

A review of Order Book Article VII, Section 1, provides that:

Disciplinary actions against firefighters at the rank of captain and below shall be governed by the collective bargaining agreement between the Department and D.C. Fire Fighters' Association Local 36 and Chapter 16 of the D.C. Personnel Manual (DPM). In the event of a conflict between the collective bargaining agreement and Chapter 16, the collective bargaining agreement shall prevail. (Emphasis added).

Furthermore, Article 31, Section A of the CBA between Employee's Union and Agency provides:

Disciplinary procedures are governed by applicable provisions of Chapter 16 of the District Personnel Manual, and the Department's Rules and Regulations and Order Book, except as amended/abridged by this Article. Disciplinary procedures are also governed by applicable sections of the District of Columbia Official Code, of which such sections shall supersede the provisions of this Article. (Emphasis added).

The record is void of any indication that Employee's Union invoked its rights to bargain or made a request to bargain the changes in Chapter 16 of the 2017 or 2019 DPM. Therefore, I further conclude that the applicable DPM at the time of the current disciplinary action was the 2019 DPM.

In this matter, under Charge 1, Specification 1, Employee was charged with Neglect of Duty. And under Charge 2, Specification 1; Employee was charged with Conduct unbecoming - Neglect of duty and Any act which constitutes a criminal offense whether or not the act results in a conviction, pursuant to the Order Book and the 2012 version of the DPM. Since the undersigned has concluded that the applicable DPM at the time of the current action was the 2019 DPM version, I additionally find that Agency used the incorrect DPM version.

Neglect of Duty:

Here, Employee was charged with Neglect of duty pursuant to the Order Book Article VII, Section 2(f)(3)¹⁴ and 16 DPM §1603.3(f)(3)¹⁵ in compliance with Order Book Article VII, Section 1 and Article 31, Section A of the CBA, which required that all disciplinary actions against firefighters at the rank of captain and below be governed by the CBA and Chapter 16 of the DPM. However, in the current matter, because the cause of action occurred in 2021, and Employee was disciplined in 2022, the applicable DPM is the 2019 DPM. Moreover, 16 DPM §1603.3(f)(3) does not exist in the current DPM, as the 2017 version of the DPM, moved all the adverse action charges to DPM § 1605. Thus, in the

¹⁴ Order Book Article VII, Section 2(f)(3), defines cause as “[a]ny on-duty or employment-related act or omission that interferes with the efficiency and integrity of government operations, to include: (3) Neglect of duty.”

¹⁵ Under the 2012 DPM version, this section correlated with “[a]ny on-duty or employment related act or omission that interferes with the efficiency and integrity of government operations, specifically neglect of duty”.

current DPM, there is no 16 DPM §1603.3(f)(3) and the charge of neglect of duty can now be found in DPM § 1605.4(e), with its corresponding penalty found in DPM § 1607.2(e).

Any act which constitutes a criminal offense whether or not the act results in a conviction:

Agency also charged Employee with “Any act which constitutes a criminal offense whether or not the act results in a conviction pursuant to the Order Book Article VII § 2(h) and 16 DPM §1603.3(h) in compliance with Order Book Article VII, Section 1 and Article 31, Section A of the CBA, which required that all disciplinary actions against firefighters at the rank of captain and below be governed by the CBA and Chapter 16 of the DPM. This cause of action does not have a corresponding provision in the 2019 version of Chapter 16 of the DPM. Further, there are substantive changes in the 2019 version of the DPM with regard to the charges and penalties such that the undersigned would be unable to ascertain which charges should have been levied against Employee had Agency utilized the appropriate version.¹⁶ OEA has held that it is required to adjudicate an appeal on the “grounds invoked by agency and may not substitute what it considers to be a more appropriate charge.”¹⁷ Additionally, this Office has held that an employee must be aware of the charges for which they are penalized in order to appropriately address/appeal those charges.¹⁸

Upon review of the record, the undersigned concluded that there were substantive changes in the 2012 DPM related to the charges and penalties as compared to the current 2019 DPM version. The undersigned can only adjudicate the current appeal based on the grounds invoked by Agency in the Final Agency Decision. Agency disciplined Employee under an incorrect DPM version. Thus, I am unable to determine which cause of action could have been levied against Employee had Agency utilized the appropriate version. The only similar charge found in the 2012 DPM version and the 2019 DPM version of the DPM is the charge of Neglect of Duty, however, Agency failed to identify the charge under the applicable DPM.

Moreover, the D.C. Superior Court in *D.C. Office of the Attorney General v. Office of Employee Appeals*, 2019 CA 5286 P(MPA) (July 2, 2020), found that the Advance Notice and Final Decision issued by OAG failed to adequately identify the charges underlying [employee’s] proposed removal. It concluded that “... OAG’s failure to provide [employee] with adequate notice of the charges underlying her proposed termination prevented her from knowing “the allegations . . . she w[ould] be required to refute or the acts . . . she w[ould] have to justify, thereby [depriving her of] a fair opportunity to oppose the proposed removal.””¹⁹ The D.C. Superior Court agreed with the OEA Board and AJ Harris’s decision in *Rachel George v. D.C. Office of the Attorney General, supra*, that OAG’s failure “to identify the charges underlying [employee’s] proposed termination in the Final Agency Notice deprived [employee] of the notice to which she is entitled, as well as an opportunity to adequately defend herself.” Citing to case law, the D.C. Superior Court further opined that “[A]n employer is required to provide an employee, against whom an adverse action is recommended, with advance written notice

¹⁶ *Madeleine Francois v. Office of the State Superintendent of Education*, OEA Matter No. 1601-0007-18, Opinion and Order (July 16, 2019); See also *Stephanie Linnen v. Office of the State Superintendent of Education*, OEA Matter No. (February 13, 2019).

¹⁷ *Kenya Fulford-Cutberson v. Department of Corrections*, OEA Matter No. 1601-0010-13 (December 19, 2014). Citing to *Gottlieb v. Veteran Administration*, 39 M.S.P.R. 606, 609 (1989) and *Johnston v. Government Printing Office*, 5 M.S.P.R. 354, 357 (1981).

¹⁸ *Rachel George v. D.C. Office of the Attorney General*, OEA Matter No. 1601-0050-16, Opinion and Order (July 16, 2019); See also *Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994); *Johnston v. Government Printing Office*, 5 M.S.P.R. 354, 357 (1981); and *Sefion v. D.C. Fire and Emergency Svcs.*, OEA Matter No. 1601-0109-13 (August 18, 2014).

¹⁹ Citing to *Office of the D.C. Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994), at 662.

stating any and all causes for which the employee is charged and the reasons, specifically and in detail, for the proposed action.”²⁰

Similarly, here, I find that Agency’s failure to provide Employee with the specific charges underlying the proposed termination under the appropriate DPM provision deprived Employee of a fair opportunity to oppose the proposed removal. Because the wrong version of the regulation was used, Employee could not adequately defend himself against the charges levied against him. Additionally, Agency did not provide a breakdown of the penalty with respect to each cause of action or specification under Charge 2, Specification 1. It would be improper for the undersigned to essentially ‘guess’ or ‘speculate’ what the appropriate charge and/or penalty would have been had Agency used the appropriate DPM version.²¹ Unlike the 2012 version, the 2019 version does not include a charge for “[a]ny act which constitutes a criminal offense whether or not the act results in a conviction”. Agency disciplined Employee for “[a]ny act which constitutes a criminal offense whether or not the act results in a conviction” under the same charge as that of “neglect of duty”. Accordingly, I find that Agency’s failure to follow the appropriate laws, rules and regulation amount to harmful procedural error. Based on the aforementioned, these charges cannot be sustained, and must be dismissed.

3) Whether Agency’s action was in accordance with law or applicable regulation

Employee was charged with Neglect of Duty for both Charge No. 1, Specification No.1, and Charge No. 2, Specification No. 1. Neglect of Duty is defined as “[f]ailing to carry out official duties or responsibilities as would be expected of a reasonable individual in the same position; failure to perform assigned tasks or duties; failure to assist the public; undue delay in completing assigned tasks or duties; careless work habits; conducting personal business while on duty; abandoning an assigned post; sleeping or dozing on-duty or loafing while on duty.”²²

Under Charge 1, Specification 1, the Trial Board found that Ambulance 27 failed to acknowledge the radio request from the Office of Unified Communications (“OUC”) after numerous attempts at contacting them on multiple channels. Lt. Caddington highlighted that the procedure was for the crew to update their status via the tablet. He affirmed that sometimes the tablets do not work, or they are slow, thus, OUC tried to contact Ambulance 27 via radio which they failed to respond to. Employee on the other hand did not dispute Agency’s assertion that Ambulance 27 failed to acknowledge the radio request from OUC. Employee averred that Ambulance 27 indicated that they were ‘en route’ but because the safety pad in Ambulance 27 had had problems for months, it was slow. He also provided that it was both the ACIC and the ACA’s responsibility to status ‘en route’, but the ACIC/driver generally kept tabs on the status.

²⁰ *Id.* (internal quotations and citations omitted); see also 6B DCMR § 1618(c)-(d) (requiring an employer to provide the employee with written notice of “[t]he specific performance or conduct at issue;” and “[h]ow the employee’s performance or conduct fails to meet appropriate standards.”). “The purpose of requiring a specification of the details is to apprise the employee of the allegations he or she will be required to refute or the acts he or she will have to justify, thereby affording the employee a fair opportunity to oppose the proposed removal.” Frost, 638 A.2d at 662.

²¹ Assuming *arguendo* that this cause of action was based solely on the Order Book Article VII, Agency will not meet its burden of proof here because the Order Book does not provide a table of penalty or list of potential penalties associated to the different causes of actions outline in section 2, on which the undersigned can rely on in determining the appropriateness of the penalty. Hence, the reason both the Order Book Article VII and the CBA provide that disciplinary action shall be based on **both** the Order Book and Chapter 16 of the DPM, as the DPM provides a Table of Illustrative Actions for the various causes of actions (emphasis added).

²² District Personnel Manual (“EDPM”) section 1607.2(e).

Upon review of the record, I find that Employee neglected his duties when he and EMT Hassan, both Ambulance 27 crewmembers, failed to respond to OUC radio communications while they were ‘enroute’ to 208 Kenilworth Ave run, and this caused OUC to dispatch Paramedic 27 to the same run. I further find that Ambulance 27 crewmembers’ failure to respond to the OUC radio communications is a violation of D.C. Fire and Emergency Medical Services Department Rules and Regulations Article VI (**General Rules of Conduct**) which states as follows:

Section 2. *Member shall devote proper attention to the service, exert their greatest energy and full ability in the performance of their duties, not perform their duties in a spiritless, lax, surly, or careless manner, not neglect nor fail to perform any portion of their duties required by rule, regulations, order common practice, or the necessities of the situation involved; avoid connection with any clique tending to interfere with good order; be efficient; exercise proper judgment in the performance of their duties.*

Accordingly, I conclude that Agency had cause to discipline Employee for Neglect of Duty under Charge 1, Specification 1.

Under Charge 2, Specification 1, Employee was charged with Neglect of Duty and “any act which constitutes a criminal offense whether or not the act results in a conviction.” While the charge of Neglect of Duty can be found in both the old and current versions of the DPM, I find that because the charge of “*any act which constitutes a criminal offense whether or not the act results in a conviction*” does not exist in the current version of Chapter 16 of the DPM, the undersigned cannot adjudicate this issue (emphasis added). OEA may not substitute the current cause of action as presented by Agency to what it considers to be a more appropriate charge. Therefore, the undersigned finds that Agency cannot discipline Employee pursuant to Charge 2, Specification 1.

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).²³ 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

²³ 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).

reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.²⁴

In this case, I find that Agency has met its burden of proof for the charge of “[a]ny on-duty or employment-related act or omission that interferes with the efficiency or integrity of government operations to include Neglect of Duty under Charge 1, Specification No. 1. When an Agency's charge is upheld, this Office has held 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.²⁵

In this matter, although Agency had cause for the charge of Neglect of Duty under Charge 1, Specification 1, I however find that Agency engaged in harmful procedural error against Employee. Agency brought two charges against Employee under an incorrect version of the DPM, both of which do not exist in the applicable version of the DPM. This created substantial harm and severely prejudiced Employee’s rights. As previously noted, the 2017, and subsequent versions of the DPM eliminated DPM section 1603 and moved all adverse actions to DPM section 1605. Consequently, I conclude that the penalty of termination levied against Employee for Charge 1, Specification 1 was inappropriate under the circumstances.

Assuming arguendo that Agency used the correct DPM for Charge 1, Specification 1, I conclude that Agency cannot discipline Employee for violating Charge 1, Specification 1, because I find that Agency engaged in disparate treatment. Employee asserted that his partner, EMT Hassan was not disciplined for her failure to respond to OUC radio communications on June 1, 2021, although she was the ACIC on the run.

OEA has held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees (emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (emphasis added).²⁶ Further, “in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty.”²⁷ (Emphasis added). An employee must show that there is “enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to determine that the agency treated similarly-situated employees differently.”²⁸ If a showing is made, then the burden shifts to the agency to

²⁴ *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).

²⁵ *Id.*; See also *Hutchinson*, *supra*; *Link v. Department of Corrections*, OEA Matter No. 1601-0079-92R95 (Feb.1, 1996); *Powell v. Office of the Secretary, Council of the District of Columbia*, OEA Matter No. 1601-0343-94 (Sept. 21, 1995).

²⁶ *Mills v. D.C. Department of Public Works*, OEA Matter No. 1601-0001-09, *Opinion and Order on Petition for Review* (December 12, 2011), citing *Manning v. Department of Corrections*, OEA Matter No. 1601-0049-04 (January 7, 2005); *Ira Bell v. Department of Human Services*, OEA Matter No. 1601-0020-03, *Opinion and Order on Petition for Review* (May 6, 2009); *Frost v. Office of D.C. Controller*, OEA Matter No. 1601-0098-86R94 (May 18, 1995); and *Hutchinson v. District of Columbia Office of Employee Appeals*, 710 A.2d 227, 236 (D.C. 1998).

²⁷ *Metropolitan Police Department v. D.C. Office of Employee Appeals, et al.*, No. 2010 CA 002048 (D.C. Super. Ct July 23, 2012); citing *Social Sec. Admin. V. Mills*, 73 M.S.P.R. 463, 473 (1991).

²⁸ *Barbusin v. Department of General Services*, OEA Matter No. 1601-0077-15, *Opinion and Order on Petition for Review* (January 30, 2018) (citing *Boucher v. U.S. Postal Service*, 118 M.S.R.P. 640 (2012)).

produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.²⁹

Here, the record shows that both Employee and EMT Hassan were assigned to Ambulance 27 on June 1, 2021. Both Employee and EMT Hassan were assigned to Engine 27 on June 1, 2021, under the command of Lt. Caddington. Lt. Caddington also testified that they were both responsible for communicating Ambulance 27's status during the run on June 1, 2021. Lt. Caddington asserted that he did not cite EMT Hassan for violation of this dispatch procedure, however, he charged Employee for neglect of duty for violating this same dispatch procedure. I find that Employee and EMT Hassan should have both been disciplined for violating the dispatch procedure, and received the same penalty for this offense, unless there were specific mitigating factors to the contrary.

The selection of an appropriate penalty must involve a balancing of the relevant factors in the individual case. Here, Employee has provided enough evidence to at least raise the question of whether he received the same treatment as similarly situated employees. It is uncontested by the parties that Employee and EMT Hassan were both responsible for updating their status and responding to radio communication on June 1, 2021. Moreover, they worked in the same organizational unit and under the same commanding officer – Lt. Caddington. Although the issue of disparate treatment is now irrelevant in this case since Employee's violation of [a]ny on-duty act or employment-related act or omission that interfered with the efficiency and integrity of government operations: Neglect of Duty is now moot because I found that Agency utilized an inaccurate version of the DPM; I still conclude that Agency engaged in disparate treatment in this matter. Employee was similarly situated with EMT Hassan at the time of his termination and EMT Hassan was not disciplined, consequently, Employee should not have been charged and disciplined with this cause of action. Therefore, I find that Employee has established a *prima facie* showing of disparate treatment and as such, I conclude that Employee has provided proof that he was subjected to disparate treatment under Charge 1, Specification 1.

Moreover, Agency failed to provide a breakdown of the penalty with respect to each of the two (2) causes of action under Charges 2, Specification 1. It would be improper for the undersigned to essentially 'guess' what the appropriate charge and/or penalty would have been had Agency used the appropriate DPM version. Consequently, I conclude that the penalty of termination levied against Employee for Charge No. 2, Specification No. 1 was inappropriate under the circumstances.

Penalty Based on Consideration of Relevant Factors

An Agency's decision will not be reversed unless it failed to consider relevant factors or the imposed penalty constitutes an abuse of discretion.³⁰ Agency presented evidence that it considered relevant factors as outlined in *Douglas v. Veterans Administration*, 5 M.S.P.R. 313 (1981), in reaching the decision to remove Employee.

In reaching the decision to remove Employee, Agency gave credence to the nature and seriousness of the offense; Employee's type of employment; the erosion of supervisory confidence; notoriety of the offense on the reputation of the Agency; Employee's past disciplinary record and his

²⁹ *Id.*

³⁰ *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).

past work record; and mitigating and aggravating circumstances. However, because Agency utilized the wrong version of Chapter 16 of the DPM and it engaged in disparate treatment, I find that it abused its discretion and its action of removing Employee from service should be reversed.

ORDER

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

1. Agency's action of terminating Employee for Charge No. 1, Specification No. 1 and Charge No. 2 Specification No. 1 is hereby **REVERSED**.
2. Agency shall reimburse Employee all pay and benefits lost as a result of the termination.
3. 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. Dohnji
MONICA DOHNJI, Esq.
Senior Administrative Judge