THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1]	)	
	)	OEA Matter No. 1601-0022-25
v.	)	
D.C. FIRE and EMERGENCY MEDICAL SERVICES,	)	Date of Issuance: December 18, 2025
Agency	)	
	)	

OPINION AND ORDER
ON
PETITION FOR REVIEW

Employee worked as a Firefighter/Paramedic with the D.C. Fire and Emergency Medical Services Department ("Agency"). On January 3, 2025, Agency served Employee with a Final Agency Decision charging him with neglect of duty – violating the Department's protocols and making false statements during a Departmental investigation. According to Agency, on October 30, 2023, while on duty Employee was observed administering an intramuscular ("IM") Narcan [2] injection through multiple layers of the patient's clothing without conducting an assessment. Another Firefighter/Emergency Medical Technician filed a complaint with Agency regarding Employee's misconduct. During the investigation, Agency secured footage of a body-worn camera showing Employee's actions. Subsequently, he was terminated effective on January 18,

[1] Employee's name was removed from this decision for the purposes of publication on the Office of Employee Appeals' website.
[2] Narcan is a medication that rapidly reverses an opioid overdose.

2025.[3]

On January 31, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA"). He acknowledged administering the Narcan through the patient's clothing. However, Employee argued that administering Narcan through clothing was a common practice among other paramedics at Agency. Additionally, he claimed that the patient suffered no adverse effects from the injection. Employee contended that he should have gone through retraining instead of being charged with the adverse action and brought before the Fire Trial Board ("FTB"). He explained that when Agency considered its penalty, his adverse action was compared with two other cases that were not similarly situated to his. As a result, Employee requested that he be reinstated to his previous position.[4]

Agency filed its Answer to Employee's Petition for Appeal on February 26, 2025. It argued that Employee's admission of misconduct warranted termination. Agency contended that Employee's gross negligence of administering IM injections through clothing on multiple occasions contradicts its written policies and protocols in paramedic training. Additionally, it opined that Agency's FTB considered the *Douglas*[5] factors before reaching its decision to

[3] *Petition for Appeal*, p. 1-2 and 7 (January 31, 2025).
[4] *Id*., p. 1-2 and 7 (January 31, 2025).
[5] The standard for assessing the appropriateness of a penalty was established by the Merit Systems Protection Board ("MSPB") in *Douglas v. Veterans Administration*, 5 M.S.P.B. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated;
2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position;
3) the employee's past disciplinary record;
4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability;
5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties;
6) consistency of the penalty with those imposed upon other employees for the same or similar offenses.
7) consistency of the penalty with any applicable agency table of penalties;
8) the notoriety of the offense or its impact upon the reputation of the agency;

terminate Employee. As a result, Agency requested that Employee's removal action be upheld.[6]

The OEA Administrative Judge ("AJ") issued a Post-Status Conference Order on April 1, 2025. The order requested that the parties submit briefs addressing (1) whether the adverse action taken against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations.[7] Agency timely filed its brief.[8] However, Employee failed to provide a timely submission. Consequently, the AJ issued an Order for Good Cause Statement, in which Employee was required to submit his brief, along with a statement for good cause by June 23, 2025, for his failure to comply with the April 1, 2025 , Order.[9]

The AJ issued an Initial Decision on June 25, 2025. She held that in accordance with OEA Rule 624.3, an Administrative Judge has the authority to impose sanctions upon parties as necessary to serve the ends of justice. The AJ noted that the failure to take reasonable steps to prosecute or defend an appeal includes failure to submit required documents after being provided with a deadline for such submission. The AJ concluded that Employee failed to submit his brief

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9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question;
10) potential for the employee's rehabilitation;
11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice, or provocation on the part of others involved in the matter; and
12) the adequacy and effectiveness of alternative sanctions to deter such conduct.

[6] *D.C. Fire and Emergency Medical Services Department Answer to Employee Petition for Appeal* , p. 10-17 (February 26, 2025).
[7] *Post-Status Conference Order* (April 1, 2025).
[8] In its brief, Agency argued that it had cause to terminate Employee for violating Agency procedures when administering the IM injections. It explained that IM injections are only approved for specific sites, so by failing to visualize the muscle, Employee created a risk that he would miss the proper injection site. Additionally, it argued that injecting a patient through clothing creates a significant risk of the patient contracting an infectious disease. Agency asserted that Employee's recorded statement and testimony, the video evidence, and the FTB's findings demonstrated that Employee intentionally provided false statements. Moreover, it provided that the FTB found that the *Douglas* factors were properly considered, thus Agency opined that its removal action was within the range of the Table of Penalties. *Agency's Brief*, p. 14-18 (May 6, 2025).
[9] *Order for Statement of Good Cause* (June 9, 2025).

by the prescribed deadline and failed to provide a written response to the Order for Statement of Good Cause, to her June 9, 2025, Order. She opined that Employee did not exercise the diligence expectant of an appellant pursuing an appeal before this Office. Consequently, the AJ dismissed the matter for Employee's failure to prosecute his appeal.[10]

Employee filed a Petition for Review on July 25, 2025. He asserts that he did not intentionally fail to submit his brief on time. Employee explains that on May 30, 2025, he emailed an Unopposed Motion for Modification of Briefing Schedule, requesting an extension of the filing deadline to July 7, 2025, instead of the original June 3, 2025, deadline. According to Employee, he intended to file his brief by July 7th. He argues that Agency already filed its brief and agreed to him modifying the deadline for him to file his brief. Thus, Employee asserts that Agency would not be prejudiced if he was allowed to file his brief . However, he contends that he would suffer prejudice if this appeal was dismissed. As a result, Employee requests that the Board grant his Petition for Review.[11]

In response, Agency asserts that Employee failed to respond to the AJ's order to show cause. It also asserts that Employee's email to the AJ failed to comply with OEA's filing requirements under 6-B DCMR § 608.8. Agency contends that if the Board granted the Petition for Review and remanded the matter, it would be prejudicial to Agency because if Agency prevailed on the merits it would have to expend the resources to defend its adverse action. However, if Employee prevails Agency claims it would be required to reinstate him with backpay. As a result, it requests that Employee's Petition for Review be denied.[12]

[10] *Initial Decision*, p. 2-3 (June 25, 2025).
[11] *Employee's Petition for Review*, p. 2-5 (July 25, 2025).
[12] *Agency's Answer to Petition for Review,* p. 4-8 (October 28, 2025).

The AJ relied on OEA Rule 624.3, which provides that "if a party fails to take reasonable steps to prosecute . . . the Administrative Judge, in the exercise of sound discretion, may dismiss the action. . . ." However, in *In re Estate of Davis*, 915 A.2d 955, 962 (D.C. 2007) (quoting *Wilds v. Graham,* 560 A.2d 546, 547 (D.C.1989)), the D.C. Court of Appeals held that dismissal for failure to prosecute should be sparingly exercised. It reasoned that the appellant's circumstances did not demonstrate a pattern of dereliction amounting to willful and deliberate delay, gross indifference, or gross negligence.

Moreover, in *Danaryae Lewis v. D.C. Office of Employee Appeals*, Case No. 2025-CAB-2167 (D.C. Super. Ct., Dec. 8, 2025), the employee submitted an emailed synopsis of what she intended to provide in her brief by the deadline. However, she did not file the actual brief. The Superior Court for the District of Columbia reasoned that while there was a lack of diligence from the employee to prosecute her case, a dismissal would be an inappropriate sanction because her actions did not demonstrate bad faith, and it did not create a delay or unduly burden the agency. The Court also noted its strong preference for resolving matters on the merit.

In the current case, the AJ ordered that Employee file a response brief by June 3, 2025.[13] Before the June 3, 2025, deadline Employee emailed the AJ an unopposed motion to modify the briefing schedule and requested until July 7, 2025, to file his response brief.[14] Agency is correct that Employee's email submission did not comply with the filing requirements provided in OEA Rule 608.8.[15] However, this Board cannot ignore evidence in the record of Employee's email attempt to request an unopposed extension to file his brief before the filing deadline.

[13] *Post-Status Conference Order* (April 1, 2025).
[14] *Employee's Petition for Review*, Exhibit B (July 25, 2025).
[15] OEA Rule 608.8 provides that "a party must submit two (2) hard copies of . . . any . . . motion, either by mail or hand-delivery to the Office."

Similarly to the holdings in *Davis* and the order in *Lewis*, there is no pattern of dereliction by Employee in this case; Employee did not engage in bad faith; and he did not willfully or deliberately ignore the filing deadline completely. As was noted in *Lewis*, this Board has historically relied on *Murphy v. A.A. Beiro Construction Co. et al.*, 679 A.2d 1039, 1044 (D.C. 1996), where the District of Columbia Court of Appeals held that "decisions on the merits of a case are preferred whenever possible. . . ."[16] Given the emailed unopposed motion to extend the deadline to file Employee's response and in the interest of justice and fairness, we grant Employee's Petition for Review and remand this matter to the Administrative Judge to consider the merits of Employee's appeal.

[16] *Employee v. Department of Youth Rehabilitation Services*, OEA Matter No. 1601-0017-23 (July 13, 2023); *Employee v. D.C. Department of Forensic Sciences*, OEA Matter No. 1601-0015-21, *Opinion and Order on Petition for Review* (June 17, 2021); *Carl Mecca v. Office of the Chief Technology Officer*, OEA Matter No. 2401-0094-17, *Opinion and Order on Petition for Review* (September 4, 2018); *Khaled Falah v. Office of the Chief Technology Officer*, OEA Matter No. 2401-0093-17, *Opinion and Order on Petition for Review* (September 4, 2018); *Carmen Faulkner v. D.C. Public Schools,* OEA Matter No. 1601-0135-15R16, *Opinion and Order on Petition for Review* (March 29, 2016); *Cynthia Miller-Carrette v. D.C. Public Schools,* OEA Matter No. 1601-0173-11, *Opinion and Order on Petition for Review* (October 29, 2013); *Jerelyn Jones v. D.C. Public Schools,* OEA Matter No. 2401-0053-10, *Opinion and Order on Petition for Review* (April 30, 2013); and *Diane Gustus v. Office of Chief Financial Officer,* OEA Matter No. 1601-0025-08, *Opinion and Order on Petition for Review* (December 21, 2009).

ORDER

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **GRANTED**, and the matter is **REMANDED** to the Administrative Judge for consideration on the merits of the case.

FOR THE BOARD:

Pia Winston, Chair

Arrington L. Dixon

LaShon Adams

Jeanne Moorehead

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