THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE[1],	)	OEA Matter No. 1601-0035-25
	)	
v.	)	Date of Issuance: November 12, 2025
	)	
METROPOLITAN POLICE DEPARTMENT,	)	MONICA DOHNJI, Esq.
Agency	)	Senior Administrative Judge
	)	

Daniel McCartin, Esq., Employee's Representative
Daniel Thaler, Esq., Agency's Representative petted

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On April 4, 2025, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him from his position as a Police Officer, effective March 11, 2025. Employee was terminated for violating (1) General Order ("GO") 120.21, Attachment A, A-11; (2) G.O. Series 120.21, Attachment A, Part A-1; (3) G.O. 120.21, Attachment A, Part A-6; (4) G.O. Series 120.21, Attachment A, Part A-16; (5) G.O. 120.21, Attachment A, A-5; and (6) G.O. 120.21, Attachment A, A-24. OEA issued a Request for Agency Answer to Petition for Appeal on April 7, 2025. Thereafter, Agency submitted its Answer to Employee's Petition for Appeal on May 1, 2025. This matter was assigned to the undersigned Senior Administrative Judge ("SAJ") on May 2, 2025.

Upon review of the case file, the undersigned determined that this appeal was subject to the standard of review outlined in *Elton Pinkard v. D.C. Metropolitan Police Department,* 801 A.2d 86 (D.C. 2002).[2] Consequently, on May 5, 2025, the undersigned issued an Order requiring the parties

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

[2] Pursuant to *Pinkard*, an Administrative Judge of this Office may not conduct a *de novo* hearing in an appeal before him/her, but must rather base his/her decision solely on the record below, when all of the following conditions are met: (1) The appellant (Employee) is an employee of the Metropolitan Police Department or the D.C. Fire & Emergency Medical Services Department; (2) The employee has been subjected to an adverse action; (3) The employee is a member of a bargaining unit covered by a collective bargaining agreement; (4) The collective bargaining agreement contains language essentially the same as that found in *Pinkard*, *i.e.*: "[An] employee may appeal his adverse action to the Office of Employee Appeals. In cases where a Departmental hearing [*i.e.*, Adverse Action Panel] has been held, any further appeal shall be based solely on the record established in the Departmental hearing"; and (5) At the agency level, Employee appeared before an Adverse Action Panel that conducted an

to submit written briefs addressing the following: (1) whether Agency's decision to take adverse action against Employee was supported by substantial evidence; (2) whether there was harmful procedural error with the Trial Board's decision; and (3) whether Agency's action was done in accordance with all applicable laws and regulations. Agency's brief was due by May 30, 2025; Employee's brief was due by June 20, 2025; and Agency had the option to file a sur-reply by July 7, 2025. Thereafter, on May 28, 2025, Agency filed a Consent Motion to Extend Briefing Schedule requesting a two-week extension to the briefing schedule due to "competing deadlines and demands of other matters."[3] The undersigned issued an Order on June 9, 2025, granting Agency's Motion. Pursuant to this Order, the briefing schedule was adjusted as follows: Agency's brief was due by June 13, 2025; Employee's brief was due by July 7, 2025; and Agency's Sur-reply was due by July 25, 2025. Both parties have submitted their respective briefs. The record is now closed.

JURISDICTION

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

ISSUES

1) Whether the Trial Board's decision was supported by substantial evidence.

2) Whether there was harmful procedural error.

3) Whether Agency's action was done in accordance with applicable laws or regulations.

BURDEN OF PROOF

OEA Rule § 631.1, 6-B District of Columbia Municipal Regulations ("DCMR") Ch. 600, et seq (December 27, 2021) states:

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[4]

STATEMENT OF THE CHARGE(S)

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

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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.

[3] *See* Agency's Consent Motion to Extend Briefing Schedule (May 28, 2025).

[4] OEA Rule § 699.1.

Charge No. 1: Violation of General Order 120.21, Attachment A, A-11, which states, "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*"

Specification No. 1: In that, on November 11, 2023, you operated a marked MPD cruiser while you were under the influence of an alcoholic beverage, and was placed under arrest for Driving Under the Influence (DUI) and Obstruction of justice. On January 9, 2024, you pleaded guilty to Driving Under the Influence of Alcohol or Drug, in violation of D.C. Code 50-2206.11.

Specification No. 2: In that, on November 11, 2023, you:

a) Did not comply with numerous commands from officers from the Second District and you actively resisted being placed in handcuffs;

b) Interfered with the DUI investigation conducted by the members of the Second District regarding your girlfriend [Employee's fiancé];

c) Acted in a rude disrespectful manner toward the Second District officers on the scene.

Charge No. 2: Violation of General Order Series 120.21, Attachment A, Part A-1FYI, which states, "*Alcohol: Off-duty – drinking while in uniform and/or under the influence.*"

Specification No. 1: Specifically, on November 11, 2023, by you (sic) your own admission, you consumed alcoholic beverages at a restaurant in Virginia and later drove your department-issued marked police cruiser while still under the influence of the alcoholic beverages consumed.

Charge No. 3: Violation of General Order 120.21, Attachment A, Part A-6, which states, "*Engaging in conduct that constitutes a crime*."

Specification No. 1: Specifically, on November 11, 2023, you drove your assigned marked take-home cruiser to the scene of a DUI investigation at 1645 Connecticut Ave, NW. Officer Givens observed you to exit your police vehicle, and multiple officers on the scene smelled a strong odor of an alcoholic beverage emanating from you. Consequently, probable cause was established to place you under arrest for DUI. On January 9, 2024, you pleaded guilty to DUI, in violation of D.C. Code 50-2206.11.

Specification No. 2: Specifically, on November 11, 2023, you interfered with and obstructed a DUI investigation by repeatedly approaching the scene, yelling at the officers conducting the investigation, advising the subject of the investigation not to comply with the officers, and failing to comply with numerous commands to

leave the scene. Consequently, probable cause was established to place you under arrest for Obstruction of Justice, in violation of D.C. Code 22-722.

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

Specification No. 1: In that on November 11, 2023, you were argumentative and disrespectful to on-duty members who were investigating a DUI. You repeatedly raised your voice and yelled at the on-duty members. This misconduct is further described in G.O. 201.26, Section V, Part C, 2, which states "*Be courteous, civil, and respectful to their superiors, associates, or others, whether on-duty or off-duty. They shall be quiet, orderly and attentive and shall exercise patience and discretion in the performance of their duties.*"

Specification No. 2: In that, on November 11, 2023, while speaking to Seargeant McEachern, you stated, "*Tell Griffin's fat ass to get away from [Employee's fiancé]. "Furthermore, you stated to the officers on the scene, "Oh my God, you guys are fucking acting fucking wild" …" Are you fucking kidding me dog… Arrested for what? You guys are the fucking worst bro" …" Cuff me, you're not going to fucking cuff me" … Oh my fucking God" …" I would shake your hand but I can't cause your fucking officers decided to cuff me*." You used profane language numerous times. This conduct is further described in G.O. 201.26, Section V, Part C, 2, which states, *"[r]efrain from harsh, violent, coarse, profane, sarcastic, or insolent language. Members shall not use terms or resort to name-calling, which might be interpreted as derogatory, disrespectful, or offensive to the dignity of any person*."

Specification No. 3: In that on November 11, 2023, you operated a government vehicle and utilized the emergency lights to respond to the scene of a DUI investigation that involved your girlfriend. The use of the vehicle was not in the performance of your official duties and the furtherance of the District of Columbia's official business. This misconduct is further described in E.O. 17-027, Section 3, Part B, 1, which states, "*Members may use government vehicles to carry out District government business. Except as otherwise provided in this order, government vehicles may be used only in the performance of a member's official duties and in furtherance of District government business.*"

Specification No. 4: In that on November 11, 2025, you operated a government vehicle while under the influence of alcohol. This misconduct is further described in E.O. Part III, Section D. 1, which states in the relevant part "*Members driving government vehicles shall: e. Not be impaired by alcohol, illegal drugs, or prescription medication when operating a government vehicle.*"

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

the information of any superior officer, or making any untruthful statement before any court or any hearing."

Specification No. 1: In that on November 11, 2023, you told numerous officers and officials of the MPD, including Officer Griffin, Sergeant Parker, and Lieutenant Murphy, that you did not drive and that you had taken an Uber to the scene at 1645 Connecticut Avenue, NW. However, the investigation revealed that you drove your MPD-issued marked take-home cruiser to the scene and that you did not take an Uber.

Charge No. 6: Violation of General Order 120.21, Attachment A, A-24, which states: "*Any conduct not specifically set forth in this order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations and orders relating to the discipline and performance of the force.*"

Specification No. 1: In that on November 11, 2023, Mr. Traore recorded a video of you being placed in handcuffs while you were actively resisting, and the officers were heard ordering you to stop resisting. Your conduct captured in the video brough discredit to yourself and to the MPD.

Specification No. 2: In that on November 11, 2023, your arrest for DUI was covered by numerous media outlets. Your status as an MPD officer were covered by the media outlets. Your misconduct brought discredit to your own reputation and also to the reputation of the department.

On December 12, 2024, Employee appeared before a Fire Trial Board. He was represented by counsel and pleaded to these charges as follows:

1) Charge No.1:
    a. Specification No. 1: **Guilty with an explanation**.
    b. Specification No. 2: **Not Guilty.**
2) Charge No. 2:
    a. Specification No. 1: **Guilty with an explanation.**
3) Charge No. 3:
    a. Specification No. 1: **Guilty with an explanation.**
    b. Specification No. 2: **Not Guilty.**
4) Charge No. 4:
    a. Specification No. 1: **Guilty with an explanation.**
    b. Specification No. 2: **Guilty with an explanation.**
    c. Specification No. 3: **Guilty with an explanation.**
    d. Specification No. 4: **Guilty with an explanation.**
5) Charge No. 5:
    a. Specification No. 1: **Not Guilty**.
6) Charge No. 6:
    a. Specification No. 1: **Not Guilty**.
    b. Specification No. 2: **Guilty with an explanation**.

Trial Board Chairperson, Inspector Jones, notified Employee during the Trial Board hearing that by pleading guilty to Charge No. 1, Specification No. 1, Charge No. 2, Specification No. 1, Charge No. 3, Specification No. 1, Charge No. 4, Specification No. 1, Charge No. 4, Specification No. 2, Charge No. 4, Specification No. 3, Charge No. 4, Specification No. 4, and Charge No. 6, Specification No. 2, Employee would be depriving himself of the benefit of defense as to these charges. Employee was also notified that he could, however, introduce evidence of mitigating circumstances or of previous good character. Employee confirmed that he understood the Trial Board's explanation.

SUMMARY OF THE TESTIMONY[5]

On December 12, 2025, Agency held a Trial Board Hearing. During the hearing, testimony and evidence were presented for consideration and adjudication relative to the instant matter. The following represents what the undersigned has determined to be the most relevant facts adduced from the findings of fact, as well as the transcript (hereinafter denoted as "Tr."), generated and reproduced as part of the Trial Board Hearing.

Agency's Case-in-Chief

1) Keenan Gallagher ("Agent Gallagher") – Tr. pgs. 24-75

Agent Gallagher has been employed with Agency for approximately 12 years, and he has been an agent with Agency's Internal Affairs Division ("IAD") for two (2) years. In his role as an IAD Agent, he investigates allegations of police misconduct. Agent Gallagher explained that investigations come to them through "an on-call assignment where an official, a Lieutenant or someone in the field, gives us a call and says hey, there's been an allegation of serious misconduct, in which case we just determine whether or not we're going to take those cases. And the other way is it comes in through … the PPMS system. And it's assigned that way." Tr. pgs. 24-26.

Agent Gallagher affirmed that he was familiar with Employee and that he issued an investigative report about the current matter. He identified Agency's Exhibit 2 as his final report regarding the allegation of misconduct against Employee. Agent Gallagher testified that his investigation into Employee originated from a call he received on November 11, 2023, from the Second District Watch Commander that an officer had been arrested. Tr. pgs. 26-28.

Agent Gallagher asserted that on November 11, 2023, at about 3:00 a.m., the Second District received a report about a traffic crash that occurred on Connecticut Avenue and one of the individuals involved in the crash alleged that the other driver, who was Employee's fiancé, had struck his car and tried to flee the scene. Agent Gallagher explained that MPD Officer Sousa was the first to arrive at the scene, and MPD Officer Givens later arrived. He cited that these officers interviewed the Employee's fiancé and the other driver involved in the accident to try to determine what had occurred. Agent Gallagher stated that at some point, these officers determined that Employee's fiancé was under the influence, and they requested that she take a standardized field sobriety test ("SFST"). Agent Gallagher testified that at some point during the incident, Officer Blagrove, Officer O'Hara and Officer Griffin arrived at the scene. He stated that Officer Griffin attempted to conduct the SFST on Employee's fiancé. Tr. pgs. 28-29.

[5] Agency Answer to Employee's Petition for Appeal at Tab 20 (October 27, 2021).

Agent Gallagher averred that while Officer Sousa and Officer Griffin, were interacting with Employee's fiancé, it appeared that she was speaking to someone who was later determined to be Employee. Agent Gallagher testified that Employee arrived at the scene of the incident from his home in his "… SOD take home cruiser with the lights activated. And then he turned, he came southbound on Connecticut, turned eastbound on R Street against a one way, and parked in the crosswalk there and walked on foot from there to the scene, which wasn't far away." Agent Gallagher cited that there was footage from a body-worn camera ("BWC") So there's a body-worn camera that showed Employee's vehicle arriving and parking. He stated that there was also CCTV footage from a nearby building that captured Employee's vehicle coming and turning onto R Street. Tr. pgs. 30-32.

Agent Gallagher asserted that Employee was not on duty at the time of the incident and that he was not there on police business. He stated that when Employee arrived at the scene, Employee approached the officers and inserted himself into the scene as Officer Griffin had just started the horizontal gaze and nystagmus test. According to Agent Gallagher, Employee was instructed by Officer Griffin to get off the scene, but Employee did not comply. Agent Gallagher stated that Employee motioned to his fiancé not to take the test and as the officers on the scene tried to keep Employee away, he identified himself as MPD by providing his badge. Agent Gallagher cited that the officers had to push Employee away from the scene so Officer Griffin could complete her SFSTs. He asserted that Employee told the officers on the scene that his fiancé she was not required to perform SFSTs. Agent Gallagher agreed that per the General Order, and MPD training, drivers can refuse to participate in SFSTs. He asserted that because Employee kept interfering, the Officers made the decision to detain Employee, and he resisted being placed in handcuffs. Agent Gallagher cited that Employee was arrested for 'Obstruction and driving under the influence.' Tr. pgs. 33-37, 54, 57-59.

Agent Gallagher testified that when he interviewed Employee during his investigation, Employee admitted that he had consumed alcohol that evening at the Marine Corps birthday celebration with some friends and that when his fiancé called, he drove the cruiser down there. He stated that Employee admitted that he still had alcohol in my system when he drove to the scene. Agent Gallagher cited that he was told by Officer Griffin that she smelled alcohol on Employee when he walked to the scene. Agent Gallagher stated that when Employee was told he was being arrested for DUI, he used unprofessional language and he stated that he did not drive to the scene, but took an 'Uber', which was untrue. He testified that he interviewed Employee and everyone who was present at the scene. Agent Gallagher explained that "the United States Attorney's Office declined to prosecute the obstruction of justice charge. And [Employee] was charged with DUI and operating while intoxicated. There were hearings scheduled, and eventually he pled guilty to DUI and entered into a deferred sentencing agreement." He stated that following his investigation, he found that Employee violated the following: (1) General Order 120.21, Attachment A, Number 1; (2) General Order 120.21, Attachment A, Number 5; (3) General Order 120.21, Attachment A, Number 6; (4) General Order 120.21, Attachment A, Number 11; and (5) General Order 120.21, Attachment A, Number 24. Tr. pgs. 38 -53, 55-56.

Agent Gallagher confirmed that Employee attended a status hearing regarding the DUI case, and the deferred sentencing agreement ordered Employee to complete 40 hours of community service, to complete an alcohol program, to complete a traffic safety program, to complete a victim impact panel, and contribute $100 to the Crime Victims Compensation Fund. And that Employee was given 12 months to do that. Agent Gallagher also confirmed that if those conditions were met in 12 months, Employee would be allowed to withdraw his guilty plea, and the case would be dismissed with prejudice. Agent Gallagher affirmed that a hearing was scheduled for January 9, 2025, about a

month from the date of the trial board hearing and one (1) year from the January 9, 2024, status hearing to determine if Employee complied with the deferred sentencing agreement. Tr. pgs. 66-67

2) Othneil Blagrove ("Ofc. Blagrove") – Tr. pgs. 77-88

Ofc. Blagrove has been employed by Agency for over ten (10) years. He stated that he was familiar with Employee from the November 11, 2023, traffic stop. He confirmed that Agency's Exhibit 3J as his BWC footage from the November 11, 2023, traffic accident scene. Tr. pgs. 77-79. While reviewing Agency's Exhibit 3J, Ofc. Blagrove testified that he requested a SFST because Employee's fiancé was showing signs of intoxication. He stated that Ofc. Griffin later arrived at the scene to conduct the SFST test. He cited that Employee also arrived at the scene at some point, and that he did not know who Employee was when he arrived at the scene. Ofc. Blagrove asserted that he had to restrict Employee at the scene because Employee kept interfering with their investigation. He stated that he asked Employee to step back on the sidewalk to call his official because Employee was interfering with their investigation and he was not complying. Tr. pgs. 80-83.

Ofc. Blagrove affirmed that he agreed with Ofc. Griffin's statement that Employee was interfering. He stated that Employee was loud and that Employee came back and interfered with the investigation, so he had to put Employee in handcuffs. Ofc. Blagrove explained that while he was trying to put the handcuffs on Employee, he resisted and there was a struggle. He stated that the Watch Commander, Captain McHauley Murphy arrived at the scene because it involved another officer being uncooperative. Ofc. Blagrove testified that Employee was uncooperative. Ofc. Blagrove confirmed that he was aware that drivers are permitted to refuse to participate in SFSTs and that Employee's fiancé was arrested that evening. He also confirmed that there's nothing illegal or improper with telling someone that they have the right to refuse SFSTs. Tr. pgs. 84-86.

3) McHauley Murphy ("Capt. Murphy") - Tr. pgs. 89-98

Capt. Murphy has been employed by Agency for ten (10) years, and he was had been a captain for approximately six (6) months as of the date of the hearing. Prior to being a captain, he was a lieutenant. He cited that while he was a lieutenant on duty, he was assigned as a watch commander for the Second District ("2D") on November 11, 2023. Capt. Murphy testified that on the morning of November 11, 2023, he "received a call from one of the primary officers on the scene in reference to an off-duty officer that was involved in an accident in reference to a 1050, and I responded to the scene as a primary official on the scene." Capt. Murphy explained that when he arrived at the scene, he observed Employee who was off-duty, sitting in the back of the transport. Capt. Murphy stated that he was briefed by Ofc. Givens that Employee did not comply with any of his commands in reference to his girlfriend being investigated, taking an SFST and that Employee was interfering with the investigation telling his girlfriend to leave and not take the SFST. Tr. pgs. 89-91.

Capt. Murphy testified that he spoke to Employee when he arrived at the scene and Employee was in the back of the transport vehicle. He explained that Employee had slurred speech, red eyes, and he was smelling alcohol coming out of Employee's breath. Capt. Murphy stated that he explained to Employee that he could not interfere with his girlfriend's investigation and that he did not comply with several commands that were given to him at the scene. Capt. Murphy asserted that they also called Employee's official to the scene, as well. He testified that it was at that point that he made the determination that he had probable cause to place Employee "under arrest for obstruction to

interfering with a police investigation and as well to get an SFST officer to conduct an SFST on him, as well." He cited that an SFTS officer conducted an SFST on Employee and based on the SFST results, Employee was placed under arrest for DUI. Tr. pgs. 92-94.

Capt. Murphy confirmed that people are permitted to refuse to perform SFSTs. He stated that he honored Employee's request when he refused to take the SFST on the scene. Capt. Murphy testified that Employee "did not resist and did not try to assault anybody." Capt. Murphy testified that "I was briefed by Officer Griffin that off-duty [Employee] had driven his SOD-marked police cruiser to the scene, Code 1 to the scene. And as I arrived on the scene, I observed an SOD cruiser parked right there on the corner on the scene." Tr. pgs. 94-97.

4) Lauren Griffin ("Ofc. Griffin")– Tr. pgs. 99-119

Ofc. Griffin has been a police officer with Agency for almost 18 years. Ofc. Griffin testified that on November 11, 2023, she was called to do a sobriety test on a driver. She confirmed that she was trained to administer sobriety tests. Ofc. Griffin stated that as she was conducting the test when she got to the scene, she was approached by a male whom she later found out was an MPD officer. She cited that "… in the process of conducting those tests on the original subject, the female, [Employee] was interfering in the investigation." She noted that she did not know Employee prior to November 11, 2023.Tr. pgs. 99-100, 102.

Ofc. Griffin identified Agency's Exhibit 3E as her BWC from the November 11, 2023, incident. While reviewing her BWC footage, she stated that while at the scene she could hear Employee's fiancé on the phone with someone who was on the other end of the phone instructing her not to get out of the car. Ofc. Griffin explained that "[a]s part of the DUI investigation, I had to have her step out of the car so I could administer tests." Ofc. Griffin testified that she did not know the person on the other end of the phone, and that she told Employee's fiancé to hang up the phone. She confirmed that she thought that the person on the other end of the phone could hear Ofc. Griffin. Tr. pgs. 101-104.

According to Ofc. Griffin, she was under the impression that Employee's fiancé had agreed to the sobriety test, so she began to administer the horizontal gaze nystagmus test. She cited that Employee arrived at the scene in plain clothes, and she did not know who he was. Ofc. Griffin explained that Employee was telling his fiancé not to cooperate, and to come with him, and she Ofc. Griffin told Employee to get off the scene to the sidewalk, or he would be arrested if he didn't, but Employee did not comply. She confirmed that Employee's actions were obstructive to her investigation at this time. Ofc. Griffin also testified that she could smell the odor of an alcoholic beverage on his breath. She affirmed that she completed the horizontal gaze portion of the SFST after several attempts. Ofc. Griffin cited that Employee was detained by other officers because he wouldn't leave after she told him to leave. She stated that because Employee kept yelling 'no' at his fiancé, the fiancé decided to cease cooperating, and she was placed under arrest for DUI Tr. pgs. 105-113.

Ofc. Griffin testified that she was asked by Ofc. Givens if she could conduct a sobriety test on Employee. She stated that because Employee was not listening to her earlier, she wasn't sure he would comply. She cited that she went over to the car where Employee was, and she told him the steps involved in the sobriety tests and Employee said 'no'. Ofc. Griffin testified that "So [Employee] seemed like he was trying to tease me that if I didn't see him driving that I didn't have a

case. You know, we told him Officer Givens did see him, and he didn't seem to accept that answer. Yes, he seemed to be making a joke out of me not seeing him driving." Tr. pgs. 113-114.

Ofc. Griffin stated that she interacted with Employee again at the station when she was going to administer the standardized field sobriety test and she gave him paperwork to read. While referring to Agency's Exhibit 3F, Ofc. Griffin stated that "I read the applied consent form and the DPW 3340 form and gave them to [Employee] to look over and sign, and he said he wasn't going to sign them." Ofc. Griffin explained that "[s]o [Employee] was still maintaining that he didn't drive to the scene. He didn't believe he was under arrest for DUI. He refused to sign the forms. He refused to give a chemical sample. He asked if I only had one year on. He was, I guess, trying to belittle me; I don't know." Tr. pgs. 115-116.

Ofc. Griffin affirmed that Employee was not required to take the SFST and that if an individual refuses to take the SFST, that refusal is supposed to be honored. She confirmed that Employee noted numerous times that his fiancé did not have to do the SFST, yet she, Ofc. Griffin still completed the horizontal gaze portion of the SFSTs with Employee's fiancé. Tr. pgs. 116-117. Ofc. Griffin testified that Employee "… didn't direct me not to arrest [his fiancé]. He directed her to come with him off the scene." She also cited that "[h]e didn't threaten me. He made statements about not arresting him, not about not arresting her." Tr. pgs. 118-119.

5) Matthew Givens ("Ofc. Givens") – Tr. pgs. 120- 129

Ofc. Givens has been employed by Agency for approximately 12.5 years as an officer. He recalled the incident that occurred on November 11, 2023, at around 3:00 a.m. Ofc. Givens testified that it was a DUI investigation that led to an off-duty officer showing up. He cited that he did not know about this off-duty officer prior to the November 11, 2023, incident. Tr. pgs. 120-122.

Ofc. Givens identified Agency's Exhibit 3G as his BWC footage. He also identified Employee's fiancé as the female subject involved in the November 11, 2023, incident. Ofc. Givens stated that "The female subject is on the phone with a male subject. She stated that it was her boyfriend, who was an officer." He cited that now he knows that the individual the female subject was on the phone with was Employee. Ofc. Givens testified that Employee drove to the scene on November 11, 2023, in a marked scout car. He asserted that "I observed it pull up to the scene." Ofc. Givens noted that the lights on Employee's marked scout car were activated. When asked if he observed Employee driving fast or just average, Ofc. Givens cited that "I could not tell that." Tr. pgs. 122-124, 128-129. When asked if Employee's statement that he 'Ubered' to the scene was consistent with what he had witnessed at the scene, Ofc. Givens said 'no.' Tr. pg. 126.

Ofc. Givens stated that "[Employee] exited the vehicle. I approached him. I told him that we're investigating a 1050, which is an accident investigation, possible DUI, and told him that SFSTs were being conducted." Ofc. Given asserted that he informed Employee he could not interrupt the ongoing investigation and the SFSTs. But Employee seemed like he didn't want to listen to that, and he continued to walk over. He cited that Employee obstructed the investigation as he walked over to the scene. Ofc. Givens testified that Employee was detained because he kept interfering with the investigation and he put up a fight when they were placing handcuffs on him. Tr. pgs. 124 – 126.

Ofc. Givens confirmed that Employee relayed to him at the scene that his fiancé was not required to perform the SFSTs and that they both knew that. He also affirmed telling Employee that

that was true, but that if Employee's fiancé refused to perform the SFSTs, based on the clues and the evidence that he, Ofc. Givens had; Employee's fiancé would be placed under arrest. Ofc. Givens confirmed that Employee said that was fine. He noted that Employee never told him at the scene that they could not place his fiancé under arrest. Ofc. Givens confirmed that Employee's fiancé was arrested. Tr. pgs. 127 -128.

Employee's Case-in-Chief

6) Jeremy Knisely ("Lt. Kniseley") - Tr. pgs. 129-136

Lt. Kniseley has been employed with Agency for about 12 years. He is currently assigned to the First District. Lt. Kniseley testified that he first worked with Employee in the Seventh District in 2018. He also testified that he has worked with Employee on several different teams and units since then. Lt. Kniseley cited that he supervised Employee and that Employee was one of the most well-rounded officers, he was very skilled during street-level interdiction, working with sources, and doing follow-up investigations. Lt. Kniseley asserted that he could not recall a time that he ever addressed Employee for poor-quality work and his work was always above standard. He stated that Employee's work ethic was unmatched. Lt. Kniseley testified that "When we needed him to come in early for search warrants, he was always there. When we needed him to stay late to handle paperwork, when he needed to fulfill court commitments, he was always there. He was one of the primary officers handling, you know, preliminary hearings and all these court obligations. He definitely had among the strongest work ethic in both of those units." Tr. pgs. 130-133.

Lt. Kniseley stated that Employee "was very well respected…. he was someone that other people would look to, particularly when they were new in the unit and they were eager to … learn skill sets that they were deficient on. He was someone that people would want to get in his car to emulate the way that he operated and the way that he conducted the unit's mission." Lt. Kniseley testified that "Every time I've ever seen him interact with the public, even in moments in contention, he has always been respectful, even in confrontation…." Tr. pg. 133.

Lt. Kniseley asserted that he was familiar with the charges brought against Employee in the current matter. He confirmed that he stood by his opinion about Employee and that if Employee was retained by Agency, Employee would be someone that he trusted to work with. Lt. Kniseley affirmed that it was important for an officer to have good judgement and self-control. Tr. pgs. 133-135. He cited that he stopped working with Employee in 2021, and that he was aware that Employee had been suspended in the past. Lt. Kniseley affirmed that as a supervisor, it is important for the officers underneath him to be truthful with you and that an officer lying to him reflects poorly on their judgment. Tr. pgs. 135 – 136.

7) Robert Anderson ("Lt. Anderson") - Tr. pgs. 137 -140

Lt. Anderson has been employed with Agency for about 13 years. He is currently assigned to the Sixth District. He testified that he was in the academy with Employee and they have kept in touch over the years. Lt. Anderson stated that Employee was a great friend and a great person. He cited that Employee is loyal, trustworthy, and dependable. Lt. Anderson asserted that he was aware of the charges against Employee and as a person, he fully stands in support of Employee because mistakes happen, and everyone makes them. Tr. pgs. 137-140. Lt. Anderson cited that he was not worked with

Employee or assigned to the same district since leaving the academy. He confirmed that it was important for an officer to have good judgement and self-control. Tr. pg. 140.

8) Francisco Montano ("Lt. Montano") – Tr. pgs. 141-148

Lt. Montano has been employed with Agency as a lieutenant for about 17 years. He is currently assigned to the Fourth District. He stated that he met Employee around 2015 when he became a sergeant at the Seventh District. Lt. Montano cited that he worked with Employee as his supervisor for approximately three (3) years at the Seventh District. Tr. pgs. 141-142. He has not worked with Employee since 2018. Tr. pg. 146.

Lt. Montano testified that as soon as he got to the Seventh District, he noticed that Employee was an outstanding officer and a leader. He stated that Employee did not need much supervision, and he was dependable. Lt. Montano cited that Employee's work ethic was exemplary and a role model for a lot of the younger officers in the Seventh District. Regarding Employee's interaction with the public, Lt. Montano testified that Employee was very respectful, he was able to hold the scene and not let citizens get under his skin, even in tough situation. Lt. Montano confirmed that he was aware of the charges brought against Employee and that he still stands by his opinion about Employee. He affirmed that if Employee were to return to full duty, he would want to work and supervise Employee again. Tr. pgs. 142-145. Lt. Montano confirmed that it was important for an officer to have good judgement and self-control. He affirmed that as a supervisor, an employee who lied to him has poor judgment. Lt. Montana testified that Employee made a mistake and that does not define his character. Tr. pgs. 146-147.

9) Employee - Tr. pgs. 148 -186

Employee testified that before joining Agency, he was in the United States Marine Corps infantry. He stated that he joined Agency after being honorably discharged from the Marines. Employee testified that after he graduated from the academy, he was assigned to the Seventh District patrol section. He worked in patrol for about two (2) years and then he was assigned to the Power Shift Squad, which ended up becoming the Crime Suppression Squad (the "CST squad"). Employee stated that when he left the CST squad, he went back to patrol, then went back to CST. Employee testified that he was later assigned to the Gun Recovery Unit from 2019 to 2021. Employee cited that he was later selected to join the SWAT team, and he became a member of the Emergency Response Team as a sniper. Tr. pgs. 148-151.

Employee testified that he was out celebrating the Marine Corps birthday on November 10, 2023. He confirmed consuming alcohol during the Marine Corps birthday celebration, and he did not have any intention of getting behind the wheels and driving that night. Employee cited that he 'Ubered' himself to and from the Marine Corps celebration location. He noted that he laid down when he got home from the Marine Corps celebration. Employee testified he received a phone call from his fiancé, who sounded upset, stating that she had just been in an accident and a gentleman was yelling at her and blocked her vehicle in, and he was kind of irate. Employee asserted that he was worried about his fiancé being by herself with a gentleman he did not know who was upsetting her, and his thought process was to go help her. He cited that he was worried that something bad would happen to her Tr. pgs. 153-155, 166. Upon reviewing Agency's Exhibits 3G, Ofc. Griffin's BWCs from the scene, Employee explained that he did not know officers were on the scene until he had started driving. He stated that from his recollection of the night of the incident, "I remember not

knowing until I started driving there. Yes, that does show that I was possibly still at my house. But from what I remember, that's how I gathered it." Tr. pgs. 167-174, 185.

Employee asserted that because he did not take home his personal vehicle, he drove the Agency's take-home vehicle he had to the location where his fiancé was. Employee testified that "I regret my decision getting behind the wheel, driving the police cruiser or driving any vehicle at that time. But I had a lapse of judgment and didn't think about the driving portion of getting there. I just thought about getting there and helping." He noted that he had never driven a police cruiser or any other vehicle after consuming alcohol. Tr. pgs. 155-156. Employee also testified that "I would not have driven to the scene. I would have stayed at my house until the next morning, and then I would have tried to figure out where my fiancée was, if she had been placed under arrest so that would not have gone the way that it has gone." Tr. pgs. 160. Employee confirmed that he drove four (4) miles down Connecticut Avenue in a marked take-home cruiser, with the lights activated on top of the cruiser. He testified that he had the light on "… to be able to get there faster. It was late at night. There were no vehicles on the road, just the lights for more visibility so I just went with it." He noted that he was not driving at a fast speed to the scene. Tr. pgs. 174-175.

According to Employee, when he arrived at the scene, he saw his fiancé with Ofc. Griffin who was trying to get his fiancé to take the SFST which was not a requirement in the District of Columbia. Employee noted that though it could be asked, the individual had to consent to taking the SFST. He stated that he was not trying to interfere with the investigation but rather, he was trying to ensure that his fiancé was not coerced into taking the SFST, and to let his fiancé know that she did not have to do the SFST as there was no criminal law against refusing to take the test. Employee asserted that he continued to try to advise his fiancé against taking the test because he felt that Ofc. Griffin did not consider his point about the SFST, and that Ofc. Griffin wanted to do the SFST without listening to what his fiancé wanted. He affirmed that if his point was considered and the test ended, it was possible that his fiancé would be placed under arrest. Employee noted that he did not in any way attempt to prevent his fiancé from being arrested that evening. Tr. pgs. 156-158, 176-177.

Employee testified that he was embarrassed by his actions and the way he treated Ofc. Griffin and other officers on the scene. He stated that he was not thinking clearly, and he was just focused on believing that his fiancé was continuing to do something that she did not have to do. He cited that he regretted the things he said to Ofc. Griffin and wished he could take them back. Tr. pgs. 159, 179-180. Employee asserted that "[t]hat was a poor judgment night on my part. That is not a reflection of my character or how I conduct myself on the Department or will continue to conduct myself as an individual on this Department or off this Department." Tr. pgs. 160-161. Employee asserted that after his arrest he attended counseling and took alcohol courses. He cited that he has "completed all of my required classes through the criminal justice portion of all the online classes and the fines and fees and the community service." Tr. pgs. 161-162.

Employee testified that he took "… a plea [for] DUI to take responsibility for my actions in driving that night and having consumed alcohol. And then on January 9 of this coming year, I will get my charges dismissed because I have completed everything that is required of me." He noted that he was not formally charged with obstruction of justice. Tr. pg. 163. Employee stated that he did not resist arrest. He explained that he was shocked that his own Department was arresting him, so he 'tensed up' which did not make it easier for officers to place him in handcuffs. Tr. pgs. 178, 182-184.

Employee cited that he still wanted to be a member of Agency. He explained that "I believe what I did was wrong, and I believe I can help other officers, possibly junior officers or get promoted and be a person that they look up to or look to for guidance. I believe I was a productive member before this incident, and I believe I can continue to be a productive member of this department whether as an officer or of the ranks." Employee asserted that "I just hope that you all are able to see that I did make a mistake. And I am taking ownership of that mistake. And a second chance, if I am afforded one, it will not backfire in your face. And I will prove to you all and the rest of the department that I can be a productive member of this department." Tr. pgs. 163-165.

Panel Findings

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

1) On November 11, 2023, at approximately 0258 hours, Officer Anthony Sousa, Officer Othneil Blagrove, Officer Kallen O'Haraa, and Acting Sergeant Matthew Givens responded to a call for a two-car accident at 1645 Connecticut Avenue, NW.

2) Once on scene, the officers spoke with both parties to the traffic crash and developed reasonable suspicion that [Employee's fiancé] the driver of the striking vehicle, was intoxicated.

3) When the officers initially approached [Employee's fiancé], she was speaking on her cell phone with an individual later identified as her boyfriend, the [Employee].

4) Officer Lauren Griffin was called to the scene to conduct an SFST on [Employee's fiancé].

5) While Officer Griffin was attempting to persuade [Employee's fiancé] to participate in the SFST, the [Employee] arrived at the scene in a marked MPD police vehicle with the overhead lights activated. At that time, the [Employee] was off-duty and not in uniform. His arrival was captured on both CCTV and BWC footage.

6) The [Employee] approached the place on the scene where Officer Griffin was trying to convince the [Employee's fiancé] to take the SFSTs and informed [his fiancé] that she was not required to participate. Officer Griffin ordered [Employee] to leave the scene, noting that she could smell the odor of an alcoholic beverage on his breath.

7) Officers Blagrove and Sousa escorted the [Employee] away from Officer Griffin. However, [Employee] continued to urge [his fiancé] not to perform the SFSTs. Officer Griffin warned the [Employee] to move away or risk being arrested.

8) Despite being escorted away several times by Officers Blagrove, Sousa and Givens, the [Employee] repeatedly attempted to approach Officer Griffin and [his fiancé]. Officer Givens informed the Second District Watch Commander and the SOD Watch Commander about the situation.

9) When the [Employee] continued to try to approach Officer Griffin and [his fiancé], Officers Blagrove, Sousa, Givens and O'Hara placed him in handcuffs. The [Employee] initially

tensed his arms when being seized but then allowed the officers on the scene to handcuff him and escort him to a marked police vehicle.

10) The Second District Watch Commander, Lieutenant McHauley Murphy, and the SOD Watch Commander, Sergeant Robert Parker, arrived at the scene. Lieutenant Murphy requested that Officer Griffin administer SFSTs to the [Employee]. However, the [Employee] refused to participate, asserting that Officer Griffin had not observed him drive to the location and claiming that he had taken an Uber to the scene.

11) When the [Employee] refused to participate in the SFST, Lieutenant Murphy instructed the officers to place him under arrest for DUI and Obstruction of Justice.

12) While in the Second District Cell Block, Officer Griffin read the Implied Consent Form to the [Employee] and attempted to obtain a breath, blood, or urine sample for testing. The [Employee] refused to provide a sample and declined to sign the paperwork.

13) The United States Attorney's Office elected not to prosecute the [Employee] for Obstruction of Justice. However, the Office of the Attorney General (OAG) decided to pursue the charge of DUI against him. The [Employee] pleaded guilty to the charges, entered into a deferred sentencing agreement, and successfully completed all the terms of that agreement. On January 10, 2025, as stipulated in the agreement, the disposition of the [Employee's] case was changed to *nolle prosequi*, and the case was dismissed with prejudice.

Upon consideration and evaluation of all the testimony and factors, as well as the relevant *Douglas* factors,[6] the Trial Board Panel found as follows:

1) Charge No.1:
    a. Specification No. 1: **GUILTY – SUSPENSION – 30 DAYS**
    b. Specification No. 2: **GUILTY – SUSPENSION – 30 DAYS**
2) Charge No. 2:
    a. Specification No. 1: **GUILTY – SUSPENSION – 30 DAYS**
3) Charge No. 3:
    a. Specification No. 1: **GUILTY - TERMINATION**
    b. Specification No. 2: **NOT GUILTY**
4) Charge No. 4:
    a. Specification No. 1: **GUILTY – SUSPENSION – 5 DAYS**
    b. Specification No. 2: **GUILTY – SUSPENSION – 5 DAYS**
    c. Specification No. 3: **GUILTY – SUSPENSION – 30 DAYS**
    d. Specification No. 4: **GUILTY – SUSPENSION – 30 DAYS**
5) Charge No. 5:
    a. Specification No. 1: **GUILTY – SUSPENSION – 30 DAYS**
6) Charge No. 6:
    a. Specification No. 1: **NOT GUILTY**
    b. Specification No. 2: **GUILTY – SUSPENSION – 30 DAYS**

[6] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981).

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW[7]

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[8] 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.[9] 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 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).

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[7] 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").

[8] 801 A.2d 86 (D.C. 2002).

[9] *See* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

There is no dispute that the current matter falls under the purview of *Pinkard*. Employee is a member of the Metropolitan Police Department and was the subject of an adverse action (termination); Employee is a member of a Union - Fraternal Order of Police ("FOP"), which has a Collective Bargaining Agreement ("CBA") with Agency. The CBA contains language similar to that found in *Pinkard* and Employee appeared before an Adverse Action Panel on December 12, 2024, 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.[10] 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.[11]

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 (1) Charge No.1, Specification No. 1; (2) Charge No. 2, Specification No. 1; (3) Charge No. 3, Specification No. 1; (4) Charge No. 4: Specification No. 1; (5) Specification No. 2; (6) Specification No. 3; (7) Specification No. 4; and (8) Charge No. 6; Specification No. 2 because Employee pleaded guilty to these charges and specifications during the Trial Board Hearing. Additionally, the Trial Board Panel found Employee 'Not Guilty' for Charge No. 3, Specification No. 2, and Charge No. 6, Specification No. 1.

For Charge No. 1., Specification No. 2., I find that Agency had substantial evidence in the record to support its findings of "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*" To support this charge, the Trial Board Panel cited under Specification No. 2, that Officers Blagrove, Griffin and Givens all testified that Employee was given multiple instructions by on-duty officers on the scene to back away from the area where Officer Griffin was attempting to conduct the SFSTs, but he repeatedly disobeyed these directives. The Trial Board Panel also noted that while Employee did not intentionally resist arrest, he admitted that he tensed up when the officers were attempting to place handcuffs on him, and this action falls under the definition of MPD Use of Force Framework. General Order 901.07, II.5.[12] The Trial Board Panel

[10] *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).
[11] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).
[12] "Subject is uncooperative and will not comply with member's request of commands. Subject exhibits physical and mechanical defiance… including evasive movements to defeat member's attempt at control, including bracing, tensing, pushing or verbally signaling an intention not to held in custody, provided that the intent to resist has been clearly manifested."

further cited that in addition to tensing, Employee stated, "Cuff me, you're not going to fucking cuff me" and this verbally signal his intent to resist. The Panel further asserted that the BWC footage and the officers' testimony confirmed that Employee interfered with his fiancé's DUI investigation. I find that the Panel's findings for this Charge No. 1., Specification No. 2., is supported by Employee's own admission that he tensed up, and that he was disrespectful toward the officers on the scene. Employee testified that he was embarrassed by his actions and the way he treated Ofc. Griffin or other officers on the scene. Accordingly, I further find that there's substantial evidence in the record to support the Panel's findings with regard to Charge No. 1., Specification No. 2.

For Charge No. 5., Specification No. 1., I find that Agency had substantial evidence in the record to support its findings "*Willfully and knowingly making an untrue statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making any untruthful statement before any court or any hearing.*" The Trial Board Panel cited that the BWC footage clearly shows Employee stating to the officers on the scene that he' Ubered' to the scene. Employee admitted during the Trial Board Hearing that he drove to the scene. He stated that because he did not take home his personal vehicle, he drove the Agency's take-home vehicle he had to the location where his fiancé was. Employee testified that "*I regret my decision getting behind the wheel, driving the police cruiser or driving any vehicle at that time*. But I had a lapse of judgment and didn't think about the driving portion of getting there. I just thought about getting there and helping." (Emphasis added). Employee does not deny telling the officers on the scene that he 'ubered' to the scene which was not true. Thus, based on the record, I find that there is substantial evidence in the record to support the Panel's findings for Charge No. 5., Specification No. 1.

2) Whether there was harmful procedural error

Pursuant to *Pinkard* and OEA Rule 634.6, the undersigned is required to make a finding of whether or not MPD committed harmful error. OEA Rule 634.6 provides as follows: "notwithstanding any other provision of these rules, the Office shall not reverse an agency's action for error in the application of its rules, regulations, or policies ***if the agency can demonstrate that the error was harmless*** (emphasis added). Harmless error shall mean an error in the application of the agency's procedures, which did not cause substantial harm or prejudice to the employee's rights and did not significantly affect the agency's final decision to take the action." The parties do not allege any harmful procedural error in this matter.

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

> **Charge No. 1., Specification No. 2.:** Violation of General Order 120.21, Attachment A, A-11 "*Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violation of any law of the United States, or of any law, municipal ordinance, or regulation of the District of Columbia.*" Specification No. 2., "In that, on November 11, 2023, you: (a) Did not comply with numerous commands from officers from the Second District and you actively resisted being placed in handcuffs; (b) Interfered with the DUI investigation conducted by the members of the Second District regarding your girlfriend [Employee's fiancé]; (c) Acted in a rude disrespectful manner toward the Second District officers on the scene.

To support this charge, the Trial Board Panel cited that Officers Blagrove, Griffin and Givens all testified that Employee was given multiple by on-duty officers on the scene to back away from the area where Officer Griffin was attempting to conduct the SFSTs, but he repeatedly disobeyed these directives. The Trial Board Panel also noted that while Employee did not intentionally resist arrest, he admitted that he tensed up when the officers were attempting to place handcuffs on him, and this action falls under the definition of MPD Use of Force Framework. General Order 901.07, II.5. The Trial Board Panel further cited that in addition to tensing, Employee stated, "Cuff me, you're not going to fucking cuff me" and this verbally signal his intent to resist. The Panel further asserted that the BWC footage and the officers' testimony confirmed that Employee interfered with his fiancé's DUI investigation. I agree with the Trial Board's findings regarding this specification. Moreover, Employee admitted during the Trial Board Hearing that he 'tensed up' when the officers were attempting to put handcuffs on him. Employee also admitted acting in a rude and disrespectful manner towards Ofc. Griffin. Employee testified that he embarrassed by his actions and the way he treated Ofc. Griffin or other officers on the scene. Accordingly, I find that there is substantial evidence in the record to support Charge No. 1, Specification No. 2. I further find that Agency's decision to levy the current charge against Employee was done in accordance with applicable laws and regulations.

> **Charge 5, Specification No. 1**, Violation of General Order 120.21, Attachment A, A-5 "*Willfully and knowingly making an untrue statement of any kind in any verbal or written report pertaining to his/her official duties as a Metropolitan Police Officer to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making any untruthful statement before any court or any hearing.*" Specification No. 1., "In that on November 11, 2023, you told numerous officers and officials of the MPD, including Officer Griffin, Sergeant Parker, and Lieutenant Murphy, that you did not drive and that you had taken an Uber to the scene at 1645 Connecticut Avenue, NW. However, the investigation revealed that you drove your MPD-issued marked take-home cruiser to the scene and that you did not take an Uber."

The Trial Board Panel cited that the BWC footage clearly shows Employee stating to the officers on the scene that he' Ubered' to the scene, but it was later discovered that drove to the scene. Agency also argues that General Order 120.21, A, A-5, does not require that the untruthful statement be made while on-duty. While Employee does not deny making a false statement to the officers on the scene regarding how he arrived at the scene, Employee on the other hand argued that he was off-duty on the night of the incident and not on the scene in connection with his official duties at MPD. Employee also asserted that he did not make the false statement before a court or in any hearing. Therefore, any statement Employee made while he was off-duty does not meet Agency's own definition of an untruthful statement, and as such, Agency's guilty charge for Charge No.5, Specification No. 1., is not supported by substantial evidence.

Here, both parties agree that Employee was off-duty when he arrived on the scene on November 11, 2023, in plain clothes and in his MPD issued take-home cruiser. Additionally, the parties agree that Employee was not on the scene in his official capacity. While I agree with Agency's assertion that the applicable General Order does not require that the untruthful statement be made while on duty, I find that the applicable General Order specifies that the untruthful statement "…. pertaining to his/her *official duties as a Metropolitan Police Officer* to, or in the presence of, any superior officer, or intended for the information of any superior officer, or making any untruthful

statement before any court or any hearing." (Emphasis added). Because Employee was not on the scene in his official capacity as an MPD officer and he was not carrying out his official duties, I must agree with Employee's assertion that his statements on November 11, 2023, do not meet the requirements of General Order 120.21, A, A-5, and accordingly, Agency has not met its burden of proof for Charge No.5, Specification No. 1.

Whether the Penalty was Appropriate

Agency asserts that based on factual findings and consideration of the *Douglas* factors, termination is an appropriate penalty. Agency further argues that it exercised proper managerial discretion in accordance with applicable laws and regulations. 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).[13] 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 Penalty; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it fails to consider relevant factors or the imposed penalty constitutes an abuse of discretion.[14]

In this case, I find that Agency's action was taken for cause with regard to (1) Charge No.1, Specification No. 1.; (2) Charge No. 1., Specification No. 2.; (3) Charge No. 2, Specification No. 1; (4) Charge No. 3, Specification No. 1; (5) Charge No. 4: Specification No. 1; (6) Specification No. 2; (7) Specification No. 3; (8) Specification No. 4; Charge No. 5., Specification No. 1; and (9) Charge No. 6; Specification No. 2. 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.[15] Because I find that Agency did not have cause for Charge No. 5., Specification No. 1, Agency cannot rely on this charged to discipline Employee. Agency issued the following penalties for the remaining charges: **Charge No.1., Specification No. 1**: (30 days suspension); **Charge No. 1., Specification No. 2:** (30 days suspension); **Charge No. 2., Specification No. 1**: (30 days suspension); **Charge No. 3., Specification No. 1:** (Termination); **Charge No. 4., Specification No. 1**: (5 days suspension); **Specification No. 2**: (5 days suspension); **Specification No. 3**: (30 days suspension); **Specification No. 4**: (30 days suspensions); **Charge No. 6: Specification No. 2:** (30 days suspension). These sum up to a total of 190 days suspension and termination.

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[13] *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).

[14] *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).

[15] *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).

Disparate Treatment

Employee argues that Agency's penalty of termination for Charge No. 3., Specification No. 1., is disproportionately severe when compared to decades of prior punishments imposed on similarly situated MPD officers. Employee asserts that it provided the Trial Board Panel with ten (10) comparable employees who received a penalty ranging from 19 to 35 days of suspension for a similar cause of action. Citing to Merit Systems Protection Board ("MSPB") cases, Employee highlights that the comparator employee in a disparate treatment case "need not always have to be in the same work unit or under the same supervisor…. There must be enough similarity between both the nature of the misconduct and the other factors to lead a reasonable person to conclude that the agency treated similarly situated employees differently, but the Board would not have 'hard and fast rules regarding the outcome determinative nature of these factors.'"[16] Employee states that the "comparative discipline that [Employee] presented at the adverse action hearing establishes a *prima facie* showing of disparate treatment."[17] Employee highlights that he works in the same organizations unit with the comparator employees. He notes that they are all sworn police officers with Agency. Employee avers that they were also all subjected to discipline by the same supervisor. He explains that seven (7) of the ten (10) comparator employees were disciplined by Discipline Review Division ("DRD") Director, Director Hobie Hong. Employee reiterates that prior comparable disciplinary cases involving other MPD officers who have been charged with Driving Under the Influence demonstrate that termination is not appropriate in this matter. [18]

The Trial Board cites that none of the comparable cases presented by Employee were investigated under the updated General Order 120.21. It maintains that General Order 120.21 was updated on November 27, 2022, and the updated version included a new table of penalties.[19] Agency asserts that Employee has not established disparate treatment. It explains that Employee has not established that any of the prior disciplines involved substantially similar circumstances as is required for a finding of disparate treatment. Agency contends that Employee has not shown that any of the comparable employees were similarly situated. Agency notes that only one (1) of the comparator employees work in the same organization unit as Employee. It also cites that none of the comparator employees were disciplined by the same supervisor within the same general period. Agency explains that all the misconduct of the comparator employees occurred more than a year prior to Employee's misconduct.[20] Agency cites that the DUI charges for the comparator employees were related to these employees using their private vehicles, whereas Employee's misconduct involves the use of a marked MPD cruiser with emergency lights activated.[21] Agency further agues that even if Employee has establish a *prima facie* showing for disparate treatment, it had a legitimate reason to terminate Employee. Specifically, Agency argues that Employee "engaged in egregious with severely aggravating circumstances including using a marked MPD cruiser with the emergency lights activated, interfering with an MPD investigation, behaving belligerently towards MPD officers…. Accordingly, Employee's argument that his termination is disparate treatment is meritless."[22]

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[16] *See* Employee's Reply brief
[17] *Id*.
[18] *See* Petition for Appeal (April 4, 2025) and Employee's Brief (July 7, 2025).
[19] Agency's Answer (May 1, 2025).
[20] Agency's brief (June 11, 2025) and Agency's sur-reply (July 18, 2025).
[21] *Id*.
[22] *Id*.

In *Jordan v. Metropolitan Police Department*,[23] the OEA Board held the following with respect to a claim of disparate treatment:

> [An agency must] apply practical realism to each [disciplinary] situation to ensure that employees receive fair and equitable treatment where genuinely similar cases are presented. It is not sufficient for an employee to simply show that other employees engaged in misconduct and that the agency was aware of it, the employee must also show that the circumstances surrounding the misconduct are substantially similar to his own. Normally, in order to show disparate treatment, the employee must demonstrate that he or she worked in the same organizational unit as the comparison employees and that they were subject to [disparate] discipline by the same supervisor [for the same offense] within the same general time period.

OEA has further held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees. 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).[24] Further, "in order to prove disparate treatment, [Employee] *must* show that a similarly situated employee received a different penalty."[25] (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."[26] If a showing is made, then the burden shifts to the agency to produce evidence that establishes a legitimate reason for imposing a different penalty on the employee raising the issue.[27]

Here, Employee provided a list of ten (10) comparator employees whom he alleged received a different penalty than him. Of the ten (10) comparator employees, three (3)[28] were disciplined by a different supervisor (Inspector Michael Eldridge) and these comparator employees were disciplined more than ten (10) years before Employee was disciplined. Therefore, I find that these three (3) comparator employees are not similarly situated as Employee. Additionally, one of the comparator employees is a sergeant (DRD # 498-21), while Employee is an officer. As such, I find that this comparator employee is also not similarly situated as Employee. Furthermore, the misconduct supporting the adverse action for two (2) of the comparator employees (DRD # 513-22 and DRD # 634-19) occurred more than three (3) years before the misconduct in Employee's case occurred. Moreover, discipline for these comparator employees (DRD # 513-22; DRD # 634-19; DRD# 297-22; and DRD# 552-22**)** was proposed more than two (2) years from when discipline in the current matter was proposed. Therefore, I find that these comparator employees are not similarly situated as Employee as they were not disciplined within the same general time period. In addition, I find that

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[23] OEA Matter No. 1601-0285-94, Opinion and Order on Petition for Review (September 29, 1995).
[24] *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).
[25] *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).
[26] *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)).
[27] *Id*.
[28] DRD# 199-11; DRD # 540-10; and DRD # 337-10.

the comparator employee in DRD# 721-22 who received a penalty of termination was not similarly situated as Employee because this comparator employee was criminally charged with 'obstruction of justice' and 'public intoxication' in a Virginia court, whereas Employee was only criminally charged with 'DUI' in a District of Columbia court. Therefore, I find that the misconduct in this comparable employee's case and in Employee's case are not substantially similar.

Of the ten (10) comparator employees submitted by Employee, I find that only one (1) of the comparator employees is similarly situated - **DRD# 095-23. Employee and this comparator employee** worked in the same organizational unit – MPD; this comparator employee pled guilty to DUI, just like Employee, but they received a penalty of 35 days suspension while Employee was terminated. Additionally, both Employee and the comparator employees were disciplined by the same supervisor, Director Hong, within the same general time period.[29] Additionally, the circumstances surrounding this comparator employee's misconduct are substantially similar to Employee's misconduct. Both Employee and the comparable employee were off duty at the time of their arrest; they were both arrested for DUI, and they both pled guilty to DUI in court. Therefore, I find that there exists 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. Accordingly, I conclude that Employee has established a *prima facie* showing for disparate treatment with regard to this comparable employee - DRD# 095-23.

In the instant matter, because I find that Employee has shown that a similarly situated employee – DRD # 095-23, was treated differently than him, pursuant to case law, the burden now shifts to Agency to produce evidence that establishes a legitimate reason for imposing a different penalty on Employee. While it is evident from the record that MPD has a long history dating to as far back as 2010, of suspending employees charged with DUI, this Trial Board Panel highlighted under *Douglas* factor No. 6 – *Consistency of the penalty with those imposed upon other employees of the same or similar offense*, that "[a]lthough several cases were included by both counsel, none of the cases that were included were investigated under the update General Order 120.21. The General Order was updated on November 27, 2022, and included multiple updates and a new table of penalties." The Trial Board Panel further noted under *Douglas* factor No. 7 – *Consistency of the penalty with any applicable agency table of penalties*, that pursuant to General Order 120.21, Attachment A, the charge of "'Criminal Conduct' merits termination in reference to the charge of Driving Under the Influence." While the record supports Agency's assertion, it should be noted that the penalty for the charge of 'Criminal Conduct' has always been termination, even with the prior table of penalties, yet throughout the years (as far back to at least since 2010, as provided in the record), Agency has imposed the lesser penalty of suspension for employees charged with 'Criminal Conduct' for a DUI. Therefore, I conclude that Agency's excuse in the current matter that there are no cases that were investigated under the updated General Order 120.21, Attachment A (table of penalties), does not sufficiently establish a legitimate reason for imposing a different penalty on Employee. While the updated November 27, 2023, General Order 120.21. I, provides in pertinent part that "Penalties imposed under this new policy are not bound or limited by any prior outcomes that occurred under the previously negotiated disciplinary process or resulting arbitration," I still conclude that Agency engaged in disparate treatment in the instant matter.

[29] The discipline for the comparator employee in DRD# 095-23 was proposed on February 8, 2023, and discipline for Employee in the current matter was proposed on May 13, 2024, approximately one (1) year and three (3) months apart.

Furthermore, the Trial Board Panel did not attempt to distinguish Employee's misconduct with any comparator employees' misconduct to warrant a different penalty. While Agency noted in its briefs to this Office that Employee's misconduct was egregious because unlike the comparator employees, Employee drove his MPD vehicle while under the influence of alcohol, I find that this argument is irrelevant as it was not considered by the Trial Board Panel in its *Douglas* factor No. 6 analysis. Pursuant to *Pinkard*, the undersigned can only rely on the evidence presented during the Trial Board hearing in deciding this matter. Therefore, I find that Agency subjected Employee to disparate treatment by terminating him for being arrested and pleading guilty to DUI, whereas Agency suspended a similarly situated employee (DRD # 095-23) for thirty-five (35) days within the same general time period.

Penalty Based on Consideration of Relevant Factors

Although OEA has a "marginally greater latitude of review" than a court, it may not substitute its judgment for that of the agency in deciding whether a particular penalty is appropriate.[30] The "primary discretion" in selecting a penalty "has been entrusted to agency management, not to the OEA."[31] Selection of an appropriate penalty must involve a responsible balancing of the relevant factors in the individual case.[32] OEA's role in this process is not to insist that the balance be struck precisely where the OEA would choose to strike it if OEA were in MPD's shoes in the first instance; such an approach would fail to make proper deference to the Agency's primary discretion in managing its workforce. Rather, OEA's review of an agency-imposed penalty is essentially to ensure that MPD conscientiously considered the relevant factors and did strike a responsible balance within tolerable limits of reasonableness. Only if OEA finds that the agency failed to weigh the relevant factors, or that MPD's judgment clearly exceeded the limits of reasonableness, is it appropriate for OEA then to specify how the MPD's decision should be corrected to bring the penalty within the parameters of reasonableness.[33]

General Order 120.21, II, A, provides in pertinent parts that "Disciplinary action shall be administered by the department for sustained misconduct in a manner, and at a level, appropriate

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[30] *See*, *Douglas v. Veterans Administration*, 5 MSPB 313, 328, 5 M.S.P.R. 280, 301(1981)(Federal Merit Protection Board case); Raphael 740 A. 2d 945).
[31] *Id*.
[32] In *Douglas v. Veterans Administration*, the Merit Systems Protection Board ("MSPB"), this Office's federal counterpart, set forth "a number of factors that are relevant for consideration in determining the appropriateness of a penalty." Although not an exhaustive list, the factors are as follows: (1) the nature and seriousness of the offense, and its relation to the employee's duties, position, and responsibilities including whether the offense was intentional or technical or inadvertent, or was committed maliciously or for gain, or was frequently repeated; (2) the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; (3) the employee's past disciplinary record; (4) the employee's past work record, including length of service, performance on the job, ability to get along with fellow workers, and dependability; (5) the effect of the offense upon the employee's ability to perform at a satisfactory level and its effect upon supervisors' confidence in employee's ability to perform assigned duties; (6) consistency of the penalty with those imposed upon other employees for the same or similar offenses; (7) consistency of the penalty with any applicable agency table of penalties; (8) the notoriety of the offense or its impact upon the reputation of the agency; (9) the clarity with which the employee was on notice of any rules that were violated in committing the offense, or had been warned about the conduct in question; (10) potential for the employee's rehabilitation; (11) mitigating circumstances surrounding the offense such as unusual job tensions, personality problems, mental impairment, harassment, or bad faith, malice or provocation on the part of others involved in the matter; and (12) the adequacy and effectiveness of alternative sanctions to deter such conduct in the future by the employee or others.
[33] *Raphel* 740 A. 2d at 945.

with *the member's past record*, and the seriousness of the offense, *giving due consideration to mitigating and aggravating factors*." (Emphasis added). This Trial Board Panel found the following to be mitigating under its *Douglas* factors analysis:

> **Douglas Factor No. 4**: *The employee's past work record, including length of service, performance on the job, ability to get along with fellow coworkers and dependability* – "The Panel considers the Respondent's extensive experience and commendations to be a mitigating factor in this case. He is a thirteen-year veteran of the Metropolitan Police Department and has received numerous awards throughout his career. The Respondent's counsel provided a comprehensive package that included the Respondent's prior awards, performance evaluations, and his military DD-214, which details his military accomplishments.
>
> As a member of the Metropolitan Police Department, the Respondent received (29) twenty-nine PD751's – Commander's Commendations; (1) one achievement medal, and (1) one Medal of Valor. In each of the Respondent's PD751's, he was recognized along with his coworkers. Each of these commendations highlights his exceptional skills and the intense levels of collaboration he achieved with his fellow officers.
>
> The Respondent's performance evaluations demonstrate consistency and reliability across different assignments. The evaluations included in the evidence cover three of his roles within the Metropolitan Police Department: The Gun Recovery Unit, The Emergency Response Team, and The Court Liaison Division. He received favorable reviews from his supervisors in each of these units. Even after being placed in a non-contact role, his supervisor in the Court Liaison Division noted his continued professionalism as an MPD officer, commending him for his courtesy and professionalism towards others in his evaluation.
>
> As a member of the U.S. Marin Corps, the Respondent received the following awards: Afghanistan Combat Action Ribbon, Marine Corps Good Conduct Medal, Afghanistan Campaign Medal (with (1) Bronz Service Star), Sea Service Deployment Ribbon, Global War on Terrorism Service Medal, National Defense Service Medal, Navy Meritorious Unit Commendation, NATO Medal – ISAF Afghanistan, Letter of Appreciation, and an Expert Rifle Qualification Badge.
>
> The Respondent is highly decorated and has proven to be an assert both to the United States as a Marine and to the District of Columbia as a Police Officer."
>
> **Douglas Factor No. 5**: *The effect of the offense on the employee's ability to perform at a satisfactory level and its effect on supervisors' confidence in the employee's ability to perform assigned duties* – "The Panel holds this to be a mitigating factor. It heard testimony from three managers at the Metropolitan Polica Department: Lieutenant Jeremy Kniseley, Lieutenant Robert Anderson, and Lieutenant Francisco Montano. All three managers expressed complete confidence in the Respondent's ability to continue being an asset to the Metropolitan Police Department if he were to remain with the organization. None of them indicated any reservations about his ongoing performance or contributions to the MPD, should he be retained."

> **Douglas Factor No. 10**: *Potential for the employee's rehabilitation* – "The Panel holds this to be a mitigating factor. The Respondent took ownership of his offense and pled guilty to Driving Under the Influence in D.C. Superior Court on 1/9/2024, less than two months after the initial offense. The Respondent has completed all the terms of the deferred sentencing agreement that he entered into with D.C. Superior Court and, as such, on 1/10/2025, was permitted to return to court where the court entered a *nolle prosequi* for sentencing, dropping the case.
>
> Additionally, independent of any court requirement or agreement, the Respondent voluntarily began individual therapy and joined the Alcohol Recovery Group at the Metropolitan Police Employee Assistant Program (MPEAP). He first contacted MPEAP on November 29, 2023, and attended an intake session on December 6, 2023.
>
> Dr. Beverley Anderson of the MPEAP stated that, during his therapy, the Respondent has developed new coping mechanisms and strategies to manage his past experiences as a Marine deployed overseas, as well as his time at MPD. Additionally, Dr. Anderson included a certification from Kolmac Outpatient Recovery, which indicated that the Respondent did not meet the criteria for a substance use disorder diagnosis.
>
> Balancing the Respondent's positive and proactive steps in addressing his DUI offense, the circumstances surrounding his arrest, his present candor and acceptance of responsibility, his committed effort at therapy, coupled with his many years of decorated service to MPD and the Marine Corps, *the Panel believes there is a high potential for his rehabilitation*." (Emphasis added).

Here, the Panel admitted under **Douglas Factor No. 10** that there was a high potential for Employee's rehabilitation based on the steps Employee took after the November 11, 2023, incident to address his DUI offense, yet the Panel later asserted under **Douglas Factor No. 12:** *The adequacy and effectiveness of alternative sanction to deter conduct in the future by the employee or others* that termination was the only penalty to deter Employee's future misconduct for DUI. Specifically, the Panel cited under *Douglas* Factor No. 12 that "Due to the nature of this misconduct, the Panel has determined that **Termination** is the *only effective sanction and deterrent*." I disagree with this finding as I do not find this assertion to be convincing. Based on the Trial Board Panel's own admission under *Douglas* Factor No. 10, that there was a "high potential for Employee's rehabilitation," and considering the record as a whole, the undersigned finds that Agency did not conscientiously consider the relevant *Douglas* factors or strike a responsible balance within tolerable limits of reasonableness.

Furthermore, General Order 120.21 B, Table of Penalties lists 'Termination' as the 'Presumptive Penalty' for this cause of action and '20 Days suspension - anything less than termination' as the 'Mitigated Penalty'. I find that the record includes several mitigating factors, some of which the Trial Board Panel included in its *Douglas* factors analysis. I further find that giving the totality of the circumstances, the aggravating factors do not outweigh the mitigating factors. Accordingly, I conclude that the 'Mitigated Penalty' of suspension was warranted in this instance and not the 'Presumptive Penalty' of termination. Consequently, I further conclude that Agency's penalty of termination for Charge No. 3. Specification No. 1. constitutes an abuse of discretion.

ORDER

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

1. Agency's action of terminating Employee for Charge No. 3. Specification No. 1 is **REVERSED** and **MODIFIED** to a THIRTY-FIVE (35) DAYS SUSPENSION.

2. Agency's action of suspending Employee for Charge No. 5., Specification No. 1 is **REVERSED**:

3. Agency action is further **UPHELD** for the following charges and specifications:

    a. **Charge No.1., Specification No. 1**: 30 DAYS SUSPENSION.
    b. **Charge No. 1., Specification No. 2:** 30 DAYS SUSPENSION.
    c. **Charge No. 2., Specification No. 1**: 30 DAYS SUSPENSION.
    d. **Charge No. 4., Specification No. 1**: 5 DAYS SUSPENSION.
    e. **Charge No. 4., Specification No. 2**: 5 DAYS SUSPENSION.
    f. **Charge No. 4., Specification No. 3**: 30 DAYS SUSPENSION.
    g. **Charge No. 4., Specification No. 4**: 30 DAYS SUSPENSION.
    h. **Charge No. 6: Specification No. 2:** 30 DAYS SUSPENSION.

4. Agency shall reimburse Employee all back-pay and benefits lost as a result of the termination.

5. 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