THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
EMPLOYEE,[1]	)	
Employee	)	OEA Matter No. 1601-0061-23
	)	
v.	)	Date of Issuance: June 11, 2025
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	NATIYA CURTIS, Esq.
Agency	)	Administrative Judge
	)	

Daniel J. McCartin, Esq., Employee Representative
Timothy McGarry, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On August 25, 2023, Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA" or "Office") contesting the District of Columbia Metropolitan Police Department's ("Agency" or "MPD") decision to terminate him from his position as a Police Officer effective June 23, 2023. OEA issued a Request for Agency's Answer to Petition for Appeal on August 28, 2023. Agency submitted its Answer to Employee's Petition for Appeal on September 22, 2023. This matter was initially assigned to Administrative Judge ("AJ") Lois Hochhauser on September 22, 2023.

On November 27, 2023, Employee requested a Prehearing Conference. On November 27, 2023, AJ Hochhauser issued an Order requiring the parties to brief issues Employee raised in his Petition for Appeal. This Order further requested the parties to address whether this matter is governed by *Elton Pinkard v Metropolitan Police Department*, 801 A.2d 86 (D.C. 2002). The Order further directed the parties to consult regarding the documents that should be submitted as part of this appeal. The parties' briefs were due by January 4, 2024. Both parties submitted their briefs as required.

On October 31, 2024, Employee filed a Motion Requesting a Briefing Schedule and Prehearing Conference or Alternatively for Reassignment. The matter was reassigned to the undersigned AJ on October 28, 2024. On November 4, 2024, the undersigned issued an Order scheduling a Prehearing Conference for November 22, 2024. Prehearing statements were due by November 15, 2024. The parties submitted their Prehearing statements within the prescribed deadline.

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

On November 22, 2024, both parties appeared for the Prehearing Conference. During the Prehearing Conference, I found that because there was an Adverse Action Panel hearing in this matter, that OEA's review of this appeal was subject to the standard of review outlined in *Elton Pinkard v Metropolitan Police Department.* As a result, on November 22, 2024, the undersigned issued a Post-Prehearing Conference Order, requiring the parties to submit briefs addressing whether: (1) 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 all laws and/or regulations. Agency's brief was due by December 20, 2024. Employee's brief was due by January 17, 2025. Agency's Sur-Reply brief was due by January 31, 2025. I also ordered that all electronic exhibits such as video footage and or audio recordings be provided to the undersigned by January 31, 2025. The party submitted their initial briefs within the prescribed deadline.

On January 29, 2025, Agency filed a Consent Motion to Extend the Deadline to File its Reply. On January 30, 2025, I granted Agency's Consent Motion and extended the deadline for Agency to file its reply to February 7, 2025. Agency filed its Sur Reply Brief within the prescribed deadline. The parties also submitted the electronic exhibits, as ordered. 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 Adverse Action Panel's decision was supported by substantial evidence;
2) Whether there was harmful procedural error;
3) Whether Agency's action was done in accordance with applicable laws or regulations.

BURDEN OF PROOF

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

> The burden of proof for material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.[2]

OEA Rule § 631.2 *id.* states:

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

[2] OEA Rule § 699.1.

STATEMENT OF THE CHARGES

According to the Adverse Action Panel's Findings of Facts and Recommendation of Termination, which was accepted by the Agency in a Final Notice of Adverse Action, and received by Employee on June 7, 2023, Agency terminated Employee effective August 1, 2023, based on the following charges and specifications, which are reprinted in pertinent part below:[3]

Charge 1: Violation of General Order Series 120.21, Attachment A, Part A-7, which states, "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction. Members who are accused of criminal or quasi-criminal offenses shall promptly report or have reported their involvement to their commanding officers."

Specification 1:

In that, between August and December, 2019, you physically assaulted Ms. [K.H.] by grabbing her and choking her. You violated Maryland Code 3-203, Assault in the Second Degree, which is a misdemeanor in the state of Maryland.

Specification 2:

In that, sometime in 2019, you assaulted Mr. [R.J.] by grabbing him by the neck and throwing him on the couch. You violated Maryland Code 3-203, Assault in the Second Degree, a misdemeanor in the State of Maryland.

Charge 2: Violation of General Order 120.21, Attachment A, Part #12, which states, "conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violations of any law of the United States, or any law, municipal ordinance, or regulation of the District of Columbia."

Specification 1:

In that, between August and December, 2019, you threatened to kill Ms. [K.H.] during a physical assault you perpetrated against her when you said, "You think I am playing with you bitch, I will fucking kill you. You better not disrespect me again. When I tell you to shut the fuck up, you shut the fuck up or won't wake up. Stop playing with me."

[3]Agency's Answer to Petition for Appeal (September 22, 2023).

Specification 2:

> In that, on May 11, 2021, Ms. [K.H.] was threatened by you over the telephone and Ms. [K.H.]'s children heard the threats made by you. Based on the threats made over the telephone, Ms. [K.H.] called Anne Arundel County Police Department ("AAPD") and filed for a protection order against you. A Final Protection Order was granted as a result of the threats made by you, which was valid for one year.

Specification 3:

> In that, on May 11, 2021, as a result of your verbal threats made toward Ms. [K.H.], the AACPD took an offense report for "Assaults Threatened Spousal," listing you as the suspect. Domestic Violence supplement reports were also completed, indicating a "high danger" was posed to Ms. [K.H.] by you.

Charge 3: Violation of General Order 120.21, Attachment A, Part A-16, which states, "Fraud in securing appointment, or falsification of official records or reports."

Specification 1:

> In that, on May 31, 2022, you completed the criminal history section on your Personal History Statement ("PHS") and knowingly provided false responses to the questions regarding any previous batteries or assaults, or the commission of any acts that would rise to a felony or misdemeanor, regardless of if caught. You were involved in a domestic violence assault on or about August 24, 2019, in which you assaulted Ms. [K.H.] and choked her, causing her to go unconscious.

SUMMARY OF THE TESTIMONY

On May 4, 2023, Agency held an Adverse Action Panel hearing in this matter. During the hearing, testimonial, documentary, and audio 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 Adverse Action Panel hearing.

Agency's Case-in-Chief

Sergeant Tiffani Cowan ("Sgt. Cowan") – Tr. pp. 53-176

Sgt. Cowan is the Sergeant at the 4th District and has been a sergeant with the Metropolitan Police Department ("MPD") for sixteen years. Tr. 53-54. Sgt. Cowan testified that in June 2022 she was an agent in the Internal Affairs Division and was assigned to an investigation involving Employee. Sgt. Cowan affirmed that she essentially handled the investigation from start to finish. Sgt. Cowan was questioned about incident summary numbers and she explained that they are numbers that are obtained when there is alleged misconduct involving a member of the MPD. Tr. pp. 54-56. Sgt. Cowan noted that incident summary numbers were drawn as May 23, 2022. Sgt. Cowan affirmed that Employee was served with the Notice of Proposed Adverse Action and acknowledged receipt on September 22, 2022.

When questioned about what led to the incident summary number being drawn, Sgt. Cowan testified that it was drawn because Employee was being reinstated with the Metropolitan Police Department, so he was required to fill out background documents. She stated that Employee answered "yes" to the fact that he had received a stay away order and Internal Affairs was notified. Sgt. Cowan testified that she memorialized her investigation into this matter in an investigative report and noted that it contained about 163 pages. Tr. pp. 58-59.

Sgt. Cowan identified part of Agency's Exhibit 1, as a Petition for Protective Order in reference to a domestic violence incident and identified Ms. K.H. as the petitioner and Employee as the person the protective order was filed against.[4] Sgt. Cowan stated that Ms. K.H. filed the protective order because she reported that Employee had threatened her life in front of her children on May 11, 2021. Sgt. Cowan testified that the petition for protective order indicated that Ms. K.H. and Employee have a child in common. Tr. pp. 60-61. When asked whether the petition stated whether Ms. K.H. was injured by Employee in the past, Sgt. Cowan testified that Ms. K.H. noted that Employee choked her to the point of passing out. Sgt Cowan stated that Ms. K.H. filed the protective order on May 12, 2021, and it was granted. Tr. p.62. Sgt Cowan identified Agency's Exhibit 1, page 73 as the temporary protective order that was granted effective May 19, 2021. Sgt. Cowan testified that the final protective order became effective on May 26, 2022. Tr. pp. 62-63.

Sgt. Cowan clarified that the initial protective order was issued in Anne Arundel County, Maryland, and the final protective order was issued in Prince George's County because Ms. K.H and Employee had an open custody case in Prince George's County. Sgt. Cowan confirmed that the final protective order was transferred from Anne Arundel County to Prince George's County. Tr. p. 64.

Sgt. Cowan affirmed that she obtained an incident report from Anne Arundel County regarding the threats made by Employee against Ms. K.H. Tr. p. 65. Sgt. Cowan affirmed that the officer listed on the offense report is Katerina Panagiotopoulos who later changed her last name to Brummitt ("Detective Brummitt"). Tr. pp. 65-66. Sgt. Cowan confirmed that Detective Brummitt was listed as the responding officer on the incident report. Tr. p. 66. Sgt. Cowan testified that Detective Brummitt indicated in the incident report that Ms. K.H. told her that she had a conversation with Employee by phone, and Employee threatened to "put her in the ground." Ms. K.H. further reported to Detective Brummitt that Employee had assaulted her and made threats to take her life in the past. Sgt. Cowan noted that Detective Brummitt further indicated in her report that Ms. K.H. also stated that Employee had strangled her in the past to the point of losing consciousness. Tr. p. 67.

Sgt. Cowan further testified that Detective Brummitt indicated in her report that she had completed a lethality assessment and determined that Ms. K.H. was in the high-danger category and that she should apply for a protective order immediately. Tr. pp. 68-69. Sgt. Cowan stated that Ms. K.H. filed for the protective order the next day. Sgt. Cowan confirmed that after she obtained copies of the Petition for a Protective Order and the final protective order along with the incident report from Anne Arundel County, it was her understanding that she was investigating an assault. Tr. p. 69. Sgt. Cowan indicated that she interviewed Ms. K.H. three (3) times as part of her investigation. She stated that all the interviews were recorded, and one was in person at Ms. K.H.'s home in Maryland. Tr. p. 70. Sgt. Cowan testified that Ms. K.H. reported that she and Employee were once in a relationship for eight (8) years. Sgt. Cowan confirmed that Ms. K.H. indicated the relationship had ended around 2020 and that

[4] Agency asserts that multiple efforts were made to have Ms. K.H. appear and testify, but she failed to appear. Tr. pp. 45-46.

she and Employee had one child together, who was six (6) years old at the time of the investigation. Tr. pp. 70-72.

Sgt. Cowan testified that during her interview with Ms. K.H., she spoke to her about the incident on May 11, 2021, when Employee was alleged to have stated that he would 'put Ms. K.H. in the ground'. Tr. p. 72. Sgt. Cowan noted that she found Ms. K.H.'s account of what happened during the incident that led to her filing the protective order credible. She stated that Ms. K.H. was very detailed, she explained that she was fearful, and she did not take the threat lightly. Sgt. Cowan noted that after Employee made the threats, Ms. K.H. immediately called the police to file a report. Tr. p. 73. Sgt. Cowan testified that the threats were made in the state of Maryland, Ms. K.H. referenced a custody battle during her interview, and it was Sgt. Cowan's understanding that Ms. K.H. and Employee were no longer together. Tr. p. 74.

Sgt. Cowan noted that she recalled speaking to Ms. K.H. about being strangled by Employee. Tr. p. 74. Sgt. Cowan was then asked to listen to part of her interview with Ms. K.H. Sgt. Cowan testified that Ms. K.H. and Employee were in Maryland when the strangulation incident took place and that Ms. K.H. also provided cell phone recording of the strangulation incident. Sgt. Cowan affirmed that in her opinion and based on her review, the cell phone recording corroborated Ms. K.H.'s account of what she told Sgt. Cowan during the interview. Tr. p. 75. When asked if she was able to visually see what was happening in the cell phone recording, Sgt. Cowan testified that the cell phone recording was mostly audio. Tr. p. 76.

Sgt. Cowan confirmed that she reviewed the cell phone video involving Employee and Ms. K.H. prior to the Adverse Action Panel Hearing. She described what she saw and heard in this video as a verbal altercation that turned physical. Sgt. Cowan affirmed that based on her observation, there was a gasp and Ms. K.H. was silent for a period. Sgt. Cowan testified that after the silence, Ms. K.H. stated to Employee that she saw the light and that he killed her. Tr. p. 78. Sgt. Cowan stated that after she reviewed the footage, she believed Ms. K.H.'s account that she was unconscious for a period of time because there was an audible gasp then no sound from Ms. K.H. Sgt. Cowan noted that fifteen (15) to twenty (20) seconds later, Ms. K.H. said she saw the light and resumed talking. Sgt. Cowan noted that when Ms. K.H. resumed talking, Employee said to her that next time she would not wake up. Sgt. Cowan affirmed that Employee's statement indicated that Ms. K.H. had been unconscious for a period of time. Tr. p. 79.

Sgt. Cowan testified that at the time the cell phone video was recorded, Employee and Ms. K.H. were still in a relationship and living together, and there was no custody battle at that time. She testified that in her opinion the cell phone video footage was not manufactured for a custody battle. Tr. pp. 80-81. Sgt. Cowan testified that Ms. K.H. stated that she did not call the police because of issues between police and black men and noted that she and Employee had agreed that they would not call the police about matters pertaining to the two of them. Tr. p. 81. Sgt. Cowan confirmed that during the interview, Ms. K.H. could not remember the exact date of the incident but indicated that she knew that it happened in 2019. Tr. p. 82. Sgt. Cowan testified that the metadata extracted from the video revealed that it was created on November 21, 2019. Tr. p. 83. Sgt. Cowan affirmed that based on her investigation, it was her understanding that the incident took place sometime between August 2019 and the end of 2019. Tr. p. 83.

Sgt. Cowan reviewed a clip from her first interview with Ms. K.H. and testified that during this portion of the interview, Ms. K.H. stated that she decided that if she called the police that would affect

the support that she was getting from Employee, who was a sole provider of Ms. K.H. and her children. Tr. p. 83. Sgt. Cowan recalled that she also interviewed Employee about the strangling incident in question. Tr. p. 84. Sgt. Cowan testified that she did not play the video recording for him of the strangling event during his interview on July 22, 2022, because he did not wish to see the video but Employee indicated that he was aware of it. Tr. p. 85-86. Sgt. Cowan affirmed that she did not believe Employee's version of the events he reported in his interview. Tr. p. 76. She testified that compared to the video that Ms. K.H. provided, there was nothing that caused her to believe that Employee had been assaulted. Sgt. Cowan further testified that in the video, she heard Ms. K.H. gasping for air, then saying she saw the light. Sgt. Cowan testified that this led her to believe that there was an assault, and that Ms. K.H. was strangled. Tr. pp. 87-88. Sgt. Cowan affirmed that she did not hear Employee reference being hit or struck by Ms. K.H. or hear Employee refer to Ms. K.H. putting hands on their daughter.

Sgt. Cowan confirmed that she interviewed Ms. K.H. again after speaking with Employee, and Ms. K.H. denied ever grabbing or shaking her daughter during that incident or striking Employee. Tr. 89. Sgt. Cowan testified that during a second interview with Employee, she played the video of the incident in question for Employee, and Employee confirmed that it was his voice and Ms. K.H.'s voice on the recording. Tr. pp. 90-91.

Sgt. Cowan recalled speaking to Employee about Ms. K.H.'s report that Employee threatened to kill her on May 11, 2021. Tr. p. 91. Sgt. Cowan listened to a portion of her interview of Employee and affirmed that Employee acknowledged that a conversation had taken place on May 11, 2021. Sgt. Cowan testified that Employee claimed that he said "you're killing me" when asked if he had threatened Ms. K.H. Sgt. Cowan stated that she did not find this explanation credible because during the interview, Ms. K.H. specifically stated that Employee threatened her multiple times and stated three times that he would put her in the ground if she kept messing with him. Sgt. Cowan testified that Ms. K.H. also stated that her children overheard the conversation as well. Tr. pp. 92-93.

Sgt. Cowan also remembered interviewing Ms. K.H.'s teenage son ("R.J.") on July 1, 2022. Tr. p. 94. Sgt. Cowan confirmed that she interviewed R.J. right after interviewing Ms. K.H. and there would have been no time for Ms. K.H. to tell R.J. what to say. Sgt. Cowan testified that she recalled asking R.J. about the incident in which Employee told Ms. K.H. that he would put her under the ground. Tr. p. 94. Sgt. Cowan noted that R.J. confirmed that he heard Employee make that statement because the conversation was on speaker phone. Tr. p. 95. Sgt. Cowan stated that R.J. heard Employee say "I'm going to put you in the ground" and his interpretation of that meant he would kill Ms. K.H. Tr. pp. 95-96. Sgt. Cowan testified that R.J. also stated that Employee and Ms. K.H. had prior altercations, so he believed that Employee's threat was credible. Tr. p. 96. Sgt. Cowan stated that R.J. appeared to be concerned about his mother, and believed something bad could happen to her. Sgt. Cowan testified that R.J. did not appear to be vindictive or trying to get Employee in trouble. She stated that it also did not appear that Ms. K.H. told R.J. what to say Tr. p. 97.

Sgt. Cowan then testified concerning an altercation between Employee and R.J. Sgt. Cowan stated that R.J. informed her during their interview that Employee grabbed him, picked him up by the neck and threw him on the sofa. Tr. p. 97-99. Sgt Cowan testified that based on her interview with R.J., she believed his account of what happened. She noted that he seemed to be forthcoming and explained what happened, and he did not appear to have been coached on what to say. Sgt. Cowan stated that Ms. K.H.'s older son R.B. was present to witness this altercation, and thus Sgt. Cowan also interviewed him. Tr. pp. 100-101. Sgt. Cowan testified that in his interview, R.B. provided details of the altercation between Employee and R.J. Sgt. Cowan stated that per R.B.'s account, R.J. came home wearing a

paperclip necklace that he made. At some point, Employee picked R.J. up with both hands by the neck and threw him on the sofa. Sgt. Cowan stated that she found his account of what happened to be credible because the story was consistent with R.J.'s. Tr. pp. 102-103. She further stated that R.B. provided more detail about the incident and that R.B. did not appear to be vindictive or trying to get Employee in trouble. Tr. p. 103.

Sgt. Cowan reviewed Employee's background investigation that was conducted as a part of his reinstatement process. Sgt. Cowan confirmed that as part of the background investigation process, Employee completed a criminal data portion on May 31, 2022. Tr. p. 104. Sgt. Cowan confirmed that as part of the criminal data section of the application, there are a series of questions asked about the applicant's criminal history. Tr. p. 104. Sgt. Cowan affirmed that Employee was asked whether he had ever committed the offense of battery, which was described as use of force or violence upon another, and his response was 'no'. Sgt. Cowan stated that she found his response to be untruthful because of the strangulation of Ms. K.H. and the assault of R.J. Tr. p. 105.

Sgt. Cowan also confirmed that Employee was also asked if he had ever committed any act amounting to a misdemeanor regardless of whether he was caught and his response was 'no'. Sgt. Cowan affirmed that she found that response untruthful because Employee's assault on R.J. constituted a misdemeanor offense. Sgt. Cowan confirmed that Employee was asked whether he had ever committed an act amounting to a felony regardless of whether he was caught and responded 'no'. Tr. p. 106. Sgt. Cowan testified that she found the statements to be untruthful because of the strangulation of Ms. K.H. which she believed was a felony offense in the state of Maryland. Tr. p. 107.

Sgt. Cowan testified that she consulted the Maryland Criminal Code. She affirmed that Section 3-202 of the Maryland Criminal Code was Assault in the First Degree. She testified that this section defines strangling as impeding the normal breathing of blood circulation to another person by applying pressure to the other person's throat or neck. Sgt. Cowan further noted that a person who violates this section is guilty of felony Assault in the First Degree and is subject to imprisonment if convicted. Tr. p. 108. Sgt. Cowan testified regarding her investigative report and stated that it had been determined that Employee physically assaulted Ms. K.H. between August 2019 and December of 2019 by grabbing and choking her, and thus Employee violated Maryland code 3-202, Assault in the First Degree. Tr. p. 109. Sgt. Cowan also noted that it was also determined that Employee assaulted R.J. by grabbing him by the neck and throwing him on the couch. She noted that the incidents of assault violated General Order 120.21. Tr. p. 110.

Sgt. Cowan noted that the investigation also sustained a violation of General Order 120.21 attachment A which states, conduct unbecoming of an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee or the agency's ability to perform effectively. Sgt. Cowan noted that on May 11, 2021, Ms. K.H. was threatened by Employee over the telephone and Ms. K.H.'s children heard the threats. Based on the threats made over the phone, Ms. K.H. called Anne Arundel County Police Department and filed for a protection order against Employee the following day. A final protection order was granted as a result of the threats made by Employee which was valid for one year. Tr. pp. 110-111. Sgt. Cowan further noted that on May 11, 2021, as a result of the verbal threats toward Ms. K.H., the Anne Arundel County Police Department took an offense report for assault listing Employee as a suspect. She noted that domestic violence supplement reports were also completed which indicated that a high danger was posed to Ms. K.H. by Employee. Tr. pp. 111-112.

Sgt. Cowan also stated that the investigation found that Employee engaged in prohibited conduct per General Order 120.21, which states, "Fraud in securing appointment, or falsification of official records or reports." Sgt. Cowan testified that on May 31, 2022, Employee completed the criminal history section of his background documents and provided knowingly false responses to the questions regarding any previous batteries or assaults, or the commission of any acts that would arise to a felony or misdemeanor regardless of if caught. Tr. p. 112. Sgt. Cowan stated that Employee had been involved in a domestic violence assault between August and November of 2019, during which he assaulted Ms. K.H. and strangled her to the point of unconsciousness. Tr. p.113. When asked what the next steps were after completing the investigation, Sgt. Cowan testified that she had a consultation with her official, Lieutenant Fawzi. Sgt. Cowan testified and affirmed that Lieutenant Fawzi agreed with the investigation's findings and at that point she submitted the report. Tr. p. 113. Sgt. Cowan testified that after submitting the report she attempted to contact Ms. K.H. Sgt. Cowan reported that she did not have any involvement in deciding disciplinary action against Employee, but she was aware that the proposed penalty for his conduct was termination. Tr. p. 114.

Sgt. Cowan testified regarding her attempts to contact Ms. K.H. prior to the Adverse Action Panel Hearing regarding her willingness to testify. Ms. K.H. She stated that Anne Arundel County Police went to her residence to obtain a good working cell phone number for her. Sgt. Cowan stated that while the officer was on the scene, Sgt. Cowan was able to talk to Ms. K.H. over the phone. Sgt. Cowan stated that she advised Ms. K.H. that she did not have a good working number for her any longer, at which time Ms. K.H. provided Sgt. Cowan with a cell phone number. Tr. pp. 116-117. Sgt. Cowan noted that she asked Ms. K.H. if it would be okay for Sgt. Cowan to give the number to the attorney, and that he would be contacting her within five (5) to ten (10) minutes once they got off the phone. Sgt. Cowan noted that she explained to Ms. K.H. that the attorney would be speaking with her about the scheduled hearing. Sgt Cowan stated that Ms. K.H. said it would be fine for the attorney to give her a call. Sgt. Cowan testified that when she got off the phone with Ms. K.H., she called the attorney and provided the attorney with Ms. K.H.'s phone number. Sgt. Cowan stated that the attorney attempted to call Ms. K.H. but was unsuccessful and was also unsuccessful through text. Sgt. Cowan stated that she then attempted to call Ms. K.H. but did not get a response. Sgt Cowan stated that she also sent Ms. K.H. a text message but Ms. K.H. did not respond, although it was indicated that the message was read. Sgt. Cowan further stated that it was her understanding that MPD officers had attempted to serve subpoenas on Ms. K.H. at least four (4) times but were unsuccessful. Tr. pp. 117-118.

Sgt Cowan testified that during her first interview, Ms. K.H. expressed her concern and fear about Employee having a personal firearm and stated that he was very revengeful. Sgt. Cowan further stated that Ms. K.H. expressed reluctance in providing information. Sgt. Cowan noted that she also recalled interviewing Ms. K.H.'s friends J.H. and J.B. and both expressed that Ms. K.H. was fearful of Employee. Tr. p. 119-120.

Sgt. Cowan testified regarding a written statement provided by Employee that was purportedly written by Ms. K.H. on May 1, 2023. Tr. pp. 121-122. When asked to review Ms. K.H.'s statement, Sgt. Cowan noted that the statement said that Ms. K.H. made false statements regarding Employee choking her. Tr. p. 122. Sgt Cowan further noted that the statement said Ms. K.H. made the false statements because she was going through a difficult custody battle, and she thought she would lose her daughter. Sgt Cowan further indicated that Ms. K.H. stated in the statement that it was wrong for her to do that, but that she was desperate, and her main concern was to ensure that she did not lose custody of her daughter. Tr. p. 122.

Sgt. Cowan testified that she did not find this statement credible because during the entire investigation, between the in-person interviews, the cell phone video provided, and the report she made to Anne Arundel County Police, nothing led her to believe Ms. K.H. was being untruthful. Tr. p. 123. When asked if there was an ongoing custody battle at the time of the cell-phone video recording, Sgt. Cowan stated that there was not. Sgt. Cowan affirmed that at the time of the cell phone recording, Ms. K.H. and Employee were still in a relationship and living together with all three children. Tr. p. 123. Sgt. Cowan testified that based on the interviews and her review of the video, it was her opinion that Ms. K.H. was in fact strangled. Tr. p. 124. Sgt. Cowan testified that in her opinion, Ms. K.H. may have been unwilling to come forward due to financial concerns about Employee no longer being employed, because they have a daughter and out of fear. Tr. p. 125.

On cross examination, Sgt. Cowan confirmed that in 2019 when the incident in question allegedly happened, that no arrests were made, no charges were filed, and there were no criminal prosecutions. Tr. p 127. Sgt. Cowan affirmed that Ms. K.H. did not alert the authorities or any court that the incidents happened until she referenced them when she filed for protective order years later. When asked if there was a custody dispute when the protective order was filed, Sgt. Cowan answered affirmatively. Sgt. Cowan affirmed that Ms. K.H. stated in one of her interviews that one of the reasons she did not report the strangulation incident was because she was afraid, and did not have enough finances to support herself, so she did not want to go to the police. Tr. p 128.

Sgt. Cowan discussed the phone call she had with Ms. K.H. regarding this hearing. Sgt. Cowan confirmed that Ms. K.H. gave her a new phone number, stated that she was aware of the hearing, and noted it would be no problem for the attorney to give her call. Sgt. Cowan affirmed that the Anne Arundel County police was present for the phone call between Sgt. Cowan and Ms. K.H. and the phone call was on speaker phone. Tr. pp. 129-130.

Sgt. Cowan confirmed that based on her investigation, the crime that she alleged that Employee violated was Maryland Criminal Code 3-202, Assault in the First Degree, the portion dealing with strangulation. Tr. 131-132. Sgt. Cowan affirmed that strangulation is considered a felony in the state of Maryland. Sgt. Cowan affirmed that she was not aware of amendments to this law, which became effective in October 2020, and testified that she did not know whether strangulation was a felony charge prior to October 2020. Tr. p. 133-134. Sgt Cowan confirmed that the District of Columbia cannot prosecute Employee for a crime that occurred in Maryland, so Maryland would have to prosecute him. Sgt Cowan further affirmed that the recording being relied upon to prove strangulation occurred in the state of Maryland. Tr. 134. Sgt. Cowan affirmed that she did not review Maryland law or contact anyone in MPD's general counsel's office or contact any Maryland authority regarding the admissibility of the cell phone recording provided by Ms. K.H. Tr. pp. 139-140. Sgt. Cowan affirmed that Employee's attorney characterized the cell phone recording as an illegal recording.

Referencing her investigation report, Sgt. Cowan, affirmed that in the middle of that page there is a question: "Did[Employee] assault Ms. K.H. and on what date." Tr. p. 143. She further affirmed that the report states, "the video footage did not capture [Employee] choking Ms. K.H." Sgt. Cowan affirmed that the investigation report notes that there were discrepancies with the video itself. When asked if Ms. K.H. reported that the recording happened in August of 2019, but in her temporary protective order petition she said it had occurred in December 2019, Sgt. Cowan answered affirmatively. When asked if the metadata from the video contradicted both of those dates and determined that it was created in November 2019, Sgt. Cowan testified affirmatively. Tr. p. 144. Sgt.

Cowan affirmed that Employee was not employed by the Metropolitan Police Department between August 2019 and December 2019.

Sgt. Cowan affirmed that she sustained the charge of Assault in the Second Degree against Employee regarding the assault on Ms. K.H.'s son, R.J. Tr. p. 145. Sgt. Cowan affirmed that Assault in the Second Degree was a misdemeanor offense and not a felony in the State of Maryland and that in her report, she should have reported Assault in the Second Degree as a misdemeanor. Sgt. Cowan affirmed that Employee was never arrested for this alleged assault and never charged or convicted of any crime in Maryland, and no police report was ever filed about this allegation. Tr. pp. 146-147. When asked if she believed the assault occurred sometime in 2019, Sgt. Cowan answered in the affirmative. Tr. p. 148.

Sgt. Cowan testified through her investigation report, that Ms. K.H. reported Employee assaulted her son R.J. but she did not witness the assault or report it to the police". Tr. p. 148. Sgt. Cowan affirmed that the report stated that RJ was not sure if he sustained injuries or markings on his neck, could not recall when the assault occurred, or what the argument was about. Tr. pp. 148-149. Sgt. Cowan affirmed that her investigation report noted that the incidents in question were alleged to have occurred in August 2019 and May 2021. Tr. pp. 149-150. Sgt. Cowan testified that when these incidents occurred, Employee was not employed with MPD and agreed that he would not be subject to the requirements such as showing up to work or being subject to MPD's general orders during a time period in which he was not employed by MPD. Tr. p. 151.

Sgt. Cowan testified through her investigation report about the call that occurred in May 2021 between Employee and Ms. K.H. and confirmed that there was no recording of that call. Sgt. Cowan confirmed that Ms. K.H. described that call to her during an interview, as well as a description of the conversation. Sgt. Cowan confirmed that Ms. K.H. stated that she and Employee were having a conversation, and he said something to the effect of 'how do you think this is going to play out in court?' and Ms. K.H. responded, 'the chips will fall where they may' and Employee responded 'Bitch, I'll put you in the ground.' Tr. p. 152. When asked if she found that statement credible, Sgt. Cowan responded in the affirmative.

Referring to the final protective order, Sgt. Cowan confirmed that Employee consented to this protective order, which was reflected in section C and states, 'Respondent consents to the entry of a final protective order without admitting the allegations in the petition for a judicial finding of abuse." Tr. p. 153. Sgt. Cowan affirmed that the protection order was in place for one year, and there was no evidence that the protective order was ever violated. Tr. p. 154. Sgt Cowan also confirmed that Employee stated in his interview that the reason he consented to this protective order was because he was involved in a custody dispute. Tr. p. 154.

Sgt. Cowan acknowledged that she interviewed Detective Brummitt as part of her investigation. Sgt Cowan agreed that Detective Brummitt told her that the allegations did not rise to the level to request a warrant or apply for any criminal charges against Employee. Tr. p. 155. Sgt. Cowan confirmed that Detective Brummitt's report dated May 11, 2021 contains a narrative statement which states, "at this time Ms. K.H. and [Employee] are going through a custody battle." Sgt. Cowan agreed that Ms. K.H. volunteered this information.

Sgt. Cowan affirmed that a prior OEA decision overturning Employee's termination did not condition Employee's reinstatement on complying with a background check. Tr. pp. 157-158. Sgt.

Cowan testified about the criminal data section of Employee's background check, which states, "This section requires you to report detentions, arrests, and convictions, including diversion programs and, in some cases, offenses that may have been pardoned." Sgt. Cowan affirmed that Employee had never been detained, arrested, convicted of any crime, placed in any diversion programs, or ever convicted of any offenses that were thereafter pardoned. Tr. pp. 159-160. Sgt. Cowan was then directed to the portion of the background check that says "As an applicant for a law enforcement-related position." and confirmed that this document is used for new applicants to MPD.

Sgt. Cowan confirmed that Employee reported on his PHS that he had been a party to a civil lawsuit, specifically a child custody case. She further affirmed that Employee noted on the PHS, "I'm currently paying child support for my oldest daughter since 2007. Currently I have an active custody case where I am trying to obtain full custody of my youngest daughter. The case has been active for over one year." Tr. pp. 160-161. Sgt. Cowan confirmed that Employee answered yes to the question of whether he had even been subject to an emergency protective order or restraining order, and also reported that his "youngest daughter's mother, who I have a contested custody case against, filed a protective order alleging that I threatened her life via telephone." Sgt. Cowan confirmed that Employee also stated "my attorney and I believe that the protective order was filed for the purpose of posturing because in the State of Maryland the parent that has an active protective order open automatically becomes the custodial parent." Tr. p. 161. Sgt. Cowan confirmed that MPD was not aware of this information until Employee disclosed it, and it was this self-report that triggered the investigation. Tr. p. 162. Sgt. Cowan further confirmed that Employee was never charged, arrested, or convicted of battery. Tr. p. 162.

Sgt. Cowan affirmed that Employee answered 'yes' to a question on the PHS that asked, "Have you ever been investigated or questioned for any reason by law enforcement?" She affirmed that Employee reported that "in September 2020 his youngest child's mother told him that she was leaving town with his daughter, and I would never see her again. I was concerned about my daughter's well-being because my daughter's mother suffers from hyperthyroidism, which is a hormonal imbalance. After a week and several unanswered telephone calls I went to her residence to check on the welfare of our daughter. My daughter's mother called Howard County Police Department stating that she had an unwanted visitor at her residence. Howard County took a civil dispute report, and I left the location." Tr. p. 163. Sgt. Cowan answered affirmatively when asked if Ms. K.H. stated she didn't want to call the police on Employee for the 2019 [strangulation] incident out of concern about the interaction between police and black men. Sgt Cowan confirmed that Employee disclosed that Ms. K.H. called the Howard County Police on him in 2020, and Ms. K.H. disclosed that she called the Anne Arundel County police on Employee in 2021.

Sgt. Cowan confirmed that in her interview with Employee on July 22, 2022, Employee stated to her that he had text messages and information that he was going to provide to her. Tr. pp. 164-165. Sgt. Cowan confirmed that she received text messages between Employee and RJ that say, "Happy Thanksgiving. Love you, dude." And Employee's response, "I love you, too, son. Happy Turkey Day.… I told… your mother…. that I will take you and Brooklyn, and I still will. The problem is that she will not let me get you all. You know that I always keep my word, so don't let nobody tell you anything different." Tr. p. 167. Sgt. Cowan confirmed that there was another set of such messages provided to her on July 22, 2022, between Employee and Ms. K.H. describing a conversation where Ms. K.H. sent Employee a hotel room for his birthday and Employee sent it back to her by responding, "I'm sending it back to you. Thank you for thinking of me…., "do something with the kids with it. That will be my present." Tr. pp. 168-169. Sgt. Cowan confirmed that there was also a text message

from Ms. K.H. to Employee that said, "Happy birthday to my favorite man in the whole while world. Hope you have a wonderful day with many more to come." Tr. p. 169.

Sgt. Cowan additionally confirmed that there was a text message from Ms. K.H. stating, "As you know, some things are beyond my control. And to my defense, I'm not making excuses. You and I both know that was a real life situation I went through. Even with the chips stacked against me, I tried desperately to make it work. My condition was definitely the hardest thing I've ever had to deal with. It brought out insecurities and past emotional damage I had to encounter as a youth to surface. I understand the damage was done. And you seen that side of me without me have complete control over it and you not being able to understand my condition. Also been diagnosed at the tail end of my health condition was a real demise of our relationship. That's the hard truth. I made the decision to separate us because I love you that much, and I knew my behaving was overbearing. I'm healthy now I want to work on salvaging our friendship and furthermore, our family which is important to me." Tr. pp. 170-171.

When asked if Employee discussed Ms. K.H.'s health condition in his interview, Sgt. Cowan answered affirmatively. When asked why those text messages were not included in her report, Sgt. Cowan testified that at the time that she was conducting her investigation, she did not see where it had any effect on the case or her investigation, so she did not include them. Tr. pp. 171-172. Sgt. Cowan affirmed that she stated on direct testimony that she was investigating an assault. Sgt. Cowan confirmed that this investigation was administrative in its entirety, and she did not conduct a criminal investigation. Tr. p. 174.

Sgt. Cowan was asked to explain how the statement made by Ms. K.H. that she had seen the light meant that she may have been choked or strangled, to which. Sgt. Cowan stated that Ms. K.H. made sounds in the video as if she was gasping for air, which led her to believe that Ms. K.H. was strangled. Sgt. Cowan additionally testified that Ms. K.H. verbally told her she had been strangled. Sgt. Cowan testified that this statement was Ms. K.H.'s version of what she saw after she was strangled, so that's what she noted in her investigation. Tr. p. 175.

On redirect examination, Sgt. Cowan affirmed that none of the text messages indicated that Ms. K.H. was not strangled by Employee or that R.J. was not picked up by his neck and thrown onto the couch by Employee. Tr. p. 177. Sgt. Cowan affirmed that none of the text messages were relevant to the allegations that she sustained in her report. Tr. pp. 177-178. Sgt. Cowan confirmed that the text messages sent only contain a month and day of the week. Tr. p. 178-179. Sgt. Cowan confirmed that there was no indication that any of the text messages were exchanged after May 11, 2021. Tr. p. 181. Sgt. Cowan read a text message from Ms. K.H, which stated:

> But if you think for one second I'm going to allow you to attack me as you physically and emotionally attacked me for 7 years straight, you are sadly mistaken. The great thing is I don't have to deal with that abuse anymore. That's Patricia's problem. No, [Employee], your truth is far from reality.

Sgt. Cowan confirmed that Employee responded to this text message, but that she did not see anywhere in his response where he denied physically abusing Ms. K.H. Tr. pp. 181-183.

Sgt. Cowan testified that she did not know when Ms. K.H. became the owner of the trucking company. Sgt. Cowan recalled that around the time of the choking incident that Ms. K.H. and

Employee were arguing about who had to drop the truck. Tr. p. 184. Sgt. Cowan testified that her understanding was that Employee and Ms. K.H. took turns driving the truck. After reviewing interview number one with Ms. K.H., Sgt. Cowan stated that Employee owned the trucking company, and that Ms. K.H. indicated that she was willing to forego a salary as long as the bills were paid. Tr. p. 185. Sgt. Cowan reviewed Agency's Exhibit eight (8) and affirmed that Hubbard Enterprise LLC was a trucking company that Ms. K.H. started. She further noted that the incorporation date was listed as August 3, 2020. Sgt. Cowan agreed that based on this information it was her understanding that Ms. K.H.'s trucking company was not in business prior to August 2020, and the current status was forfeited. Tr. p. 186.

Sgt. Cowan affirmed that Employee was not a sworn officer at the time of the choking incident or at the time of the assault on R.J. Tr. p. 187. Sgt. Cowan testified that her understanding of the reinstatement process was that since Employee had been reinstated by the Department he was still obligated to adhere to its policies. She stated that although he was not physically a part of the police department, since he was reinstated and would receive backpay, it was equivalent to being an employee. She stated that Employee still had to adhere to the general orders of the police department. Tr. p. 188.

Sgt. Cowan confirmed that Ms. K.H. characterized herself as "going out" during the choking incident. Tr. pp. 188-189. Sgt. Cowan recalled that Ms. K.H. also made reference to a light during the incident, as seen on the cell phone recording, and after the incident she stated, "you killed me." Sgt. Cowan recalled that Ms. K.H. told her she was unconscious for a period during the incident. Sgt. Cowan affirmed that Employee stated to Ms. K.H., "next time you won't wake up." Tr. p. 189.

Sgt. Cowan testified that she recalled speaking to Ms. K.H. about the incident involving her son R.J. Sgt. Cowan confirmed that the incident occurred in 2019 when R.J. was 13. Tr. p. 190. Sgt. Cowan affirmed that based on her interviews with Ms. K.H. and her sons R.J. and R.B., there were no discrepancies that led her to believe that this was a made-up story. Tr. pp. 190-191. Sgt. Cowan confirmed that all three of their accounts corroborated with one another.

When asked about Ms. K.H.'s previous representation that she would not call the police on Employee, Sgt. Cowan affirmed that Ms. K.H. actually called the police on Employee in September 2020, and that the incident that Ms. K.H. was describing when she said they agreed she would not call the police during the relationship occurred in 2019. Tr. pp. 191-192. Sgt. Cowan confirmed that Ms. K.H. called the police in September 2020 after she and Employee were no longer together and after the choking incident. Tr. p. 192.

When asked by the Panel if she had contact with the Anne Arundel County Police Department or States Attorney's office to suggest charges being filed for assault, Sgt. Cowan testified that she did not in regard to the strangling incident. She further testified that she did ask about the threats and assaults and further stated that they did not meet the criteria to get a proper warrant. Tr. p. 193-194. Sgt. Cowan confirmed that she never notified Anne Arundel County that Ms. K.H. had made allegations of strangulation. Tr. p. 194.

Katerina Brummitt ("Detective Brummitt") Tr. pp. 197-220

Detective Brummitt testified that she previously went by her maiden name Panagiotopoulos but goes by Brummitt. She testified that she is employed at the Anne Arundel County Police and has

been for almost five years. Tr. p. 198. She indicated that she is a child abuse detective in the major crime service and that in May 2021 she was a patrol officer in the Northern District. She affirmed that on May 11, 2021, she recalled taking a call from a woman who had been a victim of threats made by her child's father. Detective Brummitt testified that she was a responding officer because she was dispatched. She stated that she did not recall if she spoke to Ms. K.H. before physically responding to her residence. Tr. p. 199.

Detective Brummitt testified that she recalled responding to Ms. K.H.'s address and speaking with Ms. K.H. Detective Brummitt noted that she went into the house and all the lights were off. She further stated that she recalled going into Ms. K.H.'s kitchen and staying in that area where she spoke with Ms. K.H. Detective Brummitt testified that she recalled Ms. K.H. being extremely scared and asked Detective Brummitt where her car was parked. Detective Brummitt further noted that Ms. K.H. had the lights off, talked very low, and was scared of anyone hearing or seeing her there. She affirmed that they discussed the reason for her call. Tr. p. 200. Detective Brummitt further described that Ms. K.H. said the reason for her call was that her child's father had been making threats against her life, and she was in fear for her life. Detective Brummitt recalled that the name of Ms. K.H.'s child's father was Employee. Ms. Brummitt further testified that Ms. K.H. stated that she and Employee were going through a custody battle, and that they had recently been arguing and Employee stated multiple times, "bitch I'm going to put you in the ground fucking with me." Tr. p. 201.

Detective Brummitt affirmed that Ms. K.H. referenced past incidents of physical harm during the conversation. Detective Brummitt testified that she completed domestic violence paperwork with Ms. K.H., and it prompted her to ask her the number of prior incidents, which Ms. K.H. replied three (3). Detective Brummitt testified that Ms. K.H. stated she did not report those incidents. Detective Brummitt stated that Ms. K.H. explained that she was strangled to the point of unconsciousness and never reported it. Detective Brummitt confirmed that that incident happened at their prior address, and not in Anne Arundel County. Detective Brummitt stated that she believed Ms. K.H. based on her genuine fear, and she could tell she was very scared. She noted that Ms. K.H.'s voice was very low, was nervous about the entire incident, and and hesitant about making the police report in general. Tr. p. 202. When asked if it appeared that Ms. K.H. was just being vindictive to gain leverage in the custody battle that she referenced, Detective Brummitt responded in the negative. Tr. pp. 202-203.

Detective Brummitt stated that as part of the domestic violence paperwork, she did a lethality assessment. She stated that she asked Ms. K.H. if she would answer the questions and noted she had the option to decline, which she did not. Detective Brummitt noted that if the individual responded yes to specific questions, they would be automatically assessed as a high danger, which requires her to call into the victim hotline. Tr. p. 203. Detective Brummitt noted that Ms. K.H. responded yes to the questions of whether Employee ever threatened to kill her or her children, if she thought that he might try to kill her, and whether Employee had a gun or could easily get one. She noted that Ms. K.H. also answered yes when asked if Employee ever tried to choke her. TR. pp. 204-205.

Ms. K.H. affirmed that she recalled filling out a form captioned as Anne Arundel County Police Domestic Violence Report. She explained that the form was used for domestic violence calls to get more information based on the call. She noted that it was also a good way for the domestic violence detective to have a basis of information to follow up with the victim as well. Tr. pp. 204-205. Detective Brummitt affirmed that she filled out the Domestic Violence Form with the assistance of Ms. K.H. while she was at Ms. K.H.'s residence. Tr. pp. 205-206. Detective Brummitt confirmed that the form had a box checked next to "afraid" which indicated that Ms. K.H. was in fear for her life. Detective

Brummitt noted that she wrote on her incident report that Ms. K.H. was in fear for her life, and she believed that Employee would try to kill her, and that he is capable of terribly harming her. Detective Brummitt affirmed that she found Ms. K.H.'s statements to be credible and affirmed that she was generally frightened for her life. Detective Brummitt testified that she called the domestic violence hotline while at Ms. K.H.'s residence because Ms. K.H. scored a high danger, and it was policy to call the domestic violence hotline when a victim scored a high danger. Tr. p. 207.

Detective Brummitt confirmed that she advised Ms. K.H. to immediately file a protective order and explained to her the process of how to get one, considering the seriousness of the threats. Detective Brummitt affirmed that Employee was not criminally charged for the threats because Maryland does not have a criminal statute for verbal threats. She affirmed that in Maryland, there must be physical contact that occurs for criminal charges to be filed and agreed that Ms. K.H. did not allege that Employee physically harmed her on that date. Tr. pp. 208-209. When asked why she did not pursue criminal charges for the past conduct that Ms. K.H. referenced, Detective Brummitt noted that it was not in her jurisdiction. Tr. pp. 209-210.

Detective Brummitt affirmed that in her five years with the Anne Arundel County Police Department, she has received domestic violence training with regard to domestic violence victims. When asked where she has learned about domestic violence victims' willingness to participate in court proceedings, she testified that based on her knowledge, training, and experience she understands that some victims are hesitant to come forward based on fear, dependency, or other mitigating factors. Tr. p. 210. When further asked what she knew about the efforts that were made to have Ms. K.H. appear for this adverse action hearing, she noted that the detective from the District of Columbia tried to serve Ms. K.H. on her subpoena, and that she, Detective Brummitt requested patrol officers to go out and try to subpoena her as well. She further noted that they sent patrol officers to make contact with her to get an updated phone number, and she cooperated. Tr. pp. 210-211.

On cross-examination, Detective Brummitt affirmed that in the "victim section", of the Domestic Violence Form, the box for "afraid" was checked, but no other boxes were checked. Detective Brummitt affirmed that the boxes for crying, fearful, hysterical, and nervous were all unchecked. Detective Brummitt further affirmed that the column that deals with physical complaints, abrasions, bruises, complaints of pain, concussion, fracture, and lacerations were all unchecked. Tr. pp. 214-215. Detective Brummitt was then asked about her lethality assessment and directed to that document. Detective Brummitt confirmed that item number one says "has he, she, they ever used a weapon against you, or threatened you with the weapon", which Ms. K.H. answered no. Detective Brummitt affirmed that question number six (6) is, "was, is he, she, they violently, or constantly jealous, or does he, she, they control most of your daily activities?" To which Ms. K.H. answered no. Tr. p. 215.

Detective Brummitt referenced her domestic violence report and affirmed that Ms. K.H. was not crying on the scene, was not angry, apologetic, or hysterical. Detective Brummitt affirmed that Ms. K.H. was fearful, quiet, seemed nervous, and was afraid. Detective Brummitt confirmed that while she did not check the box for 'nervous' on the report, that could have been an oversight on her part. Tr. pp. 217-218.

Detective Brummitt explained to the Panel that Ms. K.H.'s case was not referred for criminal charges. She noted that Ms. K.H. stated that the assault occurred at their previous residence in Prince George's County, which it not her jurisdiction, so she could not charge Employee for physical assault

that had previously occurred in a different county. Tr. pp. 219-220. When asked if there was any kind of investigation done by Prince George's County, Detective Brummitt responded that there was none that she knew about. She reported that she and Ms. K.H. did not discuss at length the previous physical assault, but she explained to Ms. K.H. that since it did not occur in Anne Arundel County there was not a lot that she could have done. But had she wished to file, she could have gone back to that other jurisdiction and reported that there. Tr. pp. 219-220.

Panel Findings

The Panel made the following findings of fact based on their review of the evidence presented at the hearing. Panel found the following:[5]

1. Officer [Employee] was appointed to the Metropolitan Police Department on May 17, 2004, and was assigned to the Patrol Division's 5th District.
2. On January 16, 2018, Officer [Employee] was found guilty at Trial Board for tax evasion and was terminated from the Metropolitan Police Department (MPD).
3. Officer [Employee] filed an appeal with the Office of Employee Appeals (OEA), which overturned his termination. On May 9, 2022, he was reinstated, resulting in retroactive backpay and the restoration of all benefits back to his date of termination.
4. On May 23, 2022, while completing Officer [Employee]'s background check, Officer Sean Savoy of MPD's Recruiting Division conducted an NCIC/WALES check that revealed Officer [Employee] had an active protection order against him. Officer Savoy notified Internal Affairs Division (IAD) and obtained IS #22-0011557.
5. Sergeant Cowan, who was an Agent at IAD, was assigned to the investigation involving Officer [Employee].
6. Tracking down the origins of the Protection Order, Sergeant Cowan learned that a temporary Protection Order was issued by the District Court of Anne Arundel County, Maryland.
7. Investigating further, Sergeant Cowan discovered that on May 11, 2021, Ms. [K.H.] had reported to the Anne Arundel Police Detective Brummitt that she was threatened by Officer [Employee], the father of one of her sons, and was in fear of her life. She stated that Officer [Employee] had threatened her over the phone, and was overheard by her 2 boys, Misters [R.J. and R.B.], since it was on speakerphone mode. A Domestic Violence report was made, listing Ms. [K.H.]'s victim threat level in the "High Danger" category, so Detective Brummitt advised Ms. [K.H.] to file for a Protective Order.
8. The very next day, on May 12, 2021, Ms. [K.H.] went to the District Court of Anne Arundel County, Maryland, and requested a Protective Order be issued against Officer [Employee]. The court granted her request and issued a temporary Protective Order.
9. Subsequent investigation revealed that Officer [Employee] had assaulted Ms. [K.H.] on several occasions, one of which he strangled her to the point of unconsciousness. This incident was captured on video/audio by Ms. [K.H.]'s cell phone. Although Officer [Employee] refuted this allegation; at minimum, he admitted to grabbing and shaking her, leading to her fall and hi [sic] her head. Officer [Employee] assaulted her son Mr. [K.J.], picking him up by his neck and walking around with his hands wrapped around Mr. [K.J.]'s neck before throwing him onto a sofa. This was witnessed by Mr. [R.B.], Ms. [K.H.]'s oldest son.

[5] Agency's Answer, tab 5, (September 22, 2023).

10. When Sergeant Cowan interviewed Officer [Employee], she provided him with the opportunity to review said video/audio recording in which he made incriminating statements and did not refute them. Additionally, Officer [Employee] admitted that he had grabbed Ms. [K.H.] and shook her before she fell and hit her head, perhaps trying to justify her going unconscious.
11. A review of Officer [Employee]'s Personal History Statement (PHS) revealed that he knowingly provided false responses to the questions regarding any previous batteries or assaults, or the commission of any acts that would rise to a felony or misdemeanor, regardless if caught.
12. The notion that Officer [Employee]'s prior termination from the Metropolitan Police Department would relieve him from observing the law and conducting himself in a manner that would reflect the high standards expected of a police officer is grossly misplaced. Excepting anything less would impugn the character, reputation and effectiveness of the Metropolitan Police Department and Officer [Employee]'s credibility when challenged in a court of law to account for his actions.

Upon consideration and evaluation of all the testimony and factors, the Panel found that there was a preponderance of evidence to sustain all charges and found Employee "Guilty." In addition to making the findings of fact, the Panel also weighed the offenses against the relevant *Douglas* factors[6] and concluded that termination was the appropriate penalty for these offenses.[7]

ANALYSIS AND CONCLUSIONS OF LAW[8]

[6] *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981). The *Douglas* factors provide that an agency should consider the following when determining the penalty of adverse action matters:

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

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

[7] Agency's Answer, tab 5 (September 22, 2023).

[8] 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").

Pursuant to the D.C. Court of Appeals holding in *Elton Pinkard v. D.C. Metropolitan Police Department*,[9] 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 Comprehensive Merit Personnel Act ("CMPA"). The statute gives OEA broad discretion to decide its own procedures for handling such appeals and to conduct evidentiary hearings.[10] The Court of Appeals held that:

> "OEA may not substitute its judgment for that of an agency. Its review of the agency's 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 subject 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 a 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.

In this case, Employee is a member of the D.C. Metropolitan Police Department ("MPD") and was the subject of an adverse action; MPD's collective bargaining agreement contains language similar to that found in *Pinkard.* Employee appeared before an Adverse Action Panel*,* which held a hearing. Based on the documents of record, and the position of the parties as stated during the Prehearing Conference held in this matter and in the briefs submitted herein, the undersigned finds that all of the affirmation criteria are met in this instant appeal. Accordingly, pursuant to *Pinkard*, OEA may not substitute its judgment for that of the Agency, and the undersigned's review of Agency's decision in this matter is limited to the determination of whether the Adverse Action Panel's findings were supported by substantial evidence, whether there was harmful error, and whether the action taken was done in accordance with applicable laws or regulations.

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[9] 801 A.2d 86 (D.C. 2002).
[10] *See* D.C. Code §§ 1-606.02(a)(2), 1-606.03(a)(c); 1-606.04 (2001).

Whether the Adverse Action Panel's decision was supported by substantial evidence

Pursuant to *Pinkard*, the undersigned must determine whether the Adverse Action Panel's ("Panel") findings were supported by substantial evidence. Substantial evidence is defined as evidence that a reasonable mind could accept as adequate to support a conclusion.[11] 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.[12]

Agency maintains that the evidence supports the charges and specifications. Agency avers that upon Employee's reinstatement, he made misrepresentations on his Personal History Statement ("PHS"). Agency specifically notes that Employee responded 'no' to the question of whether he had ever committed any previous batteries or assaults, or any acts that would rise to a felony or misdemeanor.[13] Agency notes that the PHS and other background investigation documents were a condition of Employee's reinstatement, and this condition was not limited by OEA's prior reinstatement order.[14]

Agency avers that Employee reported on his PHS that he had been subject to a protective order, and thus Agency investigated the source and cause of the protective order.[15] Agency asserts that during this internal investigation, Agency became aware of several domestic violence incidents involving Employee and his former partner Ms. K.H. with whom he has one (1) minor daughter in common. Agency further maintains that the investigation revealed that Employee had also assaulted Ms. K.H.'s son, R.J. who was a minor at the time. Agency argues that Employee's history of misconduct and the misrepresentation on his PHS is sufficient to sustain the charges levied again Employee.[16] Agency further avers that the District of Columbia has a one-party consent requirement for recorded conversations. Agency argues that accordingly the video recording submitted by Ms. K.H. during the investigation is admissible as proof of Employee's misconduct. [17] Agency maintains that Employee was properly terminated, and Employee's rationale does not excuse his misconduct.[18]

Employee avers that Agency failed to provide substantial evidence to sustain the adverse action.[19] Employee asserts that each allegation made by Ms. K.H. against Employee occurred during a time when he was not a sworn member of the MPD and prior to his reinstatement.[20] Employee also cited that completion of a PHS was not a condition to reinstatement.[21] Employee notes that he reported on the PHS that there was a protective order against him brought by Ms. K.H., which expired on May 26, 2022. Employee maintains that after the protective order expired, Sgt. Cowan interviewed Ms. K.H. Employee avers that at the time of the interview, he and Ms. K.H. were involved in a contentious custody dispute. Employee avers that while Ms. K.H. made accusations against Employee that included

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[11] *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).
[12] *Baumgartner v. Police and Firemen's Retirement and Relief Board,* 527 A.2d 313 (D.C. 1987).
[13] Agency's Brief (December 20, 2024).
[14] Agency's Brief (December 20, 2024). *See also*, Agency's Answer at tab 5(September 22, 2023).
[15] Agency's Brief (December 20, 2024); *See also* Tr. pp. 162
[16] Agency's Brief (December 20, 2024).
[17] Agency's Answer, tab 5 (September 22, 2023); Agency's Reply (February 7, 2025)
[18] Agency's Reply (February 7, 2025).
[19] Employee's Brief (January 3, 2024).
[20] Employee's Brief (January 3, 2024); Employee's Opposition to Agency's Brief (January 16, 2025).
[21] Employee's Opposition to Agency's Brief (January 16, 2025 (asserting that OEA's Initial Decision and Order did not include the completion of a PHS as a condition of reinstatement). *See also* Tr. pp. 157-158.

assault, strangulation, and threats to her life, that Ms. K.H. did not report these alleged incidents until years later, when she and Employee were engaged in a custody dispute.[22]

Employee also maintains that cell phone footage of a purported strangulation by Employee of Ms. K.H. was illegally obtained because it was recorded in Maryland, which is a two-party consent state under Maryland's Wiretap Law.[23] Employee avers that he did not give his consent to be recorded, and was recorded without his knowledge; therefore Agency cannot use the cell phone recording as evidence to support Ms. K.H.'s allegations of strangulation.[24] Employee additionally maintains that Ms. K.H. executed a signed and notarized statement recanting her prior statements and allegations of assault, thus Agency can no longer support its allegations that Employee strangled Ms. K.H.[25]

Additionally, Employee avers that Ms. K.H. provided a notarized statement recanting her allegations of misconduct against Employee. In this statement, Ms. K.H. purportedly admits that the statements she made about Employee were false and done to bolster her standing in the custody proceedings concerning their minor daughter.[26]

The undersigned finds that the record contains substantial evidence to support the charges levied against Employee in Charge 1. Charge 1 states: Violation of General Order Series 120.21, Attachment A, Part A-7, which states, "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contendere, or is deemed to have been involved in the commission of any act which would constitute a crime, whether or not a court record reflects a conviction. Members who are accused of criminal or quasi-criminal offenses shall promptly report or have reported their involvement to their commanding officers".

Specification 1: In that, between August and December, 2019, you physically assaulted Ms. [K.H.] by grabbing her and choking her. You violated Maryland Code 3-203, Assault in the Second Degree, which is a misdemeanor in the state of Maryland.

Specification 2: In that, sometime in 2019, you assaulted Mr. [R.J.] by grabbing him by the neck and throwing him on the couch. You violated Maryland Code 3-203, Assault in the Second Degree, a misdemeanor in the State of Maryland.

I find that there is substantial evidence to support Charge 1, specifications 1 and 2. In specification 1, Agency found that Employee assaulted Ms. K.H. between August and December of 2019, by grabbing her and strangling her in violation of MD Code 3-203, Assault in the Second Degree, which amounted to a misdemeanor in Maryland at the time of the incident. Agency also found that Employee assaulted Ms. K.H.'s son, R.J., in violation of Md Code 3-203, Assault in the Second Degree, which is also a misdemeanor. The undersigned finds that there is substantial evidence in the record to demonstrate a violation of General Order 120.21, Attachment A, Part A-7, specifically the portion of the General Order, which states,

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[22] Employee's Prehearing Statement (November 15, 2024).
[23] Employee's Opposition Brief (January 16, 2025). *See also* Md. Code § 10-402 (2019);
[24] *Id.* at page 6.
[25] *Id.* at page 9.
[26] *Id*.

> " …Or is deemed to have been involved in the commission of *any* act which would constitute a *crime*, whether or not a court record reflects a conviction. Members who are *accused* of criminal or quasi-criminal offenses shall promptly report or have reported their involvement to commanding officers." (Emphasis added).

This General Order does not require a conviction, it requires only that a member of MPD is deemed to have been involved in misconduct that constitutes a crime. Here, Agency conducted an internal investigation, based on information that Employee self-reported on his PHS, specifically that he had been the subject of a protective order. During its investigation, an Agency detective, Sgt. Cowan elicited information concerning Employee's alleged misconduct through interviews with Ms. K.H. and R.J., and Ms. K.H.'s eldest son R.B. Additionally, Ms. K.H. provided cell phone recording of an altercation involving Employee and Ms. K.H. in which she alleged Employee strangled her. [27]

The undersigned reviewed the cell phone recording and finds it to be consistent with Agency's findings, Sgt. Cowan's testimony, and Ms. K.H.'s interview describing the altercation. On the cell phone recording, Employee and Ms. K.H. are seemingly engaged in a verbal altercation that turns physical. Employee is heard using explicit language, and making verbal threats of harm against Ms. K.H. At a point in the video, Ms. K.H. states "you gonna put hands on me?" A moment later, movement can be heard, akin to a scuffle, and Ms. K.H. yells and makes a gagging sound and then is silent. Employee states to Ms. K.H., "You think I'm playing with you. I will fucking kill you in here, you understand me? You better not ever disrespect me again. You understand me? You fuckin understand me? When I tell you to shut the fuck up you shut the fuck up. The next time you won't wake up. Stop fuckin tryin' me all the time….Let that be the last time you try me."

Ms. K.H.'s response in the recorded cell phone video is consistent with her allegations of strangulation. In the video, when Ms. K.H. is heard speaking again, she remarks, that Employee "put her to sleep" and "just killed her." She also states that she "saw the light." At one point she says, "fuck life, go ahead and kill me." Employee yells that she "does not know when to fucking stop." Ms. K.H can be heard sobbing and stating you don't care about me, as Employee yells at her to get her "fucking ass out of the bathroom." Employee can be heard saying "you kept pushing me, you kept pushing me." Ms. K.H. says several times to leave her alone and can be heard sobbing. Employee tells her several times to get out of the bathroom. He can be heard saying "I drove all day today, now because of your fucked up schedule I have to drive again." The recording is approximately ten (10) minutes long.

Employee denied strangling Ms. K.H. Employee stated in his interviews during the internal investigation that Ms. K.H. hit him in the back so he grabbed her, shook her, and she hit her head. However, this account is not consistent with what is described above. Employee claimed that Ms. K.H. grabbed and shook their daughter, which provoked him to shake Ms. K.H. However, in the video Employee does not make any reference to being hit by Ms. K.H. While the undersigned finds that this admission is not consistent with what can clearly be heard transpiring in the video, *assuming arguendo* that Employee's account is true, his actions would still amount to an assault and constitute a crime.

Further, during Agency's first interview with Ms. K.H., she recounted this altercation in detail. She stated that she and Employee were arguing. She recounted that Employee was lying in bed trying to sleep because Employee had an impending shift driving a truck, which is consistent with Employee's remarks that because of Ms. K.H.'s schedule he had to drive again. She stated that Employee was on

[27] Agency's Answer, tab 1 (September 22, 2023) (Tab 1 contains Agency's Final Investigative Report).

top of her choking her and she saw a flash of light. Ms. K.H. recalled that when she came to, she heard him saying "next time you won't wake up." She stated that she ran to the bathroom and Employee put his foot in the door to keep her from closing the door as he yelled at her to get out the bathroom.[28]

Additionally, when probed whether Employee had engaged in additional acts that amounted to domestic violence incidents, Ms. K.H. recounted an incident where Employee grabbed her son by the neck and threw him on the couch. Ms. K.H. stated that while Employee was disciplining R.J. for "bucking up" at her, she recounted that she later told Employee that she did not appreciate his behavior toward R.J.[29] Both R.J. and Ms. K.H.'s eldest son R.B. recounted this incident in their respective interviews. R.J. said he and Employee argued and Employee picked him up by his neck with two hands, lifted him off the ground, and threw him on the couch. R.J. stated that was the only time Employee used force with him. [30] R.B. recounted the assault with more detail and noted that R.J. was wearing a paperclip necklace he had made. He recounted that Employee and R.J. argued, and Employee picked R.J. up by the shirt and neck and threw him on the couch, causing the paperclip necklace to break.[31] Consistent with Sgt. Cowan's testimony, the evidence does not suggest that the three conspired against Employee to concoct this account of an assault against R.J. Further, R.J., Ms. K.H., and R.B. all stated that this was the only time they could recall that Employee was physical with R.J., which the undersigned finds to be credible.

Further, the undersigned has considered that the investigation and interviews were conducted by a police detective, Sgt. Cowan, who is presumably trained in investigative skills, and there is no indication from the evidence that Sgt. Cowan was biased in her investigation. Additionally, the undersigned does not consider the accounts provided by Ms. K.H., R.J., and R.B. in a vacuum; even though the cell phone recording does not show Employee's face, he acknowledged that it was his voice in the video in his interview, and admitted that Ms. K.H. provoked him, causing him to assault her.[32] The threatening and explicit language, the threats against Ms. K.H.'s life, and the recording in its entirety is evidence of Employee's misconduct and further bolsters the believability that Employee committed the assault against R.J.

Moreover, Employee avers that Ms. K.H.'s interview on July 1, 2022 occurred when he and K.H. were involved in a contentious custody battle involving their minor daughter, suggesting that Ms. K.H. was using Agency's investigation to gain leverage in the custody dispute.[33] However, Employee did not present evidence to suggest that Ms. K.H. used Agency's investigation to strengthen her standing in their custody dispute. Accordingly, the undersigned finds that there is substantial evidence to sustain Charge 1.

The undersigned finds that the record contains substantial evidence to support the charges levied against Employee in Charge 2. This charge specifically states: Charge 2: Violation of General Order 120.21, Attachment A, Part #12, which states, "conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or the agency's ability to perform effectively, or violations of any law of the United States, or any law, municipal ordinance, or regulation of the District of Columbia."

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[28] Agency's Interview 1 with Ms. K.H. (July 1, 2022).
[29] *Id*. at 14:15 to 16:00.
[30] Agency's Interview of R.J. (July 1, 2022).
[31] Agency's Interview of R.B. (July 21, 2022).
[32] Agency's Interview of Employee (July 22, 2022).
[33] Employee's Opposition to Agency's Brief (January 16, 2025).

Specification 1: In that, between August and December, 2019, you threatened to kill Ms. [K.H.] during a physical assault you perpetrated against her when you said, "You think I am playing with you bitch, I will fucking kill you. You better not disrespect me again. When I tell you to shut the fuck up, you shall the fuck up or you won't wake up. Stop playing with me."

Specification 2: In that, on May 11, 2021, Ms. [K.H.] was threatened by you over the telephone and Ms. [K.H.]'s children heard the threats made by you. Based on the threats made over the telephone, Ms. [K.H.] called Anne Arundel County Police Department (AAPD) and filed for a protection order against you. A Final Protection Order was granted as a result of the threats made by you, which was valid for one year.

Specification 3: In that, on May 11, 2021, as a result of your verbal threats made toward Ms. [K.H.], the AACPD took an offense report for "Assaults Threatened Spousal," listing you as the suspect. Domestic Violence supplement reports were also completed, indicating a "high danger" was posed to Ms. K.H. by you.

As was previously noted, Agency presented credible and sufficient evidence to support its findings that Employee assaulted Ms. K.H., consistent with specification 1. In support of specifications 2 and 3, Agency presented detailed testimonial evidence from Detective Brummitt of the Anne Arundel County Police that Ms. K.H. was in fear of her life, based on verbal threats Employee made to her over the phone. Detective Brummitt was an Anne Arundel County police officer at the time and testified that she responded to a call from Ms. K.H.'s resident. She noted that Ms. K.H. was very fearful and she asked where Detective Brummitt's car was parked. Detective Brummitt further noted that Ms. K.H. had the lights off, talked very low, and was scared of anyone hearing or seeing Detective Brummitt there. Detective Brummitt further described that Ms. K.H. said the reason for her call was that her child's father had been making threats against her life, and she was in fear for her life because Employee had stated multiple times, "bitch I'm going to put you in the ground fucking with me."[34]

Detective Brummitt also noted that Ms. K.H. referenced past incidents of physical harm by Employee, including that he strangled her to the point of unconsciousness. Detective Brummitt stated that she believed Ms. K.H. due to her genuine fear, and she could tell she was very scared and was nervous about making the police report. Detective Brummitt assessed that Ms. K.H. was a high lethality risk and was in need of a protection order. She noted that she found Ms. K.H.'s statements to be credible and advised Ms. K.H. to immediately file for a protective order, which Ms. K.H. successfully obtained.[35] Detective Brummitt affirmed that in her five years with the Anne Arundel County Police Department, she has received domestic violence training with regard to domestic violence victims.[36] The undersigned finds Detective Brummitt's assessment and testimony to be credible. Ms. Brummitt was the responding Anne Arundel County officer and she was not associated with MPD. Detective Brummitt thus was a neutral party and independently assessed that Ms. K.H. was in danger.

Further, during her interview conducted by Sgt. Cowan, Ms. K.H. reported that her children overheard Employee make a threat to end her life. In his interview, R.J. stated that he heard Employee state he would put Ms. K.H. in the ground. R.J. reported that his mom was talking calm yet Employee was talking loud. R.J. specifically stated, "mom was talking calm to him, cause she knows how he get,

[34] Tr. p. 201
[35] Tr. p. 202-208.
[36] Tr. pp 209-210

big and loud with her, I don't know why he do that to a female…" R.J. noted that Ms. K.H. and Employee had prior altercations, so he was not sure if Employee's threat was credible.[37]

Employee avers that Ms. K.H. provided a notarized statement in which she retracted the allegations that Employee strangled her. Notably, this notarized statement was not provided to Agency until on or around the date of the Adverse Action Panel Hearing, May 4, 2023. Further, while Ms. K.H. told Sgt. Cowan that she was aware of the Hearing, she failed to appear to testify. Agency asserts that it made numerous attempts to contact her via phone, texts, and visits to her personal residence, yet to no avail.[38] In short, based on this evidence it appears that Ms. K.H. decided to stop cooperating with the MPD investigation. Because Ms. K.H. did not appear to testify at the hearing, and she was not subject to cross-examination, the validity of the statement cannot be confirmed.

Further, in the notarized statement, Ms. K.H. asserts that she lied about Employee strangling her to bolster her standing in their custody dispute. However, as noted by Sgt. Cowan, Ms. K.H. and Employee were not involved in a custody dispute in August 2019 through December 2019, when the strangulation is alleged to have occurred, and the cell phone recording was made. Further, several other witnesses interviewed including Employee's mother, sister, and two of Employee's friends all stated that Ms. K.H. either forwarded them the cell phone recording, played it for them over the phone and/or discussed it with them shortly after it happened, which would have been prior to MPD's investigation.[39] Employee's sister stated in her interview that Ms. K.H. told her in either 2019 or 2020 that Employee choked her.[40] Employee's mom recalled that Ms. K.H. told her that Employee choked her. She could not remember the exact date that Ms. K.H. told her this information, but stated it was possibly in the fall of 2020.[41] Further, Ms. K.H.'s allegations that she lied about Employee choking her does not explain his actions toward R.J. or Employee's own account that he shook Ms. K.H. causing her to fall and hit her head. Accordingly, the notarized statement offers little support to discredit Agency's findings.

The undersigned finds that the record contains substantial evidence, in part to support Charge 3. Charge 3 states: Violation of General Order 120.21, Attachment A, Part A-16, which states, "*Fraud in securing appointment, or falsification of official records or reports.*" Specification 1: In that, on May 31, 2022, you completed the criminal history section on your Personal History Statement (PHS) and knowingly provided false responses to the questions regarding any previous batteries or assaults, or the commission of any acts that would rise to a felony or misdemeanor, regardless of if caught. You were involved in a domestic violence assault on or about August 24, 2019, and which you assaulted Ms. [K.H.] and choked her, causing her to go unconscious.

Employee argues that he did not falsify his PHS, and Agency did not present substantial evidence to support a finding that he engaged in fraud in securing appointment, or falsification of official records.[42] Employee maintains that he did not falsify any records, and self-reported that he had a protective order filed against him, and had the police called. Employee further avers that the PHS section in question required Employee to "report detentions, arrests, convictions, diversion programs,

[37] Agency's Interview with R.J. at 2:40-3:15 (July 1, 2022).
[38] Tr. pp. 116-118
[39] *See* Agency's Interviews with D.G., S.C., J.B. and J.H., respectively.
[40] Agency's Interview with S.C. (July 21, 2022
[41] Agency's Interview with D.G. (July 20, 2022).
[42] Employee's Prehearing Statement (November 15, 2024).

and offenses that were pardoned."[43] Employee asserts that he was never arrested, charged, or prosecuted in any way for the accusations of misconduct levied against him.[44]

For the questions, "Any act amounting to a misdemeanor regardless of if you were caught," "Battery (use of violence upon another) Employee answered no. Employee was specifically asked if he had engaged in activity amounting to a misdemeanor *regardless of if caught*. (Emphasis added). As noted in the Final Notice of Termination, Agency classified Employee's purported assaults of Ms. K.H. and R.J. as misdemeanors.[45] Further, the question regarding battery notes in parenthesis use of force or violence against another, which would include the assaults of Ms. K.H. and R.J. Accordingly, Agency has presented sufficient evidence that Employee did not answer these questions factually.

I find that Employee did not falsely answer the question on the PHS, "Any other act amounting to a felony regardless of if you were caught?" While Agency initially classified Employee's alleged strangulation of Ms. K.H. as a felony, strangulation was classified as a misdemeanor in Maryland prior to 2020.[46] Further, Employee's alleged assault of R.J. was also a misdemeanor. Thus, Agency has not presented substantial evidence to show that Employee made misrepresentations regarding whether he had engaged in conduct amounting to a *felony*. (Emphasis added). The undersigned finds that Agency has met its burden of proof with regard to Charge 3, only as it relates to the questions of whether he had engaged in activity amounting to a misdemeanor regardless of if caught, and the question "Battery (use of force or violence upon another)?"

Whether there was harmful procedural error

In accordance with *Pinkard* and OEA Rule 634.6, the undersigned is required to evaluate and make a finding of whether agency committed harmful error. OEA Rule 634.6 provides that "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." OEA Rule 699 notes "Harmless error shall mean an error in the application of a District 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 action."

Employee alleges that MPD did not have jurisdiction over him at the time the alleged misconduct occurred. Employee avers that General Order 120.21 applies only to sworn employees, and argues that all the alleged misconduct occurred while he was in terminated, non-employee status. Employee further avers that the charges against Employee were based on an illegally obtained cell phone recording under Maryland law and thus cannot be used as evidence of past misconduct.

Employee further asserts that Agency committed harmful procedural error by charging him with engaging in conduct that constitutes a felony in Charge 1, specifications 1 and 2. Employee avers that Agency unilaterally amended Charge 1 to reflect different code sections and date ranges for the alleged misconduct. Employee asserts that while Agency charged that he engaged in conduct amounting to first and second degree assault, they were misdemeanors and not felonies under Maryland law. Employee asserts that the Panel unilaterally amended specifications 1 and 2 after the adverse action hearing and denied Employee the required notice and opportunity to respond to these altered

[43] Employee's Opposition to Agency's Brief (January 16, 2025).
[44] Employee's Prehearing Statement (November 15, 2024); Employee's Opposition Brief to Agency's Brief (January 16, 2025).
[45] Agency Answer, tab 3 (September 22, 2023).
[46] Tr. pp. 145-147.

charges and that he was deprived of the right to respond and defend himself against the revised charges.[47]

Agency avers that there was no harmful procedural error in its administration of the adverse action in this matter. Agency maintains that because Employee was reinstated with full backpay and benefits, he remained subject to the requirements of General Order 120.21.[48] Agency further avers that Maryland's two-party consent rule regarding the use of electronic communications does not apply to the Adverse Action Panel because the District of Columbia laws apply.[49] Agency additionally asserts that the mistakes in citation to Maryland Code in the Proposed Notice of Adverse Action did not deprive Employee of the right to respond and defend himself. Employee maintains that Sgt. Cowan admitted that Agency had incorrectly classified Employee's alleged assaults as felonies in Charge 1, specifications 1 and 2 when the alleged assaults constituted misdemeanors at that time under Maryland law and also cited to an incorrect code section.[50]

In determining whether there was harmful procedural error, OEA engages in a two-prong analysis: 1) Did the error cause substantial harm or prejudice to the employee's rights; 2) whether such error significantly affected the agency's final decision to terminate the employee. The undersigned finds that based on the evidence, Agency did not commit a harmful procedural error in applying General Order 120.21 to Employee's conduct while he was not a sworn member of the MPD. As noted above, General Order 120.21 does not state that the conduct has to have occurred while Employee was a sworn officer, only that the Order applies to sworn officers. General Order 120.21 specifically applies to disciplinary procedures. Agency can only discipline sworn members and General Order 120.21 provides the authority to address disciplinary issues.

Further, a background check would lose its relevance if the background investigation could only extend to the time the subject was a sworn member. This is especially apparent for new employees, who assumingly have been sworn members for only a short time. By Employee's logic, a background check may only extend back to the date of hire. Additionally, as Agency cited, Employee was reinstated with backpay, and had the benefit of being made whole, as if he was never terminated. Employee cannot reap the benefits of reinstatement, while also claiming that he is not subject to the administrative requirements of reinstatement, and disciplinary requirements of sworn members. Accordingly, the undersigned finds that Agency did not make an error in the application of its rules, regulations, or policies as it pertains to its application of General Order 120.21 to Employee.

I further find that the evidence does not support a finding that Agency committed harmful procedural error by admitting cell phone video recording that was recorded in Maryland. Employee correctly notes that Maryland is a two-party consent state for recordings, and any recording that is obtained without two-party consent is considered illegally obtained and inadmissible for any purpose. At issue here is whether the Agency was subject to Maryland's Wiretap law. The Maryland Wiretapping and Electronic Surveillance Act provides as follows:

> Whenever any wire, oral, or electronic communication has been intercepted, no party of the contents of the communication and no evidence derived therefrom may be received in evidence in any trial, hearing, or other proceeding in or before any court,

[47] Employee's Opposition to Agency's Brief, (Jan 16, 2025).
[48] Agency's brief (Dec 20, 2024).
[49] *Id*.
[50] Tr. Tr. pp. 145-147.

> grand jury, department, officer, agency, regulatory body, legislative committee, or other authority of *this State*, or political subdivision thereof if the disclosure of that information would be in violation of this subtitle. (Emphasis added).[51]

The key phrasing in this section is *of this State*, meaning that this evidence is not admissible in the State of *Maryland* (Emphasis added). As MPD is a District Government Agency, it is subject to the laws and jurisdiction of the District of Columbia. Employee avers that Agency's investigation was "tailored" to support a finding that Employee engaged in conduct that would constitute a crime in Maryland, thus Maryland law should apply.[52] However, Agency conducted an administrative investigation, the purpose of which was to determine Employee's fitness for service; not to prosecute Employee for criminal misconduct.

Further, the District of Columbia is a one-party consent jurisdiction, thus, only consent of one person was required to make the recording admissible. As affirmed in *Thomas v. United States*, 171 A.3d 151 (DC 2017), "…[W]e do not read the [the District's surveillance statute] as incorporating the laws of any other jurisdiction. Nowhere in this subchapter has the legislature authorized the inclusion of the law of another jurisdiction despite appellant's attempts to suggest otherwise and we can think of no legitimate policy justification for doing so."[53] The Court importantly cites that "to allow otherwise (1) would permit a foreign state to frustrate the legislative policy of another state in the enforcement of its laws and (2) would create circumstances where a foreign court is having to decide the breadth of another state's laws, decisions that are best left to that state to make."[54] Thus, I find that the video was admissible at an administrative hearing in the District of Columbia, which is a one-party consent jurisdiction. Accordingly, the undersigned finds that Agency did not err in allowing the cell phone recording to be presented as evidence of Employee's misconduct in the administrative Adverse Action Panel hearing.

I further find that Agency did not commit harmful procedural error by correcting the Maryland Code Section, amending the assault charges from felonies to misdemeanors, and adding a date range to the alleged assaults. In the Proposed Notice of Adverse Action, Specification 1 noted a violation of Maryland Code *3-202*, Assault in the *First Degree*, a *felony* in the State of Maryland. Specification number 2 noted, a violation of Maryland code *3-203*, Assault in the Second Degree, a *felony* in the State of Maryland. Specification 1 further noted that Employee physically assaulted Ms. K.H. "on our about August 2019." In the Final Notice of Adverse Action, Agency cited to Maryland Code 3-203 for Charge 1, specifications 1 and 2. Specification 1 states "and that, between *August and December, 2019*, you physically assaulted Ms. K.H. by grabbing her and choking her. You've violated Maryland Code *3-203*, Assault in the Second Degree, a *misdemeanor* in the State of Maryland." (Emphasis added). Specification 2 reads: "In that, sometime in 2019, you assaulted Mr. [R.J.] by grabbing him by the neck and throwing him on the couch. You've violated Maryland Code 3-203, Assault in the Second Degree, a *misdemeanor* in the State of Maryland." (Emphasis added).

This Office has consistently held that an employee must be aware of the charges for which they are penalized in order to appropriately address and appeal those charges.[55] Here, Employee was

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[51] MD Code § 10-405 (2008)
[52] Employee's Opposition to Agency's Brief
[53] *Thomas v. United States*, 171 A.3d at 153.
[54] *Id*. at 154-155.
[55] *Rachel George v. D.C. Office of the Attorney General,* OEA Matter No. 1601-0050-16, Opinion and Order (July 16, 2019); *See also Office of the District of Columbia Controller v. Frost*, 638 A.2d 657, 662 (D.C. 1994); *Johnston v. Government Printing*

charged with Violation of General Order Series 120.21, Attachment A, Part A-7, which states: "Conviction of any member of the force in any court of competent jurisdiction of any criminal or quasi-criminal offense, or of any offense in which the member either pleads guilty, receives a verdict of guilty or a conviction following a plea of nolo contendere, *or is deemed to have been involved* in the commission of *any act* which would constitute a *crime, whether or not a court record reflects a conviction*. Members who are accused of *criminal or quasi-criminal* offenses shall promptly report or have reported their involvement to their commanding officers (Emphasis added). This General Order does not make a distinction between felonious or misdemeanor conduct. This requirement for this General Order is *any act which would constitute a crime*, even *criminal or quasi-criminal* conduct.

While a misdemeanor crime carries a lesser penalty, it is a crime no less. Further, Employee was aware of the mistake in the classification of the assault charges, objected to the mistake at the Adverse Action hearing, and cross-examined Sgt. Cowan about Agency's misclassification of the assault. Importantly, the Final Notice of Adverse Action contained the corrected code sections and classified the assaults specified in specifications 1 and 2 as misdemeanors. Further, while Agency amended Specification 1 to include a date range, this range encompasses the original date included in Specification 1 and does not change the substance of the charge. Accordingly, the undersigned finds that Employee was aware of the charges before him and how to address those charges.

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

Whether the Penalty was Appropriate

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Illustrative Actions ("TIA"); whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An Agency's decision will not be reversed unless it failed to consider relevant factors, or the imposed penalty constitutes an abuse of discretion.[56]

Employee avers that the penalty was not in accordance with the law or applicable regulations. He asserts that all of the charges against him are based on his responses provided on his PHS upon reinstatement. Employee avers that completion of a PHS was not a requirement of OEA's Order to reinstate Employee. Employee asserts that OEA's Order only required full reinstatement to his previous position or comparable position with full backpay and benefits. Employee further avers that the Superior Court affirmed OEA's Order by denying Agency's Petition for Review, thus further solidifying the express terms of OEA's Order.[57]

Employee further asserts that disciplining him for conduct that occurred when he was not an MPD officer violates due process and MPD's General Orders. Employee asserts that MPD's General Orders only apply to sworn members of MPD and thus MPD had no jurisdiction over him at the time of his alleged misconduct. Employee additionally maintains that Agency relied on a cell phone

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Office, 5 M.S.P.R. 354, 357 (1981); and *Sefton v. D.C. Fire and Emergency Svcs*., OEA Matter No. 1601-0109-13 (August 18, 2014).

[56] *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).

[57] Employee's Opposition to Agency's Brief (Jan 16, 2025).

recording that was not permissible evidence under Maryland law and thus Agency cannot use this recording to prove misconduct. Further Employee argues that Agency's action of termination was improper because Agency failed to properly analyze and weigh the Douglas Factors.[58] Employee maintains that in reaching the penalty of termination, Agency misunderstood and/or misapplied the *Douglas* factors.[59]

Agency maintains that the evidence supports the charges levied against Employee.[60] Agency further iterates that based on the factual findings, the Panel found that the bulk of the *Douglas* factors weighed in favor of termination. Agency reasoned that Employee engaged in criminal conduct that raises questions about his judgment and responsibilities as a police officer. [61] Agency additionally avers that the Panel's decision to terminate Employee was appropriate considering the nature of the misconduct.[62] Agency further avers that Employee did not cite to any law to indicate that completion of a PHS was improper and offered no evidence that Employee was unwilling to complete the PHS.[63]

The undersigned finds that the penalty was appropriate in this matter. Agency presented substantial evidence to discipline Employee, including cell phone recording, testimony, interviews with Employee's family, former partner Ms. K.H. and her eldest sons R.J. and R.B. Thus, I find that the specifications listed in the Adverse Actions Findings of Fact and Recommendation support the charges levied against Employee.[64]

While Employee asserts that completing a PHS was not in accord with OEA's Order, which was affirmed by the Superior Court, the undersigned finds that this argument is misguided. OEA's Order reinstating Employee had the effect of making Employee whole. As a reinstated Employee, he would once again be subject to MPD's policies and procedures, including those that apply specifically to reinstated employees. Accordingly, Employee has not presented a law or regulation that would exempt him from Agency's reinstatement requirements.

Further, Special Order 10-16 expressly states that reinstatees are subject to a Level 4 background check.[65] According to Special Order 10-16, a Level 4 background check combines the elements of level 1 and level 3 back ground checks.[66] Accordingly, while Employee asserts that Agency did not have the authority or jurisdiction to require completion of a PHS and/or background check, to the contrary, by the nature of his reinstatement, he was subject to what appears to be the most comprehensive background check. Thus, the undersigned finds that Agency acted in accordance with the law and its own policies in requiring that Employee complete a PHS.

Similarly, once Employee was reinstated, he was subject to Agency's disciplinary procedures for sworn employees. General Order 120.21 specifically applies to disciplinary procedures and Agency can only discipline sworn members. Thus, while the misconduct occurred while Employee was no longer a sworn member, General Order 120.21 does not explicitly limit MPD's authority to discipline sworn members for past misconduct. Additionally, as noted above, because Employee was being

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[58] Employee's Opposition to Agency's Brief (Jan 16, 2025).
[59] *Id*. at p. 5; *See also. Supra* note 6
[60] Agency's Brief, (December 20, 2024).
[61] *Id*. Page 24.
[62] *Id*.
[63] (Agency Reply Brief (February 7, 2025).
[64] Agency's Answer to Petition for Appeal, tab 3 (December 15, 2023).
[65]Employee's Petition for Appeal (August 25, 2023).
[66] Special Order 10-16 (November 1, 2010);

reinstated and awarded backpay, his reinstatement has the effect of making Employee whole, as if he was never terminated. It is a logical conclusion that if Employee is to receive backpay for a period of termination, that he would also become subject to MPD's rules and regulations during that time period. Further, OEA has supported terminations for past misconduct of reinstated MPD officers.[67] Accordingly, Agency acted in accordance with its General Order in disciplining Employee for past misconduct.

Employee argues that Agency's action of termination was improper because Agency failed to properly analyze and weigh the *Douglas* Factors.[68] Employee maintains that in reaching the penalty of termination, Agency misunderstood and/or misapplied the *Douglas* factors.[69] Further, Employee also asserts that comparative discipline reflected that other officers with similar charges were not terminated. Employee additionally argues that because Employee was not a sworn member at the time of the alleged misconduct, that *Douglas* Factors 1, 2, and 9 were incorrectly applied. For *Douglas* Factor 3, Employee concedes that MPD correctly determined that this factor was mitigating but improperly noted that that Employee was terminated from MPD in January 2018 for criminal activity and then was reinstated in May 2022.[70] Employee notes that this matter is wholly irrelevant and outside of the three-year look back period.

While Employee argues that the *Douglas* Factors were misapplied, I find that in review of the record and Agency's administration of the instant adverse action there is no evidence to suggest that Agency abused its discretion or failed to consider relevant evidence in assessing the *Douglas* factors. As noted in *Douglas*, the question is whether "managerial judgment has been properly exercised within the tolerable limits of reasonableness."[71] It must be clear that agency "conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness."[72]

In this matter, Agency presented evidence that it considered the relevant *Douglas* Factors as outlined in *Douglas v. Veterans* Administration. While Employee argues that some *Douglas* factors cannot apply because Employee was not a sworn member of MPD at the time of the misconduct, Employee's reinstatement also reinstated MPD's jurisdiction to discipline Employee consistent with MPD policies. Further, Employee concedes that *Douglas* Factor 3 was correctly determined to be mitigating, despite taking issue with the analysis. Thus, because Agency found this factor to be mitigating, Employee has not shown that the analysis was not "within the tolerable limits of reasonableness." While Employee may not agree with the analysis and conclusions reached by Agency,

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[67] See *Employee v. MPD*, OEA Matter No. 1601-0046-22 (June 28, 2023). (Employee was disciplined and terminated for conduct that occurred during an eight-year span between termination and reinstatement).
[68] *Supra* note 65.
[69] *Id*. *See also. Supra* note 6
[70] *Douglas* Factor (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; Douglas Factor (2)- the employee's job level and type of employment, including supervisory or fiduciary role, contacts with the public, and prominence of the position; Douglas Factor (3)-the employee's past disciplinary record; *Douglas* Factor (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;
[71] *Douglas v. Veterans Administration,* 5 M.S.P.R. at 329.
[72] *See*. *Alphonso Bryant v. Office of Employee Appeals*, Memorandum Opinion and Order, Civil Action No.: 2009 CA 006180, citing *Stokes v. District of Columbia*, 502 A.2d 1006, 1010 (D.C. 1985) (quoting *Douglas v. Veterans Administration*, 5 M.S.P.R. at 332-33).

this alone is not sufficient to overturn Agency's decision. The undersigned finds that Agency provided a detailed analysis of these factors.[73] Accordingly, the undersigned will leave the penalty undisturbed.

Disparate Treatment

Employee further asserts that other employees were determined to have engaged in similar or worse offenses but did not receive the same penalty.[74] OEA has held that, to establish disparate treatment, an employee *must* show that he worked in the same organizational unit as the comparison employees (emphasis added). They *must* also show that both the petitioner and the comparison employees were disciplined by the same supervisor for the same offense within the same general time period (emphasis added).[75] Further, In *Jordan v. Metropolitan Police Department*, The OEA Board set forth the considerations regarding a claim of disparate treatment.[76] The Board held that:

> [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 [their] 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. 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.[77]

The undersigned finds that Employee has not provided sufficient evidence to support a finding of disparate treatment in the instant matter. Here, Employee presented several examples of misconduct by MPD officers, including domestic violence and assault, with a wide range in dates that the offenses occurred. However, Employee has not shown that both Employee and the comparison employees were disciplined by the same supervisor, for the same offense, and within the same general time period.[78] Thus, Employee has not met the burden discussed above to shift the burden to agency to produce evidence that establishes a legitimate reason for imposing a different penalty shown that comparable employees received.

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[73] Agency's Answer to Petition for Appeal, tab 27, (December 15, 2023).
[74] Employee's Opposition to Agency's Brief (January 16, 2025).
[75] *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).
[76] *Jordan v. Metropolitan Police Department*, OEA. Matter No. 1601-0285-95, *Opinion and Order on Petition for Review* (September 29, 1995).
[77] *Id*.
[78] *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).

Based on the aforementioned, the undersigned finds that Agency acted in accordance with all applicable laws, rules and regulations, that its charges were based on substantial evidence and that there was no harmful procedural error. Further, the undersigned notes that removal is within the range of penalties for the charges assessed against Employee. Accordingly, I find that termination was an appropriate penalty. Consequently, the undersigned concludes that the Agency's action should be upheld.

ORDER

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

FOR THE OFFICE: /s/ Natiya Curtis
NATIYA CURTIS, Esq.
Administrative Judge