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**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
JUAN JOHNSON,	)	OEA Matter No.: 1601-0064-14
Employee	)	
	)	
v.	)	Date of Issuance: April 28, 2015
	)	
METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	
	)	
	)	Arien P. Cannon, Esq.
	)	Administrative Judge

Juan Johnson, Employee, *Pro se*  
Brenda Wilmore, Esq., Agency Representative

**INITIAL DECISION**

**INTRODUCTION AND PROCEDURAL BACKGROUND**

On March 18, 2014, Juan Johnson (“Employee”) filed a Petition for Appeal with the Office of Employee Appeals (“Office” or “OEA”) challenging the Metropolitan Police Department’s (“Agency”) decision to impose a twenty-five (25)-day suspension against him. Employee is a Police Officer with Agency and was suspended for three (3) separate charges: (1) conduct unbecoming of an officer; (2) conduct prejudicial to the reputation and good order of the police force; and (3) failure to obey directives issued by the Chief of Police.<sup>1</sup> I was assigned this matter on July 18, 2014. A Status Conference was convened on November 14, 2014. A Post Status Conference Order was subsequently issued, which required the parties to submit briefs addressing the issues in this matter. Both parties submitted their briefs accordingly. The record is now closed.

**JURISDICTION**

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

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<sup>1</sup> Agency Answer, Tab 2 (April 14, 2014).

## ISSUES

1. Whether Agency had cause to take adverse action against Employee; and
2. If so, whether the penalty of removal was appropriate under the circumstances.

## FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The relevant facts of this case are largely undisputed. On or around June 19, 2013, Employee, while off-duty, was found sleeping inside of his privately owned vehicle. Employee acknowledges that while on his way home from work, he stopped to watch a basketball game and consumed a couple of beers while in possession of his off-duty weapon. However, Employee denies that he was “under the influence of alcohol” when he was found asleep in his car by Corporal Timothy White, of the Greenbelt, Maryland Police Department. Employee also acknowledges that he had secured his off-duty weapon in a holster that had not been approved by a range officer.<sup>2</sup>

Employee’s main contention is that he was not under the influence of alcohol when he was found sleeping in his car and that he did not drive under the influence of alcohol when he departed from watching the basketball game. Employee did not advance any additional arguments in his briefs, other than the two letters he already submitted in response to Agency’s proposed and final action. Employee offers his apology for consuming alcohol while in possession of his off-duty firearm and carrying it in an unauthorized holster. While Employee acknowledges his transgressions for the June 19, 2013 incident, he takes issue with the wording of the specifications set forth in charges levied against him. Additionally, as stated by Employee at the Prehearing Conference, he takes issue with the penalty imposed by Agency as a result of the June 19, 2013 incident.

Employee’s apology in his January 2, 2014 letter to Agency is also a concession that he failed to obey directives issued by the Chief of Police when he was carrying a firearm while consuming alcohol. Furthermore, Employee acknowledges that he was carrying his off-duty firearm in an unauthorized holster.

Metropolitan Police Department General Order 120.21, provides in pertinent part, that:

Conduct described below is prohibited, and shall serve as the basis for an Office Reprimand, or Adverse Action

12. Conduct Unbecoming

16. Failure to Obey Orders or Directives Issued by the Chief of Police. *See Metropolitan Police Department General Order 120.21*, effective April 13, 2006.<sup>3</sup>

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<sup>2</sup> Agency Answer, Tab 3, p. 2 (April 14, 2014). It should also be noted that Employee submitted the same document as part of his brief on January 20, 2015.

<sup>3</sup> Agency’s Brief, Exhibit A, Attachment A (December 19, 2014).

Special Order 04-07, Part IV, G, 1, provides that, “Off-duty members shall not carry their authorized firearm: When consuming, planning to consume, or likely to consume an alcoholic beverage. This applies to both the member’s issued service firearm and an authorized off-duty firearm.”<sup>4</sup>

Based on Employee’s own admission that he consumed alcohol while in possession of his firearm and carried it in an unauthorized holster, I find that Agency had cause to take adverse action against him for conduct unbecoming of an officer, conduct prejudicial to the reputation and good order of the police force, and failure to obey orders or directives issued by the Chief of Police.

### **Whether the penalty of removal was appropriate under the circumstances**

Agency has the primary discretion in selecting an appropriate penalty for Employee’s conduct, not the undersigned.<sup>5</sup> This Office may only amend Agency’s penalty if Agency failed to weigh relevant factors or Agency’s judgment clearly exceeded limits of reasonableness.<sup>6</sup> When assessing the appropriateness of a penalty, OEA is not to substitute its judgment for that of Agency, but rather ensure that managerial discretion has been legitimately invoked and properly exercised.<sup>7</sup>

For a first time offense of conduct unbecoming, the penalty ranges from a three (3)-day suspension to removal. A second time offense ranges from a ten (10)-day suspension to removal. A first offense for failure to obey orders and directives from the Chief of Police ranges from a reprimand to a removal. A second offense ranges from a one (1)-day suspension to removal.<sup>8</sup> Unfortunately for Employee, this is not his first offense for failure to obey orders and directives and conduct unbecoming.<sup>9</sup> While the Undersigned does not wish to delve into the facts surrounding Employee’s previous charges, it is noted that Employee alludes to his previous charges in his November 13, 2013 letter. In this letter, Employee writes, “I offer no excuses when I have made a mistake such as in 2010...”<sup>10</sup> Here, Employee has committed his second offense of conduct unbecoming of an officer and failure to obey orders and directives from the Chief of Police. Thus, the twenty-five (25)-day suspension, with five (5) days held in abeyance, is within the Table of Offenses and Penalties set forth in the Metropolitan Police Department General Order 120.21, Table of Offenses and Penalties. Accordingly, I find that Employee’s twenty-five (25)-day suspension, holding five (5) days in abeyance, was appropriate under the circumstances.

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<sup>4</sup> Agency’s Brief, Exhibit B (December 19, 2014).

<sup>5</sup> See *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).

<sup>6</sup> See *Id.*

<sup>7</sup> See *Id.*

<sup>8</sup> Agency’s Brief, Exhibit A at Attachment A, p. 4-5, Metropolitan Police Department General Order 120.21, Table of Offenses and Penalties (December 19, 2014).

<sup>9</sup> See Agency’s Brief, p. 5-6 (December 19, 2014).

<sup>10</sup> Employee’s Brief (January 20, 2015).

**ORDER**

Based on the foregoing, it is hereby **ORDERED** that Agency's decision to suspend Employee for twenty-five (25)-days, holding five (5) days in abeyance, is **UPHELD**.

FOR THE OFFICE:

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Arien P. Cannon, Esq.  
Administrative Judge