THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	
NICOLE LINDSEY,	)	
Employee	)	OEA Matter No. 1601-0081-09
	)	
v.	)	Date of Issuance: October 28, 2011
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	
Agency	)	ERIC T. ROBINSON, Esq.
	)	Administrative Judge
	)	

John V. Berry, Esq., Employee Representative
Frank McDougald, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

Nicole Lindsey ("Employee") was first appointed to the Metropolitan Police Department ("MPD" or "the Agency") in July 1994. She was terminated from the MPD in January 2005 for acts of misconduct she committed in August and September 2003. According to the MPD, the acts of misconduct committed by Employee included making untruthful statements and fraud in securing appointment. Employee appealed the January 2005 termination and in an arbitration decision dated February 24, 2006, the Arbitrator rescinded the termination pursuant to a finding that the Agency had violated the fifty-five (55) day provision of the collective bargaining agreement. The Agency's subsequent appeal of the arbitration decision was unsuccessful and Employee was reinstated to her position in or about October 2007.

In the Summer of 2008, Employee was investigated by the MPD for the charge of Inefficiency. The Agency's sole basis for this charge was two letters, one received from the Office of the United States Attorney General for the District of Columbia and the other from the Office of the Attorney General for the District of Columbia, the Agency charged Employee with Inefficiency. While being investigated for Inefficiency, Employee was interviewed by agents from the Department's Internal Affairs Division. During the interview, Employee presented the "finger" to the agents.

Employee had a MPD adverse action hearing before an Adverse Action Panel on November 14, 2009. Employee was found guilty of both charges and specifications and terminated effective January 16, 2009. Thereafter, Employee timely filed an appeal with the Office of Employee Appeals ("OEA" or "the Office"). Thereafter, this matter was assigned to the Undersigned. The Undersigned determined that it would be necessary to conduct an evidentiary hearing in order to make findings of fact and conclusions of law. Accordingly, an evidentiary hearing was held in this matter on December 21, 2010. Furthermore, the parties have each submitted their written closing arguments. The record is now closed.

JURISDICTION

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

BURDEN OF PROOF

OEA Rule 629.1, 46 D.C. Reg. 9317 (1999) states:

> The burden of proof with regard to material issues of fact shall be by a preponderance of the evidence. "Preponderance of the evidence" shall mean:
>
> > That degree of relevant evidence which a reasonable mind, considering the record as a whole, would accept as sufficient to find a contested fact more probably true than untrue.

OEA Rule 629.3 *id.* states:

> For appeals filed on or after October 21, 1998, the Agency shall have the burden of proof, except for issues of jurisdiction.

ISSUE

Whether Agency's action of removing the Employee from service was done in accordance with applicable law, rule, or regulation.

STATEMENT OF THE CHARGES

On September 25, 2008, Employee was served with a Notice of Proposed Adverse Action in which she was charged as follows:

> **Charge No. 1**: Violation of General Order 120.21, Attachment A, Part A-8, which states in part, Inefficiency as evidenced by repeated and well-founded complaints from superior officers, or others, concerning the performance of police duty or neglect of duty."

Specification No. 1: In that on May 23, 2008, the Acting Attorney General of the District of Columbia issued a written opinion stating that certain reinstated members could not function as effective members of the Metropolitan Police Department, due to past conduct which called into question the member's veracity. On July 30, 2008, the Metropolitan Police Department received a formal letter from the United States Attorney's Office indicating that your court testimony would not be sponsored by their agency due to past conduct that rendered you not credible for purposes of testifying in court. Moreover, on August 1, 2008, the Metropolitan Police Department received a formal letter from the D.C. Attorney General's Office indicating similarly that your testimony would not be sponsored by that agency in any criminal or civil proceeding, due to past conduct that rendered you not credible for purposes of testifying in court. These circumstances prevent you from performing a full range of police duties, rendering you inefficient, or ineffective, for service to the Metropolitan Police Department.

Charge No. 2: Violation of General Order 120.21, Number 21 Table of Offenses and Penalties, Part A (12), Attachment A, which provides: "Conduct unbecoming an officer, including acts detrimental to good discipline, conduct that would adversely affect the employee's or 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." This misconduct is further defined in General Order 201, Number 26, Part 1 (B) (22), which provides: "Members shall conduct their private and professional lives in such a manner as to avoid bringing discredit upon themselves or the department.

Specification 1: In that on July 17, 2008, you brought discredit upon yourself and the Metropolitan Police Department when you displayed a vulgar gesture directed at Internal Affairs Agents during the course of an interview.

FINDINGS OF FACT, ANALYSIS AND CONCLUSION

Summary of Relevant Testimony

Agency's Case in Chief

Brad Weinsheimer

Brad Weinsheimer ("Weinsheimer") testified in relevant part that: he currently works for the United States Attorney General for the District of Columbia ("USAG"). He has worked for the USAG for approximately 20 years. Transcript ("Tr.") at 27. His lengthy tenure within this Agency has been marked with several accomplishments including but not limited to: being named Chief of the USAG's Grand Jury division in 1999; and becoming Chairman of what is known as the *Lewis* Committee. *See* Tr. at 27 – 29. Weinsheimer has tried approximately 70 felony trials in both the Superior Court of the District of Columbia as well as the District Court

for the District of Columbia. During direct examination, Weinsheimer indicated that he was familiar with the case of *Lewis v. United States*. The ruling from that case imposed certain obligations on the prosecutors working for the USAG. The following excerpt is helpful with respect to what the *Lewis* case mandates for the USAG:

> Q: …Does [*Lewis*] impose any obligations on prosecutors in the District of Columbia, as well as prosecutor offices?
>
> A: Yes.
>
> Q: And would you share that with us, please?
>
> A: It requires us to provide certain impeachment information to the defense as part of the case. Specifically in that case, the issue was prior convictions for witnesses. But through the case *Brady v. Maryland* … and *United States v. Giglio*, that's extended to other kinds of impeachment information that we may have about witnesses that we have to share with the defense as part of our obligation.
>
> Q: And would you share with us the kind of impeachment information that you have alluded to?
>
> A: There's a variety of kinds, it largely falls into three categories. The first is prior connections or prior contacts with the criminal justice system. So if somebody had been arrested and maybe we had dismissed the case, we might have to disclose that…
>
> The second category are people who might be under investigation by our office, active investigation, and while we're investigating such a person, they have a potential bias or motive to curry favor with us, and so we would have to disclose that information.
>
> The third category is information that we determine goes to veracity. That is, for example, prior bad acts that relate to veracity, that relate to truth telling. We have an obligation to disclose that sort of information as well.
>
> Tr. at 29 – 30.

Weinsheimer indicated that the USAG has an internal system for tracking sworn members of the MPD that need to be disclosed to opposing parties pursuant to *Lewis* and its progeny. This system has come to be known as the *Lewis* list. *See* Tr. at 30 – 31. Throughout a bulk of his tenure with the USAG, Weinsheimer has served on the *Lewis* Committee which is charged with maintaining the *Lewis* list. When the USAG becomes aware of information that should be disclosed pursuant to *Lewis*, it updates this list by flagging said person with "see supervisor". An assistant USAG would typically run an officer's name through the *Lewis* list and if that officer has been flagged, they would then contact that officer's supervisor in order to

get more detailed information regarding the reason(s) behind the officer's inclusion on the list *See* Tr. at 31 - 33. Weinsheimer also explained that all sworn members of the MPD, that the USAG is aware of, are on the list. The delineating factor is if the sworn member is flagged. *See* Tr. at 37.

The following excerpt is important to the proceeding at hand:

> Q: … What is the impact on a prosecutor with respect to presenting a witness who has been flagged?
>
> A: It really depends on the situation. In some situations, we're prepared to disclose the information and litigate its admissibility or we might be prepared to disclose the information and suffer through whatever impeachment there is.
>
> Or there may be other categories of situation where we would prefer not to call that particular officer because of the impeachment information. We might try to work around that officer and not call them.
>
> And there are some circumstances where rather than disclose the information, we would dismiss the case because we think that the impeachment information is of a sufficiently significant degree that we'd rather not go forward in the case.

Agency's Exhibit No. 1 was introduced and admitted into evidence through Weinsheimer's testimony. This exhibit is a letter dated July 30, 2008. According to Weinsheimer, this letter was authored by his colleague Monte Wilkinson, who at the time was both an Executive Assistant United States Attorney for Operations and was then Chairman of the USAG's *Lewis* Committee. This letter was addressed to MPD Chief of Police Cathy Lanier and it informed her that the USAG was in possession of impeachment information with respect to Employee. It further informed Chief Lanier that "because of the likelihood of significant impeachment, it would be difficult for the [USAG] to effectively utilize [Employee], were she to be called as a witness at trial or pretrial hearings." Tr. at 34. Weinsheimer further explained that the letter included references of the misconduct that would be disclosed to an opposing party. *See* Tr. at 34.

Weinsheimer went onto explain that being flagged on the *Lewis* list need not be permanent. The USAG would generally inquire with the MPD to make sure that the information that they have is correct or to inform the USAG if there is a change in circumstances with respect to the information that they already have. *See* Tr. at 36. Weinsheimer indicated that the purpose of Agency's Exhibit No. 1 is to inform the MPD of the information that it has and the consequences said information would have on future prosecutions involving Employee. He further indicated that the MPD did not submit any additional information to the USAG in response to Agency's Exhibit No. 1. *See* Tr. at 37 - 38.

Charles Weeks

Charles Weeks ("Weeks") testified in relevant part that: he has been employed by the MPD for almost 15 years. Currently, he is a Sergeant and has been assigned to the Internal Affairs Division for the past four years. Weeks conducted an investigation with respect to Employee regarding the aforementioned charge of Inefficiency. *See* Tr. at 55. Central to Weeks investigation of Employee's Inefficiency charge is Agency's Exhibit No. 1 and Agency's Exhibit No. 2. Agency's Exhibit No. 2 was introduced into evidence through Weeks' testimony. This exhibit is a letter dated August 1, 2008, signed by Peter Nickels, then Attorney General of the District of Columbia. Not unlike Agency's Exhibit No. 1, it indicated that the District of Columbia Office of the Attorney General had impeachable information regarding Employee. *See* Tr. at 56 – 57.

In carrying out his investigation into this matter, Weeks, along with Sergeant Frank Corrigan, scheduled an interview with Employee on July 18, 2008. At the time that Weeks attempted to interview Employee, she was on maternity leave. Employee indicated that she had an appointment at the Police and Fire clinic, and that she would be able to meet him at that location prior to her appointment. *See* Tr. at 57 - 58. Weeks was able to carry out the interview at the Police and Fire Clinic. Weeks indicated that the interview was conducted in a small office. He did not anticipate that the interview would take very long. When he started the interview, he provided Employee with a confidentiality agreement and two MPD general orders dealing with truthful statements. *See generally* Tr. at 58 – 59. Weeks stated that "at some point while reading the truthful statement document, she looks up and states to me … 'you're not my superior officer'". Tr. at 59. Weeks then explained to Employee that for the singular purpose of his investigation into her conduct (and the interview that he was conducting) she should consider Weeks her superior officer, even though in all other aspects of their professional relationship he was not her superior officer. *See* Tr. at 59 - 60. Weeks then explained that after giving Employee this explanation "she raised her right hand and presented her middle finger." Tr. at 60. She directed her gesture to both Weeks and Sergeant Corrigan. She then asked Weeks "do you want me to turn the volume up?" Tr. at 61. Weeks then recalled that it was then that Employee's cellular telephone rang and it was the Clinic informing Employee that it was time for her appointment. Employee then left for her appointment. *See* Tr. at 61. According to Weeks, Employee then returned for the interview approximately 30 – 40 minutes later after her clinic appointment had ended. Weeks and Corrigan were then able to conduct and conclude their interview with Employee.

According to Weeks, he did not recommend that Employee be charged with Inefficiency. However, it was Weeks' understanding that the charge of Inefficiency was based entirely on Agency's Exhibits Nos. 1 and 2. *See* Tr. at 62 – 63.

Robert Hildum

Robert Hildum ("Hildum") testified in relevant part that: he is currently the Deputy Attorney General for Public Safety for the OAG. Tr. at 89 – 90. Hildum has had a lengthy career working for the OAG in a number of positions and he has had an extensive legal career primarily focused on criminal law. Hildum is familiar with the obligation to disclose certain

impeachable information to the opposing party pursuant to *Lewis*, *Brady* and *Giglio*. Hildum's recollection of these obligations is very similar to Weinsheimer's testimony on the matter. *See generally,* Tr. at 91 – 92. Hildum was shown Agency's Exhibit No. 2, it is a letter sent by then Attorney General Peter Nickels to Chief of Police Cathy Lanier. Hildum explained this letter as follows:

> A: … I was asked to review 27 cases, basically the Board hearings from various violations for 27 officers, and asked to consider whether, you know, *Lewis*, *Brady* and *Giglio* would come into play. After reviewing the 27 cases, I determined that 18 of them had findings, specific findings that went to veracity or truthfulness, and that based on that, we would not be able to rely on them as witnesses if they were called.
>
> Q: You said you would not be able to rely on those officers, okay. Now when you say you would not be able to rely on them, does that mean that you would not call them as witnesses?
>
> A: That's correct.
>
> Q: In prosecutions?
>
> A: We'd not call them as witnesses in the prosecution, that's correct.
>
> Q: And why was that?
>
> A: Well if we called them, we'd have to turn over the information concerning the findings that they had lied or misled, you know, there were findings of lying or misleading statements.
>
> The problem for the [OAG] is that almost all of our cases are judge trials and it's very difficult, even on a good day, to present cases to the satisfaction of the judges. And when you start out having to turn over information that a certain witness has a finding going to truthfulness, it distracts from the case as a whole, so it's extremely difficult to do that.
>
> Q: Is [Employee] on that list.
>
> A: Yes.
>
> Tr. at 94 – 95.

Hildum recalled that another person on the list, Timothy Haselden, had been removed from the list due to subsequent proceedings whereby Haselden's termination was overturned. *See* Tr. at 96 – 97 and 103 – 104.

Employee's Case in Chief

Gerry Scott

Gerry Scott ("Scott") testified in relevant part that: he has attained the rank of Captain. Scott has had the opportunity to work alongside Employee when they were both stationed at the Second District. Scott characterized Employee as an "excellent performer" with respect to her on-the-job performance. Tr. at 116.

During cross examination, Scott testified that one of the functions of a police officer is to make arrests. However, he noted that there is distinction of the job functions between a police officer and a lieutenant. Scott likened a lieutenant to being a mid-level manager. He indicated that a lieutenant's responsibilities would include scheduling, administrative tasks, and supervising her first level supervisors (sergeants). *See* Tr. at 120 – 121. He admitted that making arrests would be part of a lieutenant's job. Scott did not agree that a lieutenant would be expected to testify in court. That decision would be made by the prosecuting attorney. *See generally*, Tr. at 121 – 123. He did not agree that Employee could not testify in court. Scott explained that merely being on the Lewis list does not in of itself disqualify someone from testifying in court but rather the USAG will make a case-by-case determination on who it will choose to present as a witness in a court proceeding. *See* Tr. at 124 – 130.

Michael Elridge

Michael Elridge ("Elridge's") testified in relevant part that: he is currently serving as the Director of Disciplinary Review for MPD. During Elridge's testimony the parties stipulated that they agree that "no MPD employee has been removed from service, within recent time, for the use of profane language [or] obscene language." Tr. at 138.

Mark Veihmeyer

Mark Veihmeyer ("Veihmeyer") testified in relevant part that he is currently employed by the OAG. He stated that in August 2007, he was working for the MPD as the acting director for the Labor and Employee Relations unit. Viehmayer then refused to testify before the OEA citing that the crux of the ongoing questioning, including questions posed to him regarding Employee's Exhibit No. 6, would seek attorney – client privileged information. Veihmeyer made this determination in spite of a ruling by the Undersigned that the privilege had been waived due to his sharing this same document with opposing counsel as part of the discovery process in this matter. With respect to Veihmeyer's refusal to testify with respect to Employee's Exhibit No. 6, the undersigned informed that parties that a negative inference will be drawn[1]. Tr. at 147 – 149.

[1] As should be evident *infra*, the Undersigned did not consider Agency's Exhibit No. 6 at all when rendering the decision contained herein.

Chief of Police Cathy Lanier

MPD Chief of Police Cathy Lanier ("Lanier") testified in relevant part that: she decided that it was appropriate to remove Employee from service based on the charge of Inefficiency as described within Employee's Exhibit No. 8 which is Employee's appeal to Lanier, dated December 19, 2008, of the Final Notice of Adverse Action. *See* Tr. 181 -185.

Nicole Lindsey

Nicole Lindsey ("Employee") testified in relevant part that: prior to her removal she had last served with the MPD in the Second District. *See* Tr. at 149. Employee's career with the MPD started in July 1994. Employee explained the initial cause of action that brought out about the legal morass that resulted in her termination, twice, as follows:

> Q: Did there come a point when you were investigated in 2003 for any misconduct?
>
> A: Yes.
>
> Q: Please explain?
>
> A: In 2003, I was going through some medical issues and when I tried to obtain leave from my superior, I was denied on annual leave, on sick leave, and I needed to make a medical appointment, and I had given blood that morning, so I told her I gave blood, I'd like four hours of administrative leave, at which time she did.
>
> And it came back later that I didn't donate the blood for donation purposes, but it was for medical purposes. And I was terminated for the untruthful statement, for giving – doing my own TACIS, which is my time and attendance and for conduct unbecoming.
>
> Tr. at 150

Employee appealed that initial termination through arbitration and the arbitrator overturned her termination citing that the MPD had violated the 55 day provision in the Collective Bargaining Agreement. MPD then appealed that ruling to the Public Employee Relations Board ("PERB"). PERB upheld the arbitrators ruling. Eventually, Employee was returned to duty "in the end of September, beginning of October 2007." Tr. at 150 – 151. When she returned to duty, Employee was promoted to lieutenant and assigned to the Second District.

With respect to the interview that was conducted by Weeks and Corrigan, Employee explained that she was on maternity leave and that she had just had a baby. Weeks called her on her cellular telephone in order to schedule the interview regarding the Inefficiency charge levied against her. When Weeks called, Employee was, at that moment, in route to her scheduled

appointment at the Police and Fire Clinic and she informed him she could meet him there for the interview. *See* Tr. at 159 – 161. Employee verified certain portions of Weeks rendition of the interview. She did meet with the two agents and she did ask a question regarding their rank relative to hers. Weeks responded that for the purposes of the interview they were of equal or greater rank to her. Employee admitted that she had made the obscene gesture described by Weeks. Employee also indicated that prior to the interview she had been acquainted with Weeks from their time at the Police Academy and that they shared mutual friends. She explained that her statement "should I turn up the volume?" was a quote from the movie *The Breakfast Club*. Employee explained that she tried to lighten the mood of the interview by joking around with Weeks and Corrigan. *See* Tr. at 161 – 163.

Findings of Fact, Analysis and Conclusion

The following findings of facts, analysis and conclusions of law are based on the testimonial and documentary evidence as presented by the parties during the course of the Employee's appeal process with this Office.

Inefficiency

Employee was removed from her position of 15 years by Chief of Police Cathy Lanier on January 12, 2009, principally as a result of alleged misconduct that had occurred in Autumn of 2003 involving a sustained lack of candor allegation. In Employee's 2003 case, Arbitrator Irwin Socoloff had ruled on February 24, 2006, that the Agency had violated the Collective Bargaining Agreement ("CBA") between the Fraternal Order of Police/Metropolitan Police Department Labor Committee ("FOP") and the Agency when it removed Employee in the lack of candor case. Tr. at 151. The District of Columbia Public Employees Relations Board ("PERB") then affirmed the arbitrator's decision on February 13, 2007, and ordered Employee's reinstatement. Tr. at 151. On October 15, 2007, the Agency then reinstated Employee and retroactively promoted her to her current rank of Lieutenant, effective September of 2004. Tr. at 151.

Following Employee's return and retroactive promotion, Employee was subsequently notified of her proposed removal from the Agency on September 25, 2008, on two charges, with the principal one relating to Employee's alleged lack of candor charges from the Fall of 2003. A minor secondary charge, relating to an allegation that Employee, when she was interviewed during a medical appointment, had used profanity on July 17, 2008 was also listed, but the Agency stipulated in the proceedings that members do not get terminated for this offense. Tr. at 138.

The Employee contends that the Agency's adverse action of removing her from service should be reversed because the Agency failed to comply with Title V, Section 502, of the Omnibus Public Safety Agency Reform Amendment Act of 2004, D.C. Official Code § 5-1031 (2005 Supp.), which states that:

> Commencement of corrective or adverse action.
>
> (a) Except as provided in subsection (b) of this section, no corrective or adverse action against any sworn member or civilian employee of the Fire and Emergency Medical Services Department or the Metropolitan Police Department shall be commenced more than 90 days, not including Saturdays, Sundays, or legal holidays, after the date that the Fire and Emergency Medical Services Department or the Metropolitan Police Department **knew or should have known of the act or occurrence allegedly constituting cause**. (**Emphasis added)**.
>
> (b) If the act or occurrence allegedly constituting cause is the subject of a criminal investigation by the Metropolitan Police Department, the Office of the United States Attorney for the District of Columbia, or the Office of Attorney General, or an investigation by the Office of Police Complaints, the 90-day period for commencing a corrective or adverse action under subsection (a) of this section shall be tolled until the conclusion of the investigation.

With respect to the charge of Inefficiency, it bears examining when the MPD knew or should have known of the act or occurrence allegedly constituting cause in this matter. The Agency argues that Agency Exhibits Nos. 1 and 2 are the sole basis for this charge and that once it received these letters it acted within the timeframe mandated by D.C. Official Code § 5-1031. I disagree. There is one glaring problem with Agency's argument - the facts that underlie these two letters occurred in 2003, while the two exhibits that provide the foundation for Agency's adverse action were both created in 2008. Agency's responsibility to disclose impeachable information of its members to the USAG and OAG in adherence to *Lewis* and its progeny is not a new responsibility that manifested itself in 2008. The "*Lewis Lis*t" is derived from the D.C. Court of Appeals' decision in *Lewis v. United States*, 408 A.2d 303 (D.C. 1979). This decision, **which is over thirty-years old**, requires the government to turn over to criminal defendants information regarding the "impeachable convictions" of government witnesses. The USAG maintains a computer listing containing the names of police officers who are under investigation for misconduct and usually discloses the names of officers appearing on the list to defendants against whom those officers may be called to testify. *U.S. v. Bowie*, 339 U.S. App. D.C. 158, 198 F.3d 905, 907-08 (D.C. Cir. 1999).

It also bears noting that it would seem that Agency's Exhibit No. 2 was created at the behest of the Agency. It states in part:

> You asked for our thoughts on whether these individuals could be used to testify in criminal matters prosecute by the [OAG] or, for that matter, in civil matters defended by my office. You also asked for our judgments on whether or not these individuals could reasonably be retained as MPD officers given the conduct in which they have been found to have engaged…

> We also believe that the conduct is serious enough – the supporting evidence is compelling enough – to support any decision that MPD would make about these officers, including termination.

As was stated previously, this exhibit was sent by then Attorney General Peter Nickels to Chief of Police Cathy Lanier. The language used in this letter would seem to enforce the notion that MPD *knew or should of known* of the conduct that was cited in this letter well before it was sent to Lanier.

I find that MPD should have initiated charges on this issue in 2003, if MPD believed that this would cause difficulties in Employee's employment. MPD chose not to do so. Furthermore, since there was no ongoing criminal investigation into the allegations against Employee, D.C. Official Code § 5-1031 has effectively barred MPD from commencing corrective or adverse action against Employee based upon her alleged "Inefficiency" from years ago.

Conduct Unbecoming an Officer

The testimony in this case demonstrated that Employee was questioned immediately following her pregnancy during a medical appointment. The testimony of both Employee and Weeks clearly shows that in July 2008, Employee had been contacted by investigators while on the way to a medical appointment. Tr. at 159. Weeks had insisted that they meet regarding a charge of Inefficiency even though the Employee was still on maternity leave. Of note, Weeks and Employee had met previously and had friends in common.

Employee was then interviewed at the Police and Fire Clinic. Tr. at 159. Employee was straightforward in her testimony that given the difficult situation, in addition to her ongoing medical care, that she was feeling pressured and tried to lighten the mood, and in doing so she made an obscene gesture and quoted a movie line in *The Breakfast Club*. Tr. 161-162. I take note that, Employee's gesture and movie quote, while she was on maternity leave and heading to a medical appointment, should be considered for what it was - minor. Given all of the attendant circumstances as cited herein, the Undersigned is not inclined to impose any sanction against Employee with respect to Charge No. 2 – Conduct Unbecoming an Officer.

I conclude that given the aforementioned findings of facts and conclusions of law the Agency's action of removing the Employee from service should be reversed.

ORDER

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

1. Agency's action of removing the Employee from service is **REVERSED**; and

2. The Agency shall reinstate the Employee to her last position of record or to comparable position; and

3. The Agency shall reimburse the Employee all back-pay and benefits lost as a result of her removal; and

4. The Agency shall file with this Office, within thirty (30) days from the date on which this decision becomes final, documents evidencing compliance with the terms of this Order.

FOR THE OFFICE:

_____

ERIC T. ROBINSON, Esq.
Administrative Judge