THE DISTRICT OF COLUMBIA
BEFORE
THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	)	
	)	OEA Matter No.: 1601-0015-25
EMPLOYEE,[1]	)	
Employee	)	
	)	Date of Issuance: March 3, 2026
v.	)	
	)	
D.C. METROPOLITAN POLICE DEPARTMENT,	)	Natiya Curtis, Esq.
Agency	)	Administrative Judge
	)	

Daniel McCartin, Esq., Employee Representative
Jacob Thole, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL HISTORY

On December 20, 2024, 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 suspend him from his position as a Police Officer effective November 29, 2024. OEA issued a Request for Agency's Answer to Petition for Appeal on December 20, 2024, and required Agency to submit its Answer by January 19, 2025. Agency submitted its Answer to Employee's Petition for Appeal on January 16, 2025. This matter was assigned to the undersigned Administrative Judge ("AJ") on January 17, 2025.

On January 21, 2025, I issued an Order Scheduling a Prehearing Conference for February 25, 2025. Prehearing Statements were due by February 18, 2025. On February 6, 2025, Agency filed a Motion to Continue the Prehearing Conference to March 4, 2025, and cited that Employee did not oppose a continuance. I granted the Motion in an Order dated February 7, 2025. Prehearing Statements were now due by February 25, 2025, and the Prehearing Conference was rescheduled for March 4, 2025. Agency submitted its Prehearing Statement and a Motion for Dismissal/Summary Disposition on February 24, 2025. Employee submitted his Prehearing Statement on February 26, 2025. On February 28, 2025, Employee submitted a Consent Motion to extend the time to file his opposition Motion to Agency's Motion for Summary Disposition.

The Prehearing Conference was held as scheduled on March 4, 2025. On March 5, 2025, I issued an Order regarding Employee's Consent Motion and granted Employee's Motion. Employee's response to Agency's Motion for Dismissal/Summary Disposition was due by March 18, 2025. Employee submitted his response as required. After reviewing the record and the parties' submissions,

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

on May 7, 2025, I issued an Order Regarding Agency's Motion to Dismiss/Post Prehearing Conference Order. That Order denied Agency's Motion for Summary Disposition and ordered the submission of additional briefs. Agency's brief was due by June 9, 2025, Employee's Brief was due by July 8, 2025, and Agency's sur-reply was due by July 22, 2025.

On July 2, 2025, Employee filed a Consent Motion to Extend Time to file his brief. In an Order dated July 3, 2025, I granted Employee's Consent Motion. Employee's brief was now due by July 22, 2025, and Agency's sur-reply was due by August 12, 2025. The parties submitted their briefs as required. 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 Agency had cause to take adverse action against Employee; and
2. If so, whether the penalty of suspension for thirty (30) days with ten (10) days held in abeyance was appropriate under the circumstances and administered in accordance with all applicable laws, rules and 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.

FINDINGS OF FACT, ANALYSIS AND CONCLUSIONS OF LAW

Employee is a Police Officer with Agency, who was initially suspended for thirty-five (35) workdays in a proposed Notice of Adverse Action on July 8, 2024, and charged with the following:[3]

Charge No. 1: "Violation of General Order Series 120.21, Attachment A, Part A-6, which states, *"Engaging in conduct that constitutes a crime."*

Specification No. 1: In that, on November 30, 2023, you drove your privately owned vehicle (POV) to a gas station in Ruckersville, Virginia, while under the influence of alcohol. You subsequently pled guilty on March 3, 2024, to one count of Virginia Code § 18.2-266, Driving a Motor Vehicle, Engine, etc., while intoxicated, and you conceded you were under the influence of alcohol with a BAC of less than .15.

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

Specification No. 1: In that, on November 30, 2023, you were in a public gas station under the influence of alcohol and unable to walk or speak coherently.

Charge No. 3: Violation of General Order Series 120.21, Attachment A, Part A-24, which states, "*Any conduct not specifically set forth in the order, which is detrimental to the reputation and good order of the police force, or involving failure to obey, or properly observe any of the rules, regulations, and orders relating to the discipline and performance of the force."*

Specification No. 1: In that, on November 30, 2023, while intoxicated and operating your privately owned vehicle in Greene County, Virginia, you were identified as an officer with the Metropolitan Police Department (MPD), which brought discredit not only to yourself, but also to the agency.

Specification No. 2: In that, on March 6, 2024, you were issued a twelve (12) month driver license restriction requiring the use of an ignition interlock device on any vehicle you operated, with no exemption for employer-owned vehicles. Therefore, you cannot operate an MPD vehicle and cannot fully perform the duties of an MPD officer until the conclusion of the period of restriction.

Employee appealed these charges to the Chief of Police Pamela A. Smith ("Chief Smith") on November 6, 2024.[4] In a final letter dated November 29, 2024, Chief Smith reconsidered the charges and penalty assessed against Employee.[5] Chief Smith revised the adverse action against Employee accordingly: Charge 3, specifications 1 and 2, were dismissed. *Douglas* factor 4 was reduced to mitigating.[6] *Douglas* factor 5 was reclassified to neutral. *Douglas* factor 12 was reduced to mitigating.

---

[3] Employee's Petition for Appeal, Exhibit 1, p. 10 (December 20, 2024) (This Notice was issued by Director Hobie Hong of Agency's Disciplinary Review Division ("DRD").
[4] Agency's Answer, Tab 5, p. 30 (January 16, 2025) (page numbers not in the original but included for ease of reference).
[5] *Id.* at Tab 4, pp. 81-84.
[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:

Chief Smith noted that "[g]iven the dismissal of Charge 3 and recharacterization of Douglas factors, I am reducing the penalty to be imposed in this case to a 30-day suspension. In addition, given my consideration of the record as a whole, I am holding ten of those suspension days in abeyance for one year."[7]

In support of Employee's reduced charges and penalty, Chief Smith acknowledged that Employee provided evidence that he is able to operate Department vehicles without the installation of an ignition interlock device,[8] accepted responsibility for driving while under the influence, has not lost his supervisors' confidence in his ability to perform his duties, and experienced medical limitations that were outside of his control.[9] Thus, Employee's charges were revised as follows:

Charge No. 1: "Violation of General Order Series 120.21, Attachment A, Part A-6, which states, *"Engaging in conduct that constitutes a crime."*

Specification No. 1: In that, on November 30, 2023, you drove your privately owned vehicle (POV) to a gas station in Ruckersville, Virginia, while under the influence of alcohol. You subsequently pled guilty on March 3, 2024, to one count of Virginia Code §18.2-266, Driving a Motor Vehicle, Engine, etc., while intoxicated, and you conceded you were under the influence of alcohol with a BAC of less than .15.

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

Specification No. 1: In that, on November 30, 2023, you were in a public gas station under the influence of alcohol and unable to walk or speak coherently.

---

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 4, p. 83 (January 16, 2025).

[8] Employee's license restriction was amended to allow him to operate an Agency-owned vehicle without an ignition interlock system, while working (*See* Employee's Petition for Appeal, p. 25-Attachment 1 to the DC Police Union's Appeal letter) (page numbers are not in the original but included for ease of reference).

[9] Agency's Answer, Tab 4, p. 83 (January 16, 2025).

Employee's final penalty was a thirty-day suspension with ten (10) days held in abeyance.[10]

Jurisdiction

This Office's jurisdiction is conferred upon it by law and was initially established by the District of Columbia Comprehensive Merit Personnel Act of 1978 ("CMPA"), D.C. Official Code §1-601-01, *et seq.* (2001). It was amended by the Omnibus Personnel Reform Amendment Act of 1998 ("OPRAA"), D.C. Law 12-124, which took effect on October 21, 1998. Both the CMPA and OPRAA confer jurisdiction on this Office to hear appeals, with some exceptions. According to 6-B of the District of Columbia Municipal Regulation ("DCMR") § 604.1,[11] this Office has jurisdiction in matters involving District government employees appealing a final agency decision affecting:

(a) A performance rating resulting in removal;
(b) An adverse action for cause that results in removal, reduction in grade, or *suspension for 10 days or more;* or
(c) A reduction-in-force; or
(d) A placement on indefinite suspension for ten (10) days or more. (Emphasis added).

Agency's Position

Agency asserts that its action of suspending Employee for thirty days (30), with ten (10) days held in abeyance for one year was an appropriate penalty for Employee's misconduct.[12] Agency maintains that Employee engaged in prohibited conduct when he drove his vehicle over 75 miles while intoxicated.[13] Agency notes that after driving while intoxicated, Employee then fell asleep inside his vehicle while parked at a gas station and was so inebriated that he could not speak when awoken by a Virginia sheriff.[14] Agency cites that a search of Employee's vehicle at the time he was detained revealed three (3) bottles of alcohol: two empty 750 milliliter bottles and a third pint-sized bottle that was approximately thirty-percent full.[15] Agency also asserts that Employee registered a .40 Blood Alcohol Content ("BAC").[16]

Agency avers that there is no dispute that Employee's misconduct was criminal in nature, as Employee pled guilty to one (1) count of Driving a Motor Vehicle while Intoxicated and was sentenced to ninety (90) days incarceration, with ninety (90) days suspended pending one (1) year of good behavior.[17] Agency further notes that Employee admitted to the charged misconduct. Agency argues that based on Employee's documented misconduct and his own admissions, Agency had sufficient evidence to support the adverse action in this matter because Employee engaged in conduct that is prohibited by Agency's General Order 120.21, Part IV, Attachment A, Part A-1, which prohibits off duty drinking while in uniform or under the influence, and Attachment A, Part A-6, which prohibits

[10] *Id*.

[11] *See also.* Chapter 6, §604.1 of the District Personnel Manual ("DPM") and OEA Rules.
[12] Agency's Brief, p. 10 (June 9, 2025).
[13] Agency's Prehearing Statement, p. 5 (February 24, 2025).
[14] Agency's Brief, p. 13 (June 9, 2025).
[15] Agency's Prehearing Statement, p. 2 (February 24, 2025).
[16] Agency's Brief, p. 13 (June 9, 2025).
[17] Agency's Prehearing Statement, p. 3 (February 24, 2025); *See also* Agency's Brief, p. 10 (June 9, 2025).

engaging in conduct that constitutes a crime.[18] Agency argues that the penalty assessed is within the allowable range established by Agency's Table of Penalties, which sets a suspension range of eleven (11) to thirty days for off duty drinking and under the influence, and termination for conduct that constitutes a crime. Thus, Agency asserts that Employee's suspension was within the allowable range and also a mitigated penalty because he was not recommended for termination.[19]

Agency further asserts that OEA lacks jurisdiction over Employee's request to remain eligible for promotion to the rank of Detective Grade 3 and/or Sergeant. Agency avers that Employee's request to remain eligible for promotion is a supplemental issue that is not within the purview of OEA's jurisdiction. Agency further notes that Article 47 of the parties' Collective Bargaining Agreement ("CBA") specifies that "a member shall be ineligible to participate in a promotional process if that member has sustained an adverse action resulting in a penalty of…a suspension of fifteen or more days within one year of the announced administration date of the first phase of the exam." Agency asserts that "Phase 1 of the Detective Grade 3 promotional process began on August 17, 2024. This was within one year of the final agency action suspending Employee for 30 days on November 29, 2024" and thus Employee was not eligible for that promotion round.[20]

Employee's Position

Employee maintains that his suspension was based on insufficient evidence because Agency did not consider mitigating factors and the extenuating circumstances that he asserts caused him to self-medicate with alcohol.[21] Employee notes that he sustained an on-the-job injury while in active pursuit of a suspect, resulting in fractures to his left leg and ankle. Employee avers that he required two immediate surgeries but continued to experience pain and mobility limitations, and a prolonged recovery. Employee cites that he was required to attend follow-up appointments every thirty (30) days at the Police and Fire Clinic ("PFC") but was not progressing in his recovery. He maintains that the PFC doctors dismissed his concerns about his condition and continued pain. Employee avers that he did not want to take narcotics for the pain, considering MPD's drug-testing policy.[22]

Employee notes that in September of 2023, he was placed on limited duty status and detailed to the Telephone Reporting Unit where he worked forty (40)-hours per week. Employee asserts that he suffered mental and physical anguish due to his prolonged pain and physical deterioration and that "out of desperation" he began "to self-medicate with alcohol in order to alleviate the pain he was experiencing from his severe leg injury, which was exacerbated by his new work duties."[23] Employee notes that on November 30, 2023, while off duty and in route to visit his father, he drove his personal vehicle to a gas station and fell asleep in the driver's seat. Employee asserts that he awoke to a welfare check by Sergeant Gresham of the Greene County Sheriff's Office in Virginia. Employee avers that Sergeant Gresham detected an odor of alcohol and called an ambulance to transport Employee to the hospital, where he was admitted for alcohol consumption.[24]

Employee asserts that in 2024, approximately four (4) months since his last visit, an x-ray confirmed that Employee's leg was still broken, requiring a third surgery. Employee cites that

[18] Agency's Prehearing Statement, p. 5 (February 24, 2025).
[19] Agency's Brief, p. 16 (June 9, 2025).
[20] *Id*. at p. 21.
[21] Employee's Prehearing Statement, pp. 1-3, 5-7 (February 26, 2025).
[22] *Id*. at p. 2.
[23] *Id*. at p. 3
[24] *Id*.

approximately eight weeks after this surgery, he was finally able to "resume the normalcy he had prior to his on-duty injury."[25]

Employee avers that he appealed the Agency's proposed suspension, which was initially thirty-five (35) workdays to Chief Smith. Employee cites that Chief Smith granted Employee's appeal in part and revised Employee's suspension to thirty workdays, with ten (10) of those days held in abeyance for one year. Employee argues that Agency's action was improper because there is insufficient evidence to support a finding that Employee is guilty of the charges levied against him and medical circumstances outside of Employee's control played a part in this matter. Employee specifically asserts that the Department's negligence in failing to properly treat Employee played a significant part in this matter, as his symptoms of pain were not taken seriously, which led to him not receiving proper care and treatment. He notes that instead his workload increased while his leg was still broken. Employee maintains that Agency's action exacerbated his pain, leading him to self-medicate with alcohol. Employee asserts that this matter highlights the consequences of negligent medical care because had he been properly treated for his severe workplace injury, he would not have engaged in the conduct underlying the disciplinary charges.[26]

ANALYSIS[27]

Whether Agency's action was for cause and in accordance with law or applicable regulation

For the reasons that will be explained below, the undersigned finds that Agency's action of suspending Employee was in accordance with MPD's internal policy and General Orders and Agency had cause for the adverse action.

Employee was charged with:

Charge No. 1: "Violation of General Order Series 120.21, Attachment A, Part A-6, which states, *"Engaging in conduct that constitutes a crime."* and **Charge No. 2**: Violation of General Order Series 120.21, Attachment A, Part A-1, which states, "*Alcohol: Off-duty — drinking while in uniform and/or under the influence."*

The record supports and Employee does not dispute that on November 30, 2023, he was detained by the Greene County Sheriff's Department. The record reflects that Seargent Gresham located Employee in his car at a gas station. Employee was intoxicated to a level where he could not stand, walk, or communicate. Sergeant Gresham also noted that he observed the video footage from the gas station and Employee was visibly intoxicated upon arrival and while pumping gas, often leaning on the gas pump for support.[28] Employee was first detained but ultimately not arrested due to "GCSO "manpower" considerations and their inability to staff a guard detail at the hospital. Sergeant Gresham instead applied for an arrest warrant and Employee was transported by ambulance to the hospital.[29]

---

[25] *Id*. at pp. 1, 3.
[26] *Id*. at pp. 4-5.
[27] 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").
[28] Agency's Answer to Employee's Petition for Appeal, pp. 149-150, Tab, 1 (MPD's Final Investigative Report dated June 14, 2024, Attachment 10) (January 16, 2025).
[29] *Id*. at p. 98.

Sergeant Gresham noted that Employee's hospital records revealed a BAC level of 0.40 with a Final diagnosis of Alcohol intoxication with delirium.[30]

Employee does not dispute that he pled guilty to one count of Driving while Intoxicated and was sentenced to twelve (12) months' probation with a restricted license.[31] Employee, by his own admission, noted that on November 30, 2023, he "regrettably turned to alcohol as a temporary relief and escape from everything [he] endured over the last six plus months."[32] Employee further noted in his appeal to Chief Smith that he "fully acknowledge[d] and [took] responsibility for his decisions, and subsequent actions which were undeniably out of character and unacceptable" and also noted that he was not trying to make excuses for "the event that unfolded" in appealing to Chief Smith.[33]

In spite of his admitted misconduct, Employee asserts that Agency's action was improper because Agency did not properly weigh the medical circumstances outside of Employee's control that contributed to his misconduct. I find that Employee's argument is misguided and unsupported by the record. Employee was charged with a violation of General Order Series 120.21, Attachment A, Part A-1 and 6. While Agency *may* in its discretion consider Employee's rationale for engaging in the charged misconduct, the actual language of the General Order under which Employee was charged does not require a finding of intent. (Emphasis added). Thus, in determining that Employee's conduct violated Agency's policy, Agency need not establish *why* Employee committed the criminal misconduct, only that it was committed, and in violation of Agency's General Orders. (Emphasis added).

Agency's General Orders are clear. The Table of Penalties expressly states that off duty drinking while under the influence and engaging in conduct that constitutes a crime is prohibited conduct and "shall serve as the basis for discipline."[34] Employee pled guilty to driving under the influence, which is criminal misconduct. Thus, Employee's argument that Agency did not properly consider the circumstances that motivated his misconduct has no bearing on whether Agency had cause for the adverse action. Further, while I do not doubt that Employee experienced continued pain exacerbations, his choice to *drive* while impaired was his choice alone and has no logical nexus to the standard of care he received by Agency's appointed physicians. (Emphasis added). Accordingly, Agency has supported that it had cause for the adverse action and acted in accordance with its internal policies.

Whether the penalty of suspension is appropriate

Agency asserts that the penalty in this matter met the standard in *Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985). It cites that Chief Smith reassessed the *Douglas* factors and recharacterized some of these factors, in favor of Employee. Agency asserts that Employee's suspension was a reasonable exercise of managerial discretion because he engaged in conduct that violates Agency's General Orders and his suspension was within the range provided by the Table of Penalties. Agency further notes that Employee received a mitigated penalty because he was not recommended for

[30] *Id*. at p. 149, (attachment 10).
[31] *Id*. at pp. 166 and 174 (attachment 15 and attachment 18, respectively).
[32] Employee's Petition for Appeal p. 21(December 20, 2024).
[33] *Id*. at p. 22.
[34] Agency's Brief, p. 90 (June 9, 2025) (*citing* General Order Series 120.21, Attachment A, Part A-1 and 6).

termination.[35] Employee conversely asserts that Agency misapplied or misunderstood some of the *Douglas* factors and that the resulting penalty was beyond the tolerable limits of reasonableness.[36]

In determining the appropriateness of an agency's penalty, OEA has consistently relied on *Stokes v. District of Columbia*.[37] According to the Court in *Stokes,* OEA must determine whether the penalty was within the range allowed by law, regulation, and any applicable Table of Penalty; whether the penalty is based on a consideration of the relevant factors; and whether there is a clear error of judgment by Agency. An agency's decision will not be reversed unless it fails to consider relevant factors or the penalty imposed constitutes an abuse of discretion.[38]

As noted in *Douglas v. Veterans Administration,* 5 M.S.P.R. 313 (1981), the question is whether "managerial judgment has been properly exercised within the tolerable limits of reasonableness."[39] It must be clear that agency "conscientiously consider[ed] the relevant factors and did strike a responsible balance within tolerable limits of reasonableness."[40] Here, Agency presented evidence that it considered relevant factors as outlined in *Douglas* in reaching the decision to suspend Employee and provided thorough analysis of the assessed factors. Further, Employee had the benefit of a second-look at the *Douglas* Factor analysis in this matter through his Agency appeal, which resulted in a reduced penalty. Further, while Agency's Table of Penalties classifies a conviction for engaging in conduct that constitutes a crime (other than misdemeanor traffic) as a termination offense, Agency only suspended Employee. Thus, the undersigned finds that Employee's suspension was less punitive than the Table of Penalties prescribes and therefore a reasonable exercise of managerial judgment. While Employee may not agree with all the findings related to the *Douglas* factors, that is insufficient to suggest that Agency failed to properly weigh the *Douglas* factors or that the resulting penalty was beyond the bounds of reasonableness.

Further, while Employee argues that the adverse action was "arbitrary and capricious" because Agency did not consider that Employee's pain contributed to his misconduct, the record shows that Chief Smith considered Employee's circumstances and mitigated the *Douglas* Factors accordingly. Notably, Chief Smith agreed "that Douglas factor 12 should be classified as mitigating. When taking into account the totality of the circumstances, it is clear that medical circumstances outside of your control played a part in this matter."[41] Thus Employee's assertion that Agency did not consider Employee's extenuating medical circumstances is not consistent with the record.

Ancillary Claims

Employee asserts that this Office maintains jurisdiction over Employee's request to remain eligible for the Detective Grade 3 and/or Sergeant Promotional Process because his suspension made

---

[35] *Id*. at pp. 9, 13, 15.
[36] Employee's Brief p. 13 (July 22, 2025).
[37] *See also Monica Fenton v. D.C. Public Schools,* OEA Matter No. 1601-0013-05, *Opinion and Order on Petition for Review* (April 3, 2009); *Robert Atcheson v. D.C. Metropolitan Police Department,* OEA Matter No. 1601-0055-06, *Opinion and Order on Petition for Review* (October 25, 2010); and *Christopher Scurlock v. Alcoholic Beverage Regulation Administration*, OEA Matter No. 1601-0055-09, *Opinion and Order on Petition for Review* (October 3, 2011).
[38] *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).
[39] *Douglas v. Veterans Administration,* 5 M.S.P.R. at 329.
[40] *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).
[41] Employee's Petition for Appeal, p. 64 (December 20, 2024).

him ineligible for promotion consideration and thus, "is inextricably intertwined with MPD's decision to suspend [Employee]."[42] Employee additionally asserts that Agency failed to provide appropriate accommodation for his on-duty injury as required by the American with Disabilities Act.[43]

Agency cites that OEA has no jurisdiction over supplemental matters.[44] Agency further cites that article 47 of the parties' CBA dictates that a member should be ineligible to participate in a promotional process if that member has a sustained adverse action resulting in a penalty of a suspension of fifteen or more days within one year of the announced administration date of the first phase of the exam.[45]

The undersigned finds that these ancillary arguments are best characterized as grievances and outside of OEA's jurisdiction to adjudicate at this time. The undersigned further finds that Employee's ineligibility to be considered for a promotion is an internal administrative matter that was the result of Employee's suspension, and not an adverse action, such as a demotion for cause. Further, it is an established matter of public law that as of October 21, 1998, pursuant OPRAA, D.C. Law 12-124, that OEA no longer has jurisdiction over grievance appeals. That is not to say that Employee may not press his claims elsewhere, but rather that OEA currently lacks the jurisdiction to hear them.

Based on the aforementioned, the undersigned finds that Agency had cause to take adverse action against Employee, administered the adverse action in accordance with all applicable laws, rules and regulations, and applied an appropriate penalty under the circumstances. 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 suspending Employee from service is hereby **UPHELD**.

FOR THE OFFICE:

/s/ Natiya Curtis
Natiya Curtis Esq.
Administrative Judge

[42] Employee's Opposition Brief to Agency's Motion to Dismiss p. 11 (March 18, 2025).
[43] Employee's Brief, p. 8 (July 22, 2025).
[44] Agency's Sur Reply, p. 3 (August 12, 2025).
[45] Agency's Brief, p. 21 (June 9, 2025).