THE DISTRICT OF COLUMBIA

BEFORE

THE OFFICE OF EMPLOYEE APPEALS

In the Matter of:	
	OEA Matter No.: 1601-0033-18
MIKA PERRIN, Employee	
	Date of Issuance: November 28, 2018
v.	
	Arien P. Cannon, Esq.
METROPOLITAN POLICE DEPARTMENT Agency,	Administrative Judge

Shelia R. Clemons, Employee Representative
Nada Paisant, Esq., Agency Representative

INITIAL DECISION

INTRODUCTION AND PROCEDURAL BACKGROUND

On February 12, 2018, Mika Perrin ("Employee") filed a Petition for Appeal with the Office of Employee Appeals ("OEA"), challenging the Metropolitan Police Department's ("Agency" or "MPD") decision to remove her from her position as a Staff Assistant. Employee's termination became effective on January 20, 2018. Agency filed its Answer on March 15, 2018. I was assigned this matter on April 4, 2018.

A Prehearing Conference Order was issued on April 11, 2018, scheduling a Prehearing Conference in this matter for May 8, 2018. A second Prehearing Conference was convened on June 19, 2018. Based on the parties' representations made at the Prehearing Conferences, the undersigned determined that an evidentiary hearing was warranted. An Evidentiary Hearing was held on August 1, 2018, where both parties were afforded the opportunity to present testimonial and documentary evidence. Following the Evidentiary Hearing, the parties were given the opportunity to submit written closing briefs. Both parties submitted their closing 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).

ISSUES

1. Whether Agency had cause to take adverse action against Employee for: (1) Conduct Prejudicial to the District Government: Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has otherwise identifiable nexus to the employee's position, pursuant to DPM 1607.2(a)(5); and (2) False Statements/Records: Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record, pursuant to DPM 1607.2(b)(3)[1]; and

2. If so, whether removal was appropriate under the circumstances.

BURDEN OF PROOF

OEA Rule 628.1 states that the burden of proof with regard to material issues of fact shall be by a preponderance of the evidence.[2] "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.

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.[3]

SUMMARY OF TESTIMONY

The following represents a summary of the relevant testimony given during the Evidentiary Hearing as provided in the transcript (hereinafter denoted as "Tr.") which was generated following the conclusion of the proceeding. During the Evidentiary Hearing, I was able to observe the poise, demeanor, and determine the credibility of the witnesses.

Agency's Case-in-Chief

Michael Eames ("Eames") ***Tr. 8-101***

Eames is an agent with MPD's Internal Affairs Division ("IAD"). He is responsible for conducting investigations of misconduct by all officers and civilian employees, criminal activity within MPD, and use-of-force claims.

---

[1] These charges are also set forth in 6B DCMR §§ 1607.2(a)(5) and 1607.2(b)(3).
[2] 59 DCR 2129 (March 16, 2012).
[3] OEA Rule 628.2, 59 DCR 2129 (March 16, 2012).

Eames investigated the incident involving Mika Perrin ("Employee") that occurred on April 25, 2017. Eames' testimony is based largely on his investigative findings. He explained that Lieutenant Arce ("Arce") was first informed of an incident that occurred in District Heights, Maryland regarding Employee. Through the course of Eames' investigation he learned that an incident occurred between Employee and an individual whom she was once involved in a romantic relationship with, Ms. Qyesha Day ("Day")[4]. Subsequent to Employee's relationship with Day, Ms. Tierra Butler ("Butler") and Day began dating. Eames testified that Butler's sister, Ms. Talia Chestnut ("Chestnut"), alerted Agency of the altercation that involved Ms. Butler and Employee.

Arce initially contacted IAD and Eames was later assigned to the case. After obtaining some background information, Eames responded to the location of the incident on April 26, 2017. He learned that Boone-Day resided in District Heights, Maryland with Butler.

Eames further learned that on the day of the incident, Employee went to Day's home to speak with her. Some words were exchanged, and Day shut the door in Employee's face. Per Butler's statement, Employee banged on the door and kicked it in. However, Employee told Eames that she did not kick the door in, but that the door was open, and she walked inside. Once inside, Employee and Boone-Day had a shoving match on the downstairs level of the apartment. Employee provided a statement that she had a knife in her pocket, but it fell out, and it was not in her hand during the pushing and shoving match. However, Butler's statement indicated that Employee actually had the knife out in her hand during the shoving match.

Eames further testified that Butler ran up the stairs and Employee gave chase. Butler ran into the upstairs bedroom and shut the door, prompting Employee to kick the door in, causing Butler to fall to the ground in the bedroom. Boone-Day then entered the room and intervened in the assault on Butler. As Boone-Day and Employee wrestled with trying to gain possession of the knife, Butler called 911. After Butler called 911, Employee left the apartment and slashed the tires on Day's car as she left the premises.

Employee did not contest the events as described with the exception of her kicking in the door to the apartment. Employee told Eames that she was let inside. However, Eames recovered photographs of the front door showing a shoe print mark. It was discovered that Boone-Day paid to have her door repaired. Eames stated that when he arrived at the scene the door was fixed, but the foot print was still on the door.

During his investigation, Eames conducted recorded interviews with Butler, Chestnut, two Prince George County officers that responded to the scene, Lieutenant Arce, and two of Butler's neighbors. Eames testified that Chestnut stated that she contacted Butler several times on the morning of the incident but was unable to reach her. Believing something was amiss, Chestnut went to Boone-Day's home and saw Employee at the door of the residence with a knife in her hand.

[4] Ms. Day is also referred to throughout the record with the last name "Boone."

Eames testified that he also investigated whether Employee falsely reported her time on a sign-in sheet with Agency on April 25, 2017. Agency was aware that Employee came into the main gate at the Sixth District at 7:16 a.m. based on the key card access time. He explained that Employee was required to report to work at 7:00 a.m. Per the police report, a call for the incident came in around 6:59 a.m. Eames concluded that Employee could not have been at the Sixth District at 7:00 a.m., the time she was scheduled to be at work. Additionally, Eames received a statement from Sergeant Kimberly Freeman ("Freeman"), the administrative sergeant for the Sixth District, who stated that she was unable to confirm whether Employee was at work at the time she indicated because Freeman was the Commander's secretary during that time, and his office is separate from the administrative unit—Employee's work location.

On cross-examination, Eames stated that Chestnut observed Employee entering Day's home with the knife. He recalled that Chestnut stated that she was in her vehicle when she saw Employee and was able to see the knife in Employee's hands. Eames believed her story to be plausible because Employee stated that the size of the pocket knife was about eight inches, allowing Chestnut to see the knife from the distance she was from the front door of the apartment—where the incident was ongoing.

Eames testified that his investigation revealed that Day intervened and positioned herself between Butler and Employee which caused the physical confrontation and she fought to get Employee out of the room. Employee claimed that she put the knife away before the altercation. However, Butler stated that Employee did have the knife while they were fighting.

Eames testified that he believed that Employee kicked the front door in. However, he did not question Employee's character or veracity when it came to the other statements that she provided. Additionally, there were no reports or complaints filed by Butler or Day. Eames further explained that Employee voluntarily told him that she slashed the tires of Day's vehicle. Before Eames received a statement from Employee, he interviewed a witness in the area that also gave a statement that Day's tires were flat.

On examination by the undersigned Administrative Judge ("AJ"), Eames testified that Agency does not have a grace period policy regarding employees signing into work. Eames testified that employees were required to sign-in at the exact time they arrive to work. If an employee was not at work at their scheduled time, they are required to obtain a leave slip, or if they were running late, employees were expected to contact their supervisor. Eames further explained that in IAD, if employees signed in at incorrect times, it is considered attendance fraud and it would be considered a criminal case with the United States Attorney's Office.

When Eames interviewed Employee, her union representative was present. He clarified that Employee's statement was that she had the knife, however, during the altercation with Day the knife fell out and then she picked the knife up.

At the end of the investigation, Eames sustained the allegations that Employee kicked the front door while armed with a knife, assaulted Day while armed with a knife, and signed into work at the Sixth District at 7:00 a.m. when she really arrived at 7:16 a.m.

Lamar Greene ("Greene") ***Tr. 102-128***

Greene is a Patrol Chief with MPD and runs the northern part of the city's patrol operations. He was the deciding official in this matter. Greene reviewed the initial investigation and specifications of the charges that was conducted by IAD to determine the final decision regarding Employee.

Greene met with Employee and her union representative and informed them that she had an opportunity to explain any mitigating circumstances that she felt Agency had reported incorrectly. Employee informed Greene that she responded to the location of the incident and was armed with a knife. Additionally, Greene stated that Employee admitted that she kicked the door on the second level of Boone-Day's home and was involved in a verbal and physical altercation with Butler. Employee eventually left the residence, but before she went to her vehicle she slashed Day's tires. Shortly after, Employee reported to work at 7:16 a.m. however, on Employee's time sheet she indicated that she reported to work at 7:00 a.m. Greene stated that it is not MPD's policy to allow civilian or sworn employees a fifteen minute grace period with respect to signing in to work.

Greene testified that the facts reported to him through the investigation appeared to be accurate based on his interview with Employee. Employee told Greene that she had been involved in relationships that had turned violent before, which she attributed to her anger issues. Employee acknowledged attending anger management classes; however, she did not complete the program. Greene also indicated that Employee stated that she brought a knife with her because "somebody at the location was enticing her."

In determining the appropriate penalty in this matter, Greene considered the *Douglas* factors. Specifically, Greene took into consideration Employee's past disciplinary record, which included two reprimands. One of the previous reprimands involved Butler.[5] Greene further considered Employee's conduct to be felonious and criminal behavior. Based on the totality of the events, Greene viewed all of Employee's acts as egregious and based on the information he received, he upheld Agency's recommendation of terminal.

Employee's Case-in-Chief

Mika Perrin ("Employee") ***Tr. 129-167***

Employee testified that on April 25, 2017, she went to Ms. Boone-Day's home to confront Ms. Butler. Employee maintained that she did not kick in the front door of the apartment, nor did she assault anyone on the premises with a knife. Employee acknowledged that she charged after Ms. Butler up the stairs and kicking in the door on the upstairs bedroom, causing Butler to lose balance and fall to the floor. This also caused Butler's phone to fall on the floor at which time Employee could see that Butler was calling 911. Employee then went back down stairs.

[5] Greene became aware of the reprimands through the IAD Report and the Hearing Officer's Report.

Employee stated that she had the knife in her hand when she came up the stairs because it had fallen out of her pocket.

With respect to falsifying her sign-in time, Employee testified that the system used to sign-in at work only allowed an employee to sign-in at the half-hour or hour mark. Employee stated that she had a fifteen-minute grace period to sign-in and that she did not intentionally falsify the sign-in sheet.

On cross-examination, Employee acknowledged being reprimanded on two separate occasions in 2016.

Employee explained the reason why she went to Day's house on the morning of April 25, 2017. She stated that Butler was sending threatening text messages and indicated that she wanted to fight and urged Employee to come over so that they could fight. Based on these text messages, Employee's decided to go to Day house to fight Butler. Because Employee was being threatened, she decided to go and address Butler. Employee testified that Butler had previously antagonized her so she had a knife in her pocket for self-defense.

Employee also testified that Day tried to prevent her from going upstairs, and she engaged in an altercation with Day as she tried to go around her, and up the stairs to address Butler. During the struggle with Day, the knife fell out of Employee's pocket and she opened the blade, causing Day to step back so that Employee could go up the stairs. Once upstairs, and after kicking in the bedroom door and causing Butler to fall to the ground, Employee realized that Butler was calling 911, prompting her to leave.

As she was leaving the premises, Employee acknowledged slashing Day's tires to prevent them from following her as she left. Employee testified that she arrive at Day's house at approximately 6:30 a.m. in District Heights, Maryland, and left around 6:50 a.m. Employee was scheduled to be at work at 7:00 a.m.

Employee testified that she is no longer romantically involved with Day, but they remain friends.

FINDINGS OF FACT, ANALYSIS, AND CONCLUSIONS OF LAW

The undersigned was able to examine both the testimonial and documentary evidence presented by the parties throughout the evidentiary hearing and the documents of record. Employee was removed from her position for the following charge: (1) Conduct Prejudicial to the District Government: Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has otherwise identifiable nexus to the employee's position, pursuant to DPM 1607.2(a)(5); and (2) False Statements/Records: Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record, pursuant to DPM 1607.2(b)(3).

Agency is required to prove the facts with respect to each of the alleged acts of misconduct by a preponderance of the evidence.[6] Pursuant to OEA Rule 628.1, "preponderance of the evidence" is defined as "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."

Whether Agency's adverse action was taken for cause

It is undisputed that Employee was involved in an incident at her ex-girlfriend's house during the morning of April 25, 2017. The legal issue to determine here is whether Employee's off-duty actions amount to conduct prejudicial to the District Government as set forth in the specifications provided in Agency's Notice of Proposed Adverse Action—Termination, issued on November 3, 2017.[7] I must also determine whether Agency had cause to take adverse action against Employee for knowingly and willfully making an incorrect entry on MPD's sign-in sheet.

Whether Agency had cause to take adverse action against Employee for: Conduct Prejudicial to the District Government: Off-duty conduct that adversely affects the employee's job performance or trustworthiness, or adversely affects his or her agency's mission or has otherwise identifiable nexus to the employee's position.

I find that there is ample evidence that Agency had cause to take adverse action against Employee for conduct prejudicial to the District Government regarding her off duty conduct. Many of the detrimental acts relied on by Agency for this charge is admitted by Employee throughout the record, including her testimony at the evidentiary hearing. Employee did not dispute much of the events on the morning of April 25, 2017, with the exception of the finding that she kicked in the front door of Day's apartment.

It is undisputed that Employee went to her ex-girlfriend's house, Ms. Day, for the sole purpose of engaging in a physical fight with Ms. Butler, while armed with a knife. Employee testified that she had the knife for self-defense. While Employee denied initially having the blade of the knife open, the evidence supports, through Employee's own admission, that the blade of the knife was eventually displayed for the purpose of getting Day to move out of her way in an effort to attack Butler.[8] Additionally, despite Employee denying that she kicked in the front door of Day's home, the evidence supports that she in fact kicked the front door of the apartment with the purpose of gaining entry.[9]

Employee admitted that Day tried to prevent her from going upstairs and she engaged in a scuffle as she tried to get around Day, in an effort to get to Butler.[10] During the scuffle, Employee admitted that she switched the blade open to get Day to get out of her way. Employee acknowledges that once upstairs, she kicked the bedroom door in causing Butler to fall to the

[6] OEA Rule 628.1, 59 DCR 2129 (March 16, 2012)
[7] Evidentiary Hearing, Agency Exhibit 2 (August 1, 2018).
[8] Tr. 155-156.
[9] Evidentiary Hearing, Agency Exhibit 6 (August 1, 2018).
[10] Tr.151-159.

ground.[11] While leaving the premise, Employee admitted that she slashed the tires on Day's car to prevent them from following her. Employee's actions showed no regard for the physical safety of Day or Butler. Employee's action further showed no regard for Day's property when Employee slashed the tires on Day's car without justification. Employee's assertion that she slashed the tires of Day's car to prevent them from following her, presumably for her safety, is misguided as she created her own peril by going to the home to engage in a physical confrontation. Thus, I find that Agency had cause to take adverse action against Employee for conduct prejudicial to the District Government regarding her off duty conduct—specifically for the attack on Day and Butler and the destruction of Day's personal property by slashing her tires.

False Statements/Records: Knowingly and willfully making an incorrect entry on an official record or approving an incorrect official record.

Agency asserts that Employee knowingly and willfully made an incorrect entry on the sign-in sheet regarding her time of arrival to work on April 25, 2017. Employee's scheduled tour of duty began at 7:00 a.m. However, it was established that Employee came into the main gate of MPD's Sixth District of 7:16 a.m. based on her key card access log.[12] Both Eames and Greene testified that Agency does not have a grace period policy regarding employees signing into work. Eames further testified that employees were required to sign-in at the exact time they arrived to work. Additionally, he stated that if an employee was not at work at their scheduled time, they are required to obtain a leave slip, or if they were running late, employees were expected to contact their supervisor.

Other than Employee's own assertion that employees have a fifteen (15) minute grace period to sign-in to work, she offered no evidence to contradict Eames' or Greene's testimony. Employee testified that the system used to sign-in at work only allowed an employee to sign-in at the hour or half-hour mark and that she did not intentionally falsify her time on the sign-in sheet. However, the sign-in sheet relied on by Agency for making a false statement is a sheet of paper where employees hand-write their sign-in and sign-out time.[13] By adopting a hand-written sign-in/sign-out procedure, employees are not bound to any particular increments as described by Employee. Employee offers no evidence that she was limited to only sign in on the hour or half-hour mark, and her assertion is further contradicted by the sign-in sheet presented by Agency. Thus, I find that Agency had cause to take adverse action against Employee for knowingly and willfully making an incorrect entry on the sign-in sheet.

Appropriateness of the Penalty

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 Penalties; whether the penalty is based on a consideration of the relevant factors, and whether there is a clear error of judgment by agency. Agency has the primary discretion in selecting an appropriate penalty for Employee's conduct, not the Administrative

[11] Tr. 156-157.
[12] Evidentiary Hearing, Agency Exhibit 1, Attachment 19.
[13] Evidentiary Hearing, Agency Exhibit 1, Attachment 17.

Judge.[14] The undersigned may only amend Agency's penalty if Agency failed to weigh relevant factors or Agency's judgment clearly exceeded limits of reasonableness.[15] 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.[16]

Here, as explained above, I find that Agency had cause to take adverse action against Employee for: (1) conduct prejudicial to the District Government regarding her off-duty conduct on April 25, 2017; and (2) knowingly and willfully making an incorrect entry on the sign-in sheet. 6B DCMR § 1607.2(a)(5) (Table of Illustrative Actions) addresses the appropriate penalty for Employee's conduct prejudicial to the District government regarding her off-duty conduct. Specifically, 6B DCMR § 1607.2(a)(5) provides that the appropriate penalty for this charge ranges from counseling to a 30-day suspension.

6B DCMR § 1607.2(b)(3) addresses the appropriate penalty for Employee's action of knowingly and willfully making an incorrect entry on an official record (sign-in sheet). Specifically, this section provides that the appropriate penalty for this charge ranges from counseling to removal. Here, Agency elected to remove Employee not only based on this charge, but also the charge regarding her off-duty conduct on April 25, 2017. Thus, based on my findings that Agency had cause for both charges, I further find that the removal of Employee from her position was within the allowable range as set forth under 6B DCMR §§ 1607.2(a)(5) and 1607.2(b)(3). Additionally, Agency provided a thorough analysis of the *Douglas* factors in considering the appropriate action to take.[17] Accordingly, I find that Agency appropriately exercised its managerial discretion when it elected to remove Employee from her position.

Employee's chief argument regarding the appropriateness of the penalty is the consideration of one of the *Douglas* factors—her prior disciplinary history. Employee asserts that she was not aware that her two prior reprimands would be used against her in the instant case until she received the Final Notice of Removal. In support of this position, Employee points to the third *Douglas* factor in the Advance Written Notice, issued on November 3, 2017, which states that MPD "is aware that you have no sustained adverse action within the last three (3) years." While it is true that Employee does not appear to have any sustained adverse actions within the previous three years, Employee's gripe seems to be that Agency did not indicate that it was considering her prior reprimands, which are considered corrective action, rather than adverse actions.

However, Employee acknowledges that she received the Final Investigate Report which was issued prior to the Final Decision of Removal, and contained both previous reprimands as part of the consideration of the *Douglas* factors.[18] The Final Investigate Report was attached to the Advance Notice of Proposed Removal issued on November 3, 2017.[19] The Hearing Officer's

---

[14] *See Stokes v. District of Columbia*, 502 A.2d 1006 (D.C. 1985).
[15] *Id.*
[16] *Id.*
[17] Advance Notice of Proposed Removal, Agency Exhibit 2; *See also* Notice of Final Recommendation of the Hearing Officer, Agency Exhibit 3; *See also* Notice of Final Decision, Agency Exhibit 5.
[18] Evidentiary Hearing, Agency Exhibit 1, at 13.
[19] Evidentiary Hearing, Agency Exhibit 2.

Report and Recommendation also included the two prior reprimands in the *Douglas* factor analysis.[20] 6B DCMR § 1612.7 states that, "[a] reprimand may be considered in establishing a corrective or adverse action, when the action is initiated within three (3) years of the reprimand." As such, I find that Agency was well within its right to consider Employee's two previous reprimands in imposing a penalty. Of particular importance, one of the prior reprimands includes an incident involving one of the same victims in the instant case—Ms. Butler.[21] This incident is the second off-duty incident involving the same individual leading to disciplinary action against Employee. Agency properly invoked its managerial discretion in selecting its penalty—removal.

Throughout Employee's closing brief, she raises the argument that Agency failed to called Day, Butler, or Chestnut to testify at the evidentiary hearing, seemingly to make the point that Agency did not satisfy its burden of proof regarding the events that transpired on April 25, 2017. While it is true that Agency requested, and subpoenas were issued for these individuals, I do not find that their lack of testimony discredited any of the testimony provided at the hearing. Although Agency requested the subpoenas of these individuals, it is the Agency's prerogative as to which witnesses it calls to testify. Employee was also well within her right to request subpoenas and question the witnesses it believed Agency should have called to testify. She chose not to request any subpoenas.

As explained above, I find that Agency had cause to take adverse against Employee for both charges set forth above and that the penalty of removal was appropriate under the circumstances.

ORDER

Accordingly, it is hereby **ORDERED** that Agency's removal of Employee from her position as a Staff Assistant is **UPHELD**.

FOR THE OFFICE:

Arien P. Cannon, Esq.
Administrative Judge

[20] Evidentiary Hearing, Agency Exhibit 3, at 3.
[21] *See* Tr.at 162.